# External FAQs

**Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting final rule (CMS 3442-F)**

# Q1. What is CMS announcing?

**A1.** The Centers for Medicare & Medicaid Services (CMS) is announcing the publication of a final rule that establishes comprehensive minimum staffing requirements for Medicare- and Medicaid-certified long-term care (LTC) facilities to ensure their residents receive safe and high-quality care. This final rule establishes a federal baseline for minimum staffing in nursing homes nationwide, requiring that facilities provide a minimum of 3.48 hours per resident day (HPRD) of total nurse staffing care, which must include 0.55 HPRD of registered nurse (RN) care and 2.45 HPRD of nurse aide (NA) care. It also requires 24/7 onsite coverage by RNs and a renewed focus on using the facility assessment to properly staff based on acuity of residents.

To support nursing home staffing and to help nursing homes meet this new requirement, CMS reiterates its commitment to a new nursing home staffing campaign to help workers pursue careers in nursing homes. This campaign includes over $75 million to support the recruitment, training, and retention of nursing home workers through the Civil Money Penalty Reinvestment Program. CMS is also finalizing a requirement to promote transparency related to the percentage of Medicaid payments for services in nursing facilities and intermediate care facilities, for individuals with intellectual disabilities (ICFs/IID), that is spent on compensation to direct care workers and support staff.

**Q2. What are the finalized minimum nurse staffing standards?**

**A2.** CMS is finalizing a 3.48 HPRD total nurse staffing standard, which must include at least 0.55 HPRD of RN care and 2.45 HPRD of NA care to residents. The rule will also require 24/7 on site coverage by RNs and strengthen the facility assessment requirements to determine the appropriate staffing levels and resources needed to safely care for residents, and to ensure that direct care workers are included in the decision-making process.

**Q3. Why did CMS decide to finalize a total nurse staffing threshold?**

**A3.** CMS received numerous comments encouraging the agency to increase the overall required hours per resident day while also including LPN/LVNs in the minimum staffing standards. Therefore, CMS is finalizing a total nurse staffing standard, which includes minimum individual levels for RNs and NAs of 0.55 HPRD and 2.45 HPRD, respectively, and allows facilities flexibility to choose nursing staff, including LPN/LVNs already on staff or newly hired, to meet the remaining 0.48 HRPD. This change is in response to the comments and based on evidence that suggests that a total nurse staffing standard could lead to significant improvement in safety and quality of care.

**Q4. What if my facility already exceeds this level of hours per resident day of total nurse staffing care? Are we expected to scale back to meet CMS’ minimum standards?**

**A4.** No, the final requirements are a minimum standard. LTC facilities should continue to provide a high level of care by nursing staff to residents based on the acuity and nature of their needs. CMS expects that each facility will use its facility assessment to determine the case mix of resident population, overall care hours needed to provide safe and high-quality care to its resident population based on overall acuity and need, and the appropriate amount of nursing staff to provide such care. In some cases, this may necessitate that LTC facilities exceed the 3.48 HPRD minimum or the specific RN and NA minimums.

**Q5. Would a high-quality facility with relatively low nurse staffing be required to meet these standards? Why?**

**A5.** All facilities are expected to meet the finalized standards, regardless of performance on past surveys. The finalized standards are intended to create a consistent and broadly applicable federal baseline across all Medicare- and Medicaid-certified LTC facilities to ensure that facilities provide safe and high-quality care to residents. LTC facilities are also expected to staff above these minimum levels, as needed, and based on the facility assessment to address the specific needs of their resident population and acuity levels. Additionally, LTC facilities will need to continue to meet other requirements for participation to ensure facilities provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being for each resident, consistent with that resident’s comprehensive assessment and plan of care.

