



The National

CONSUMER VOICE

_____ for Quality Long-Term Care

Reviewing the Rule: Unpacking CMS's Minimum Staffing Standard

May 15, 2024

About the Consumer Voice

The leading national voice representing consumers in issues related to long-term care

- ▶ **Advocate for public policies** that support quality of care and quality of life responsive to consumers' needs in all long-term care settings.
- ▶ **Empower and educate** consumers and families with the knowledge and tools they need to advocate for themselves.
- ▶ **Train and support** individuals and groups that empower and advocate for consumers of long-term care.
- ▶ **Promote the critical role** of direct-care workers and best practices in quality care delivery.

Welcome

- ▶ The program is being **recorded**
- ▶ Use the **Q&A feature** for questions for the speakers
- ▶ Use the **chat feature** to submit comments or respond to questions from speakers or other attendees
- ▶ Please complete the **evaluation** questionnaire when the webinar is over.
- ▶ Links to **resources** will be posted in the chat box and will be posted to the Consumer Voice website – theconsumervoice.org

Speakers



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+ What are the New Minimum Federal Staffing Requirements?



New Federal Minimum Staffing Standards

- **24/7 registered nurses (RNs).** Currently, nursing homes are required to have a RN eight hours per day, with the other 16 LPN or RN.
- **Minimum overall nursing staff of 3.48 hours per resident per day (HPRD). This must include .55 HPRD of RN time and 2.45 HPRD of CNA time.** Currently, there are no *quantitative* federal minimum staffing requirements, only the requirement that facilities have “sufficient staffing” to ensure that every resident has the care and services necessary to attain and maintain their highest practicable physical, mental, and psycho-social well-being.
- These minimum standards do *not* supplant a facility’s longstanding requirement to provide sufficient staffing.





New Federal Minimum Staffing Standards – Implementation

Delayed implementation.

- **For all facilities.** Compliance with facility assessment requirements 90 days after the publication date of the final rule.
- **For rural facilities.**
 - The requirement related to providing 3.48 HPRD for total nurse staffing and the requirement related to 24/7 onsite RN at § 483.35(c)(1) must be implemented 3 years after the publication date of this final rule.
 - The requirements related to providing 0.55 RN and 2.45 NA HPRD at must be implemented 5 years after the publication date of this final rule.
- **For non-rural facilities.**
 - The requirement related to providing 3.48 HPRD for total nurse staffing at and the requirement related to 24/7 onsite must be implemented 2 years after the publication date of this final rule.
 - The requirements related to providing 0.55 RN and 2.45 NA HPRD at must be implemented 3 years after the publication date of this final rule.





Finding Information on Staffing in Your State, Community, Facility

The screenshot shows the website for the Long Term Care Community Coalition. The header includes the organization's logo, social media icons, a 'DONATE' button, and a search bar. The main navigation menu contains 'Who We Are', 'Learning Center', 'Data Center', 'Our Work', and 'LTC in NY'. The page title is 'Nursing Home Staffing Data', with a breadcrumb trail: 'Home » Nursing Home Data & Information » Nursing Home Staffing Data'. The content is divided into two columns. The left column contains text explaining the importance of staffing and the coalition's role in providing data. The right column features a list of quick links to staffing information for various quarters from 2022 to 2023. An important note is also present regarding a new staffing standard in May 2024.

LONG TERM CARE COMMUNITY COALITION

Who We Are ▾ Learning Center ▾ **Data Center** ▾ Our Work ▾ LTC in NY ▾

Nursing Home Staffing Data

Home » Nursing Home Data & Information » Nursing Home Staffing Data

Sufficient staffing is one of the most important indicators of a nursing home's quality and safety. Unfortunately, inadequate nursing home staffing is a widespread and persistent problem. Some nursing homes provide good care, ensuring that their facilities have enough qualified staff. However, in the absence of limits on profits and administrative expenses, too many nursing homes fail to allocate the resources necessary to maintain sufficient staffing.

