



GREATER NEW YORK HEALTH CARE FACILITIES ASSOCIATION

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Memo 24-11

To: Administrator, DNS, Medical Director, Licensed Nurses and QA Committee

**From: Mary Gracey-White RN, Director of Regulatory Compliance and
Arlette A Drigpaul, MSN RN Infection Preventionist/Education Coordinator**

Date: May 1, 2024

Re: CMS Final Rule regarding Minimum Staffing Requirements

On April 22, 2024, the Centers for Medicare and Medicaid Services (CMS) released the final rule regarding minimum staffing requirements in nursing homes.

This final rule will require nursing homes participating in Medicare and Medicaid to provide:

- An RN to be on-site 24 hours per day/seven days per week.
 - §483.35(b)(3) the director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.
- A minimum total staffing HPRD of 3.48
 - This includes all RNs, LPNs/LVNs, and nurse aides.
- A minimum RN staffing HPRD of 0.55
- A minimum NA staffing HPRD of 2.45

Facilities **must meet all four of the above** daily staffing requirements to be considered in compliance.

CMS is also revising the following:

- The existing Facility Assessment (FA) requirements to ensure that facilities have an efficient process to consistently assess and document the necessary resources, resident acuity, and staff required to provide ongoing care for its population based on the specific needs of the residents.
- The Facility Assessment (FA) will require input from the facility's governing board, medical director, direct caregivers, and potentially representatives such as labor organizations. In addition, the FA will need to incorporate the facility plan(s) for recruitment and retention and expand on behavioral health needs at the facility.

As per CMS, it is expected that the Final Rule will be published on or around May 10, 2024 which would require updating the Facility Assessment by August 10, 2024. CMS has stated they will release additional information regarding the changes to the Facility Assessment.

CMS will use a multi-stage implementation process for these requirements to allow facilities to prepare. Specifically:

- Phase 1 – All facilities must meet the Facility Assessment requirements within 90 days after publication of the final rule
- For **non-rural facilities**
 - Phase 2 Must meet the minimum 3.48 HPRD for total nursing and 24/7 RN staffing requirements two years after publication of the final rule
 - Phase 3 Must meet the minimum 0.55 RN and 2.45 NA HPRD three years after publication of the final rule
- For **rural facilities**
 - Phase 2 Must meet the minimum 3.48 HPRD for total nursing and 24/7 RN staff requirements three years after publication of the final rule
 - Phase 3 Must meet the minimum 0.55 RN and 2.45 NA HPRD five years after publication of the final rule.

Exemptions from these proposed minimum standards will be available only in limited circumstances. Facilities are not eligible for an exemption if any one of the following is true:

- They have failed to submit their data to the Payroll Based Journal System.
- They have been identified as a special focus facility (SFF).
- They have been identified within the preceding 12 months as having: widespread, or a pattern of, insufficient staffing that resulted in actual harm to a resident; or an incident of insufficient staffing that caused or is likely to cause serious harm or death to a resident.

We will continue to keep you informed on any updates from CMS as well as from NYSDOH and the impact on NYS current 3.5 hour nurse staffing mandate