**Q6. Can CMS give an example of why a facility might need to staff above the finalized minimum standards?**

**A6.** All facilities should provide additional staffing above the minimum staffing standards based on the facility assessment needs and resident acuity levels. The goal is to ensure resident safety and to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. For example, we anticipate facilities with a high population of ventilator-dependent residents, those that specialize in caring for residents with dementia, and those with residents that require dialysis may need to staff above the finalized minimum standards given the complexity of care required by these residents and increased need for specialized nursing care. These are a few examples and do not constitute an exhaustive list; every facility should determine staffing needs based on their own facility needs assessment. If a facility finds that it is not providing adequate care under these minimum standards, it should add enough staff to ensure that staffing is sufficient to provide care in accordance with resident care plans.

**Q7. Does CMS anticipate modifying the finalized minimum staffing thresholds in the future?**

**A7.** CMS plans to conduct ongoing monitoring and evaluation of aspects of this final rule, including but not limited to, the minimum staffing standards, 24/7 RN requirement, exemption process, and definition of “rural,” as they are implemented over the next several years. We will update the regulations as needed.

**Q8. Why is CMS finalizing a 24/7 RN requirement?**

**A8.** Currently, LTC facilities are required to provide 24-hour licensed nursing services and to have an RN on duty at least eight consecutive hours a day, seven days a week. However, residents remain at risk for preventable safety events when there is no RN on-site, particularly during evenings, nights, weekends, and holidays. Additionally, facilities often provide care for residents with increasingly, medically complex and acute health conditions that require the training and expertise of RNs. This final rule aims to address these challenges and ensure that residents are receiving safe, high-quality care from an RN seven days a week, including evenings, nights, weekends, and holidays.

**Q9. What are the finalized changes to the facility assessment requirements?**

**A9.** CMS finalized several updates to the facility assessment as a means of strengthening these requirements, including:

* Clarifying that the facility must use evidence-based methods when care planning for their residents, including consideration for those residents with behavioral health needs.
* Requiring that facilities use the facility assessment to assess the specific needs of each resident unit in the facility and to adjust as necessary based on any significant changes in the resident population.
* Requiring that facilities include the input of the nursing home leadership, including but not limited to a member of the governing body and the medical director; management, including but not limited to an administrator and the director of nursing; and direct care staff, including but not limited to RNs, LPNs/LVNs, and NAs. The LTC facility must also solicit and consider input received from residents, resident representatives, family members, and representatives of direct care staff.
* Requiring facilities to develop a staffing plan to maximize recruitment and retention of staff consistent with the [President’s April Executive Order on Increasing Access to High- Quality Care and Supporting Caregivers.](https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/18/executive-order-on-increasing-access-to-high-quality-care-and-supporting-caregivers/)

**Q10. Is CMS finalizing any type of implementation delay given the existing staffing challenges that some facilities may face?**

**A10.** CMS is finalizing a staggered approach to the various staffing requirements, with extended timeframes for rural facilities. The finalized timeline is as follows:

For All Non-Rural Facilities:

* Phase 1 — Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
* Phase 2 — Within two years of the final rule publication, facilities must meet the 3.48 HPRD total nurse staffing requirement and the 24/7 RN requirement.
* Phase 3 — Within three years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

For Rural Facilities (as defined by the Office of Management and Budget):

* Phase 1 — Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
* Phase 2 — Within three years of the final rule publication, facilities must meet the 3.48 HPRD total nurse staffing requirement and the 24/7 RN requirement.

Phase 3 — Within five years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

**Q11. Will CMS provide any exemptions to the finalized staffing standards? If so, how does a facility qualify?**

**A11.** Yes, some LTC facilities will be able to receive a temporary exemption from the finalized minimum staffing standards. Facilities will be surveyed for compliance with the HPRD and 24/7 RN requirement prior to being considered for an exemption. If a facility is found out of compliance with one of the minimum standards, the facilities may qualify for a temporary hardship exemption from the individual minimum staffing standards (i.e., 0.55 HPRD, 2.45 HPRD for RNs and NAs, respectively, and 3.48 total nurse staff HPRD), as well as eight hours of relief from the 24/7 RN requirement, only if they meet all of the following specific criteria below:

* The facility is located in an area where the supply of applicable healthcare staff (RN, NA, or total nurse staffing) is not sufficient to meet area needs, as evidenced by a provider to population ratio for nursing workforce, which is a minimum of 20% below the national average, as calculated by CMS, currently using U.S. Bureau of Labor Statistics and U.S. Census Bureau data.
  + The facility may receive an exemption from the total nurse staffing requirement of 3.48 HPRD if the combined licensed nurse and NA to population ratio in its area is a minimum of 20% below the national average.
  + The facility may receive an exemption from the 0.55 RN HPRD requirement, and an exemption of eight hours a day from the RN on-site 24 hours per day for seven days a week requirement, if the RN to population ratio in its area is a minimum of 20% below the national average.
  + The facility may receive an exemption from the 2.45 NA HPRD requirement if the NA to population ratio in its area is a minimum of 20% below the national average.
* The facility provides documentation of good faith efforts to hire and retain staff, including documentation of job postings and vacancies, including the number and duration of vacancies, job offers made, and competitive wage offerings.
* The facility provides documentation of its financial commitment to staffing, including documentation of the total annual amount spent on direct care staff.
* The facility posts a notice of its exemption status in a prominent and publicly viewable location in each resident facility.
* The facility provides individual notice of its exemption status, and the degree to which it is not in compliance with the HRPD requirements, to each current and prospective resident and sends a copy to a representative of the Office of the State Long-Term Care Ombudsman.

**Q12. What types of facilities are ineligible for a hardship exemption to the finalized staffing standards?**

**A12.** Facilities would not be eligible for a hardship exemption to the finalized staffing standards if they meet any one of the following criteria:

1. They have failed to submit Payroll Based Journal data as required by regulation.

2. They have been identified as a special focus facility (SFF), meaning they were selected by CMS and the state for additional oversight based on a record of persistent poor performance.

3. They have been identified as having widespread insufficient staffing with resultant resident actual harm; a pattern of insufficient staffing with resultant resident actual harm; or if they have been cited at the immediate jeopardy level of severity with respect to insufficient staffing, as determined by CMS.

**Q13. How will a facility know if it meets the requirements to even qualify for an exemption? Will CMS issue a list or notify facilities if they fall into one of these categories?**

**A13.** CMS anticipates outlining the process in guidance following the publication of a final rule. We note that the qualifications for a waiver include information that CMS can determine (such as whether the facility is located in a labor shortage area) and information that CMS cannot determine until a facility applies for an exemption, such as the facility’s efforts to hire and financial commitment. Therefore, we do not envision CMS notifying facilities that qualify for a waiver. Rather, we will describe how facilities can evaluate themselves to determine if they believe they qualify for a waiver, and the process for requesting a waiver based on their evaluation.

**Q14. How will a facility apply for an exemption?**

**A14.** LTC facilities do not need to apply for an exemption. Prior to being granted an exemption, the LTC facility must be surveyed to assess the health and safety of the residents. If a LTC facility is found noncompliant with the minimum staffing requirements, while not meeting the exclusionary criteria (for example, must not have failed to submit PBJ System data, must not be a Special Focus Facility, and must not have been identified by CMS as having “widespread” or “a pattern of insufficient staffing with resultant resident harm” or cited at an “Immediate Jeopardy to resident health and safety” level of severity with respect to understaffing within the last 12 months), the LTC facility’s documentation of a good faith effort to hire and retain staff, and the LTC facility’s documentation of a financial commitment to adequate staffing, must be submitted to the state and/or CMS. Once the documentation is submitted, a facility can be granted an exemption.

**Q15.** **Does the hardship exemption apply to the requirement for an RN presence 24/7?**

**A15.** Yes, the hardship exemption applies to the onsite 24/7 RN requirement. LTC facilities located in an RN workforce shortage area as determined by the provider-to-population ratio can receive an exemption of eight hours from the 24/7 RN requirement. This hardship exemption is in addition to the existing statutory waivers available for LTC facilities specific to the onsite RN requirement. Additionally, CMS requires that for any periods when the onsite 24/7 RN requirements are exempted, facilities must have an RN, nurse practitioner, physician assistant, or physician available to respond immediately to telephone calls from the facility.