To help the public find out about nursing home staffing in our communities, LTCCC publishes, on a quarterly basis, information on staffing for every nursing home in the country (that is in compliance with federal staff reporting requirements).

Important Note: In May 2024, the Biden Administration finalized a rule requiring, for the first time, that nursing homes provide minimum numbers of nursing staff time per resident.

- [CLICK HERE](#) to learn more about the new staffing standard.
- [CLICK HERE](#) for tips on how you can provide input to your facility to ensure that it is providing safe and sufficient staffing.

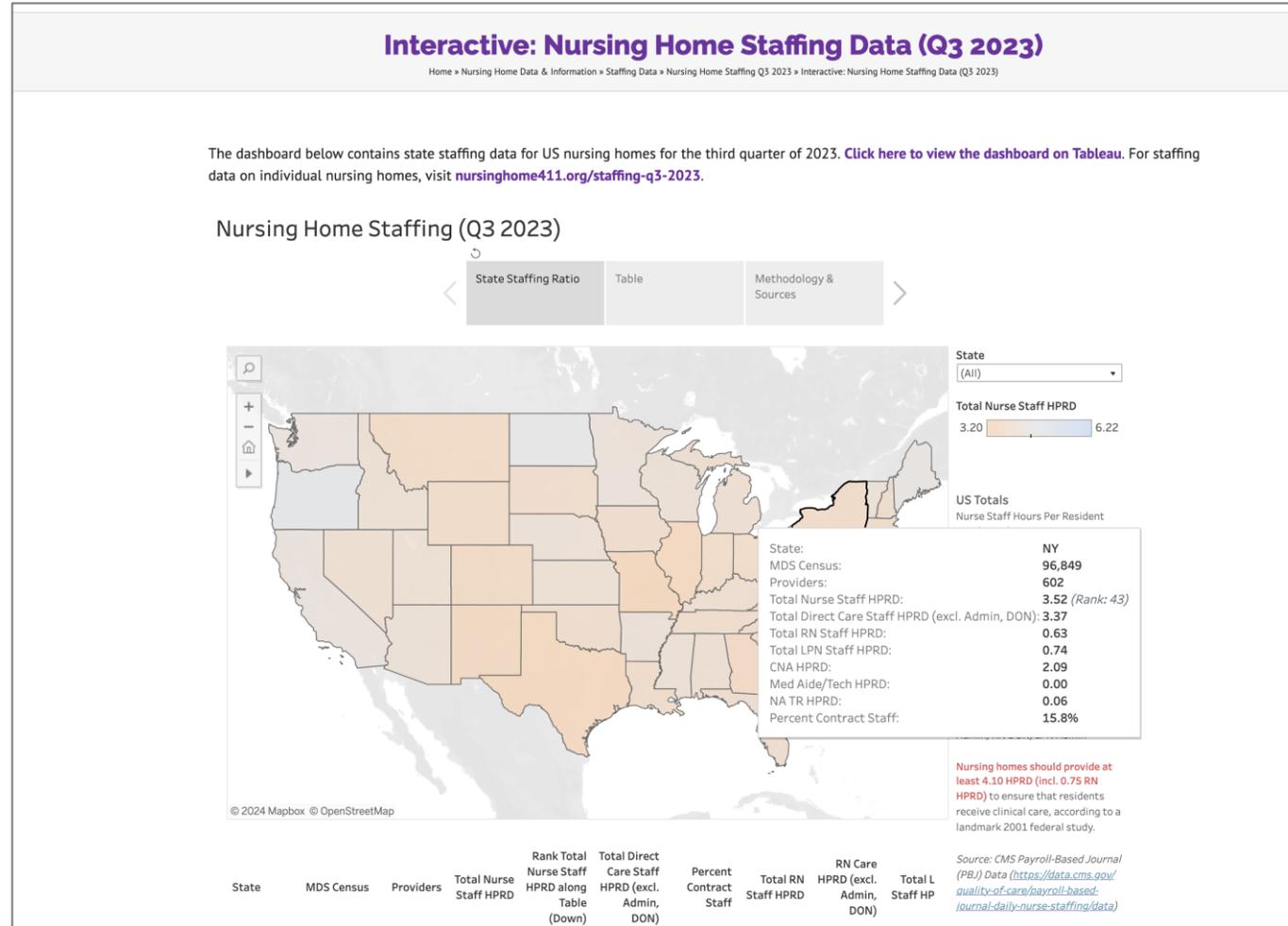
Quick links to staffing information for all licensed facilities in the U.S.