**Q16. If a facility qualifies for and is granted a hardship exemption, does that mean it is always exempt from meeting the minimum staffing standards and/or the 24/7 RN onsite requirement?**

**A16.** No. The hardship exemption is good until the next standard recertification survey, unless it falls into one of the exclusionary criteria. A facility that falls into an exclusionary criterion while under an exemption would lose its exemption. Otherwise, the facility would be reassessed for eligibility if they were found non-compliant with the minimum staffing standards and/or RN onsite 24/7 requirement at the next standard recertification survey. CMS expects any facility receiving an exemption to work toward full compliance with the final staffing requirements as soon as possible.

**Q17. If CMS is allowing an exemption to the nurse staffing standards and 24/7 RN onsite requirement, how do they plan to ensure facilities are working towards being able to meet the requirements and not simply requesting exemptions at every recertification survey?**

**A17.** As noted above, facilities will be assessed for compliance at each recertification survey and assessed for eligibility for an exemption at that time, if needed. To qualify for an exemption, facilities have to provide documentation of their ongoing efforts to hire and retain staff, provide documentation of their financial commitment, and not fall into any exclusionary criteria. CMS believes these criteria, along with transparency requirements, will encourage facilities to strive for compliance.

**Q18. Can a facility qualify for any other exemptions to the minimum staffing standards?**

**A18.** In addition to the exemptions established in this final rule,facilities may be able to qualify for an existing statutory waiver. An existing statutory waiver for Medicare SNFs, permits the Secretary to waive the requirements of § 483.35(b) to provide the services of an RN for more than 40 hours a week, including the director of nursing, if certain requirements are met. An existing statutory waiver also exists for NFs, which permits the state to waive requirements for 24-hour licensed nurses if specific requirements are met. The NF waiver is implemented at §483.35(f).

**Q19. Can a facility receive more than one exemption?**

**A19.** A LTC facility can receive an exemption for each or all of the staffing standards (i.e., RN, NA, Licensed Nurses) for which it qualifies based on being located in a workforce shortage area as determined by the provider-to-population ratio. A facility may separately apply for a statutory waiver specific to meeting the onsite RN requirements through the existing mechanisms for requesting those waivers**.**

**Q20. What types of remedies is CMS contemplating for noncompliance with the minimum staffing requirements?**

**A20.** Enforcement actions, also called remedies, that may be taken against LTC facilities that are not in compliance with these federal participation requirements include, but are not limited to, denial of payment by CMS for all Medicare and/or Medicaid individuals, civil money penalties, and/or termination from the program.

**Q21. Last year HHS announced an** [**initiative to strengthen the nation’s workforce**](https://www.hhs.gov/about/news/2023/07/06/new-hhs-initiative-aims-strengthen-nations-health-workforce.html)**, including through an investment of $100 million in nurse education and training through HRSA. Is this the same initiative?**

**A21.** No. CMS’ nursing home staffing campaign builds on previous HHS commitments to enhance the nursing workforce. The funding and actions related to the nursing home staffing campaign are separate and exclusively targeted to support the nursing home workforce. These build on, and are in addition to, initiatives announced by HHS through its comprehensive [Workforce Initiative.](https://www.hhs.gov/about/news/2023/07/06/new-hhs-initiative-aims-strengthen-nations-health-workforce.html)

**Q22. Where is the $75 million coming from, and why don’t you just use it to increase nurses’ salaries?**

**A22.** This initiative will be funded using federal civil money penalty (CMP) funds that are collected when CMS imposes a CMP on nursing homes for certain types of noncompliance. CMP funds have specific statutory and regulatory allowances and prohibitions for use. They can only be used to improve the quality of care for nursing home residents. They cannot be used to support individuals or patients in any other type of health care setting. Also, they cannot be used to supplant or supplement existing funding sources. For example, nursing homes are expected to cover costs of nurses’ salaries (and other services needed to care for residents) from existing funding sources, such as Medicare, Medicaid, or private pay payments. More information about the use of CMP funds can be found on the CMS [CMP Reinvestment Program webpage](https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/ltc-cmp-reinvestment).

We acknowledge that some may feel the funds from existing sources are not enough to cover all the costs needed for nurse staffing. However, there is a lack of transparency on how nursing homes manage and spend available funds. While there may be situations where the existing payments do present challenges to funding the costs for nurse staffing, there are other situations where the costs can be funded, but the organization has made a budgetary decision not to fund certain costs.

**Q23. How many more nurses will this initiative lead to? How many have committed to come to nursing homes? Will it enable all nursing homes to comply with the new finalized requirements?**

**A23.** We are in the very early stages of the campaign. We don’t have estimates at this time, but we will seek to obtain information like this through the research we conduct as we progress. While we don’t envision this program supplying nursing homes with all the staff they need to meet the finalized requirements, we do believe it will help facilities achieve the finalized standards in conjunction with other efforts.

We note that while this campaign will support nursing homes’ efforts to increase staffing and maintain compliance with the finalized requirements, it is not part of the regulation or rule-making process.

**Q24. How will the initiative work? For example, how will the funds ensure individuals actually come to work in nursing homes?**

**A24.** The campaign intends to recruit registered nurses (RNs), certified nurse aides (CNAs), and other nurses, such as licensed practical nurses (LPNs). For RNs, they will be given the opportunity to obtain funds to support their education, such as tuition reimbursement in return for working in the nursing home environment. For example, an RN could obtain funds to pay off their student loans, in return for working in a nursing home or state inspection agency for three years. The RN would receive funds at regular intervals throughout those three years (i.e., not all at once in the beginning) until the work commitment is fulfilled. CNAs already receive paid, on-the-job training through state-approved nurse aide training programs. For these individuals, the intent of the program is to work with states to make it easier for individuals to identify and enroll in these training programs, such as improving states’ website functionality, user-friendliness, or listings of training programs. Also, the campaign will highlight the career pathways available that can lead to a progressive and rewarding career in nursing homes. For example, we will highlight the opportunities that CNAs and LPNs have for higher-level positions and success as they move up the career ladder.

This program will also include an awareness campaign targeting the audiences above and a website to serve as the hub for information on the program.

**Q25. When will the campaign start? For example, when will we start to see promotional or advertising information as part of the awareness campaign? When will the first nurse receive a financial incentive? How long will the campaign last?**

**A25.** We are currently conducting comprehensive research to inform the structure of the program. This includes obtaining feedback from experts, identifying lessons learned and best practices from similar types of programs, and crafting and testing the key messages that will resonate with potential participants. Later this year, we will be launching a new webpage which will serve as the hub for information about this campaign. As we progress, we will be finalizing the other components of the campaign, such as building the infrastructure to administer financial incentives to nurses. We anticipate financial incentives will begin to be distributed to nurses in 2025, before the minimum nurse staffing standards are implemented.

**Q26. It can cost over $100,000 for someone to get their nursing degree. A $75 million expenditure equates to fewer than 750 nurses (considering there will be other costs for administration of the program). While 750 nurses may help some facilities, it doesn’t seem like a significant impact for nursing homes, in general. How can CMS consider this a serious attempt to help nursing homes?**

**A26**. While the cost of education for some schools, such as four-year private schools, can reach such levels, the cost can be considerably lower in other schools. For example, the cost to attend a four-year public (state) school can be around $50,000. Also, the cost to attend a two-year degree nursing program can be around $20,000. Each year, roughly half of all new registered nurses come from two-year degree programs. Also, states will be contributing state-based funds to bolster the program in their state, and we anticipate this will add millions of dollars to the total amount allocated to this program, increasing the number of nurses that can be recruited. Finally, the campaign will also be recruiting certified nurse aides, which is the largest group of nurses in nursing homes. Therefore, based on this information, we believe this program can have a significant impact on nursing homes and state inspection agencies, in general.