- NURSING HOME STAFFING 2023 Q4
- NURSING HOME STAFFING 2023 Q3
- NURSING HOME STAFFING 2023 Q2
- NURSING HOME STAFFING 2023 Q1
- NURSING HOME STAFFING 2022 Q4
- NURSING HOME STAFFING 2022 Q3

nursinghome411.org/data/staffing/



Map of State Staffing Levels (average)



nursinghome411.org/data/staffing/



Quarterly Data Reports

Nursing Home Staffing Q3 2023

Home » Nursing Home Data & Information » Staffing Data » Nursing Home Staffing Q3 2023

[CHECK OUT YOUR STATE'S STAFFING DATA USING OUR INTERACTIVE MAP.](#)

LTCCC's **Q3 2023 Staffing Report** provides user-friendly files containing data on: **1)** Nurse staff levels (RN, LPN, and CNA, including Admin & DON, NA in Training, Med Aide/Tech.), including contract staff ratios; **2)** Important non-nursing staff levels, including administrators and activities staff; **3)** Summary nurse and non-nurse staffing data at the state, CMS region, and national levels; **4)** Turnover rates, weekend staffing levels, staffing ratings, and other data. **5)** A staffing alert with our key findings from Q3 2023.

Download US nursing home staffing datasets by clicking the purple buttons below. Files can be modified to isolate locations and identify variables of interest. For example, a file can be filtered and sorted to identify nursing homes in a selected state and/or county with the highest or lowest RN staffing levels.

See table below for state summary data on total nurse staff HPRD (hours per resident day), RN HPRD, and % Contract Staff Hours.

Source: CMS payroll-based journal data.

Q3 2023 Staffing Summary	US Avg. (Previous quarter)
Total Nurse Staff HPRD	3.66 (3.66)
Total Direct Care Staff HPRD	3.41 (3.40)
Total RN HPRD	0.59 (0.59)
RN Care Staff HPRD (excl. Admin/DON)	0.41 (0.40)
% Providers ≥ 4.1 HPRD	26.1% (26.7%)
MDS Census (Daily Avg.)	1,197,033 (1,187,769)
NHs Reporting PBJ Data	14,611 (14,595)

Edit

NURSE STAFF

NON-NURSE STAFF

SUMMARY DATA

TURNOVER & WEEKENDS

KEY FINDINGS

INTERACTIVE MAP

Show entries
Search:

State	Total Census	Total Nurse Staff HPRD	Rank: Total Nurse Staff HPRD	% Providers ≥ 4.1 HPRD	RN Staff HPRD	% Contract
Alaska	611	6.22	1	100.0%	1.76	12.6%
Alabama	20,933	3.83	22	34.5%	0.55	1.9%
Arkansas	15,883	3.99	12	32.2%	0.36	2.2%
Arizona	11,000	3.96	14	37.1%	0.62	4.8%
California	96,183	4.18	7	49.0%	0.49	3.7%

Methodology Note

Starting in Q1 2021, LTCCC's reporting of federal staffing data has been modified in two important ways. 1) Highlighting "Total Nurse Staff HPRD," a more expansive metric that includes all PBJ nurse staffing categories; and 2) Expanding "Total Direct Care Staff HPRD" to include Med Aide/Tech and NA TR. Med Aide/Tech and NA TR were not included in

nursinghome411.org/data/staffing/



Searchable Staffing Files: State, County, City, & Facility Level

1	State	Provider	City	County	MDS Census	Total Nurse Staff HPRD	Total Direct Care Staff HPRD	Total RN Staff HPRD	Total HPRD Adm
3083	NY	CARING FAMILY NURSING AND REHABILITATION CENTER	FAR ROCKAWAY	Queens	173.81	4.08	3.93	1.14	
3098	NY	CARMEL RICHMOND HEALTHCARE AND REHAB CENTER	STATEN ISLAND	Richmond	299.93	3.17	3.02	0.87	
3105	NY	CARTHAGE CENTER FOR REHABILITATION AND NURSING	CARTHAGE	Jefferson	85.04	3.08	3.01	0.43	
3120	NY	CASA PROMESA	BRONX	Bronx	68.50	3.29	2.92	0.33	
3124	NY	CATON PARK REHAB AND NURSING CENTER, L L C	BROOKLYN	Kings	115.09	2.80	2.75	0.40	
3127	NY	CAYUGA NURSING AND REHABILITATION CENTER	ITHACA	Tompkins	106.24	3.53	3.39	0.46	
3130	NY	CEDAR MANOR NURSING & REHABILITATION CENTER	OSSINING	Westchester	138.57	3.16	3.03	0.88	
3156	NY	CENTRAL ISLAND HEALTHCARE	PLAINVIEW	Nassau	174.80	3.65	3.20	0.73	
3199	NY	CENTRAL PARK REHABILITATION AND NURSING CENTER	SYRACUSE	Onondaga	155.12	3.10	2.97	0.48	
3227	NY	CHAMPLAIN VALLEY PHYSICIANS HOSP MED CTR S N F	PLATTSBURGH	Clinton	36.59	3.75	3.60	1.30	
3248	NY	CHAPIN HOME FOR THE AGING	JAMAICA	Queens	136.97	3.51	3.47	0.51	
3251	NY	CHARLES T SITRIN HEALTH CARE CENTER INC	NEW HARTFORD	Oneida	163.28	4.34	3.93	0.53	
3340	NY	CHASEHEALTH REHAB AND RESIDENTIAL CARE	NEW BERLIN	Chenango	73.39	2.96	2.68	0.40	
3361	NY	CHAUTAUQUA NURSING AND REHABILITATION CENTER	DUNKIRK	Chautauqua	198.21	3.06	2.92	0.43	
3371	NY	CHEMUNG COUNTY HEALTH CENTER - NURSING FACILITY	ELMIRA	Chemung	117.16	3.85	3.48	0.79	
3398	NY	CHENANGO MEMORIAL HOSPITAL INC S N F	NORWICH	Chenango	27.52	4.91	4.72	0.69	
3402	NY	CHESTNUT PARK REHABILITATION AND NURSING CENTER	ONEONTA	Otsego	77.40	2.98	2.72	0.63	
3403	NY	CHURCH HOME OF THE PROTESTANT EPISCOPAL CHURCH	ROCHESTER	Monroe	142.62	3.99	3.89	0.48	
3427	NY	CLIFFSIDE REHAB & RESIDENTIAL HEALTH CARE CENTER	FLUSHING	Queens	211.69	3.95	3.93	0.66	
3435	NY	CLIFTON SPRINGS HOSPITAL AND CLINIC EXTENDED CARE	CLIFTON SPRINGS	Ontario	103.36	3.86	3.55	0.71	
3470	NY	CLINTON COUNTY NURSING HOME	PLATTSBURGH	Clinton	39.93	3.39	3.33	1.01	
3475	NY	CLOVE LAKES HEALTH CARE AND REHAB CENTER, INC	STATEN ISLAND	Richmond	378.91	3.19	3.09	0.72	
3481	NY	COBBLE HILL HEALTH CENTER INC	BROOKLYN	Kings	338.33	3.70	3.44	0.73	
3511	NY	COLD SPRING HILLS CENTER FOR NURSING AND REHAB	WOODBURY	Nassau	487.86	3.97	3.92	0.54	
3546	NY	COLER REHABILITATION AND NURSING CARE CENTER	ROOSEVELT ISLAND	New York	486.81	4.59	4.33	1.36	
3559	NY	COLLAR CITY NURSING AND REHABILITATION CENTER	TROY	Rensselaer	113.31	2.55	2.40	0.48	
3564	NY	COLONIAL PARK REHABILITATION AND NURSING CENTER	ROME	Oneida	74.47	2.69	2.47	0.64	
3568	NY	COMPREHENSIVE REHAB & NURSING CTR AT WILLIAMSVILLE	WILLIAMSVILLE	Erie	108.83	3.59	3.50	0.43	
3604	NY	CONCORD NURSING AND REHABILITATION CENTER	BROOKLYN	Kings	136.10	3.11	3.02	0.62	
3633	NY	CONCOURSE REHABILITATION AND NURSING CENTER INC	BRONX	Bronx	239.69	3.16	2.98	0.55	
3687	NY	CONESUS LAKE NURSING HOME	LIVONIA	Livingston	41.53	2.91	2.60	0.59	

Staff HPRD (Hours Per Resident Day) is calculated by dividing a nursing home's daily staff hours by its MDS census.
Example: A nursing home averaging 300 total nurse staff hours and 100 residents per day would have a 3.0 Total Nurse Staff HPRD (300/100 = 3.0).

Total Hours: the nursing home's average daily staff hours in a given category for the quarter. *Example: A nursing home with 22.5 RN care staff hours provides 22.5 RN care staff hours per day.*



Daily Staffing Data Direct from CMS

Data.CMS.gov
Centers for Medicare & Medicaid Services

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Payroll Based Journal Daily Nurse Staffi 🔍

Showing 1-2 of 2 results

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DATASET

[Payroll Based Journal Daily Nurse Staffing](#)

The Payroll Based Journal (PBJ) Nurse Staffing and Non-Nurse Staffing datasets provide information submitted by nursing homes including rehabilitation services on a quarterly basis. The View Data link above includes the hours staff are paid to work each day, for each facility, aggregate...

Quick links

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DATASET

[Payroll Based Journal Daily Non-Nurse Staffing](#)

The Payroll Based Journal (PBJ) Nurse Staffing and Non-Nurse Staffing datasets provide information submitted by nursing homes including rehabilitation services on a quarterly basis. The data include the hours staff are paid to work each day, for each facility. Examples of reporting cate...

Quick links

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<https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing>



Staffing Rule Waivers and Exemptions

Multiple Waiver Opportunities

- ▶ CMS has created a complex set of waiver and exemption opportunities that will allow facilities to avoid compliance with the 24/7 RN, the 3.48 Total HPRD, .55 RN HPRD, and 2.45 CNA requirements.
- ▶ The process for the RN waivers is made complicated by existing statutory waivers:
 - ▶ § 1919(b)(4)(C)(ii) of the Social Security Act allows facilities to avoid providing licensed nurse staff (RNs/LPNs) on a 24 hour basis.
 - ▶ § 1819(b)(4)(C)(ii) of the Social Security Act allows facilities to avoid providing the services of a RN for more than 40 hours per week.
- ▶ In addition to the existing statutory waivers, CMS has created additional exemptions related to the new staffing requirements.

42 C.F.R. § 483.5(f)

Waivers of 24 hours licensed requirement, 24/7 RN requirement, and/or .55 RN HPRD Requirement

- ▶ The State may waive the requirement that a Nursing Facility provides licensed nurses, a registered nurse on a 24-hour basis, and/or the requirement that a resident receive .55 RN HPRD if:
 - ▶ The facility demonstrates it has been unable to recruit appropriate personnel despite diligent efforts;
 - ▶ The State determines the health or safety of the residents is not endangered;
 - ▶ An RN or physician is obligated to respond immediately to telephone calls from the facility;
 - ▶ Notice of a waiver must be provided:
 - ▶ By the State agency granting the waiver to the State LTC Ombudsman and the Protection and Advocacy System;
 - ▶ By the facility to residents and their representatives.
- ▶ This waiver is subject to annual State review.

42 C.F.R. § 483.5(g)

Waiver of Requirement to Provide RN Services for More than 40 hours per week

- ▶ The Secretary may waive the requirement that a SNF provide RN services for more than 40 hours per week if –
 - ▶ The facility is in a rural area and the supply of SNF services is not sufficient to meet the needs of individuals living in the area;
 - ▶ The facility has 1 full-time RN who is regularly on duty 40 hours a week; and
 - ▶ The facility only has patients who, as indicated by their physicians, do not require RN or physician services for a 48-hour period, or the facility has made arrangements for an RN or physician to spend time at the facility when the regular full-time RN is not on duty.
 - ▶ Notice of a waiver must be provided:
 - ▶ By the Secretary to the State LTC Ombudsman and the Protection and Advocacy System;
 - ▶ By the facility to residents and their representatives.
- ▶ This waiver is subject to annual renewal by the Secretary.

42 C.F.R. § 483.5(h)

Hardship Exemptions from the Total Minimum Staffing HPRD, NA and RN HPRD, and/or 24/7 RN Requirements

- ▶ The Secretary may exempt a facility from meeting one or more of the minimum nurse staffing requirements (3.48 total; .55 RN; 2.45 NA) and **eight hours of the 24/7 RN requirement** if a verifiable hardship exists prohibiting them from complying.
- ▶ Must meet four criteria to qualify for a hardship exemption:
 - ▶ Location
 - ▶ Good Faith Efforts to Hire
 - ▶ Demonstrated Financial Commitment
 - ▶ Disclosure of Exemption Status

Location

- ▶ The facility is in an area where the supply of applicable healthcare staff is not sufficient to meet area needs. The supply of staff is determined not to be sufficient if the provider to population ratio for the nursing workforce is at least 20 percent below the national average (calculated by CMS using Bureau of Labor Statistics and Census Bureau data).
- ▶ The provider to population ratio is evaluated for each requirement:
 - ▶ 3.48 Total HPRD (NAs, LPNs, RNs total)

▶ Good Faith Efforts to Hire

- ▶ The facility demonstrates an inability to recruit and retain appropriate personnel despite diligent efforts (including offering prevailing wages). Facilities will have to document that they posted jobs, made offers, documented average local wages, and shared their staffing plan.

► Demonstrate Financial Commitment

- The facility will be required to document the amount of financial resources it spends on staffing relative to revenue

► Disclosure of Exemption Status

- Must be –
 - Posted in a prominent location in the facility, in a manner that is accessible and understandable by residents and representatives. The exemption disclosure must include the extent to which the facility does not meet the minimum staffing requirements and the timeframe during which the exemption applies;
 - Provided to each current and prospective resident and representative; and
 - Sent to the State LTC Ombudsman.

Facilities Ineligible for Exemptions

- ▶ Facilities ineligible for exemptions:
 - ▶ Special Focus Facilities.
 - ▶ Facilities cited for immediate jeopardy, widespread or a pattern of insufficient staffing with resultant resident actual harm.
 - ▶ Facilities that have failed to submit Payroll Based Journal data.

▶ Waivers/Exemptions Continued

- ▶ Exemption eligibility will be determined automatically when a facility is found to have violated the staffing rule.
- ▶ Documentation of eligibility for an exemption is not mandatory, but must be provided when requested. 42 C.F.R. § 483.5(h)(6)
- ▶ Exemptions last one year.
- ▶ No limitations on waivers.
- ▶ “Regulatory flexibility”
 - ▶ Facilities may apply for whichever waiver they choose. Many bites at the apple.

▶ Waivers/Exemptions Continued

- ▶ Consumer Voice opposes all waivers /exemptions. CMS has estimated that 25% of facilities will qualify for waivers and or exemptions.
- ▶ Little evidence to support rural homes are faced with more pressing staffing problems than non-rural homes.
- ▶ Waivers and exemptions enshrine inequities in care:
 - ▶ Many residents will never experience the benefits of a minimum staffing standard.
- ▶ CMS is still allowing facilities with waivers/exemptions to continue to admit new residents, therefore exacerbating the problem.
- ▶ Due to regulatory challenges, these waivers will likely be granted with little scrutiny.

▶ Waivers/Exemptions Continued

- ▶ No financial accountability for how nursing homes spend money.
- ▶ Waivers and rules are based on a Medicare and Medicaid funding system that allows nursing homes to siphon away billions of dollars annually through related parties. The failure of CMS to hold nursing homes accountable has contributed to poor job quality and high turnover.
- ▶ Advocates must continue to fight for financial accountability.



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Facility Assessment



New Federal Minimum Staffing Standards – Facility Assessment



- Facility Assessment is the first of three specific staffing requirements; it goes into effect on August 8, 2024, 89 Fed. Reg. 40876 (May 10, 2024)
- Facility Assessment is specifically discussed at 89 Fed. Reg., 40905-40910 (and elsewhere in the preamble)



Facility assessment is independent basis for staffing needs

- Facility assessment is an independent basis for identifying staffing needs.
- 42 C.F.R. §483.35, Nursing services, says:

483.35(b)(3): “Compliance with minimum total nurse staffing hours per resident day as set forth in one or more of the hours per resident day requirements of paragraph (b)(1) of this section should not be construed as approval for a facility to staff only to these numerical standards. Facilities must ensure there are a sufficient number of staff with the appropriate competencies and skills sets necessary to assure resident safety and to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments, acuity and diagnoses of the facility’s resident population in accordance with the facility assessment at § 483.71.”





Preamble: three distinct staffing requirements

- 3 staffing requirements: facility assessment, 3.48 hours per resident day (HPRD), RNs 24 hours/day, 7 days/week
 - If facility assessment indicates the facility's residents staff need higher levels of nursing care than 3.48 HPRD and 24 RN, the facility must provide the higher level
 - Unless exempted, facility must meet 3.48 HPRD, even if facility assessment does not determine that 3.48 HPRD is needed
 - Facility must also meet 24/7 RN, regardless of what facility assessment finds
- (p. 40909)





Facility assessment (2024): Preamble to final rule



- Explaining that the 3 staffing requirements are independent of each other (facility assessment, 3.48, 24/7 RN), CMS writes:
 - “The facility assessment requirement as set forth at § 483.71 is a separate requirement that is designed to ensure that each LTC facility has assessed its resident population to determine the resources, including direct care staff, their competencies, and skill sets, the facility needs to provide the required resident care. If the facility assessment indicates that a higher HPRD for either total nursing staff or an individual nursing category is necessary for “sufficient staffing”, the facility must comply with that determination to satisfy the requirement for sufficient staffing as set forth at § 483.35(a)(1).” (p. 40908)



Additional references to Facility Assessment in the final rule



- Quality assurance and performance improvement (QAPI), §483.75(c)(2), 483.75(e)(3)
- Infection control, §483.80(a)(1):
 - “(1) A system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitors, and other individuals providing services under a contractual arrangement based upon the facility assessment conducted according to § 483.71 and following accepted national standards.”
- Training requirements, §483.95, says, in part:
 - “A facility must determine the amount and types of training necessary based on a facility assessment as specified at § 483.71.”



Facility Assessment (2016)



- Requirement for facility assessment was put into Requirements for Participation in 2016, 42 CFR §483.70(e), as alternative to implementation of staffing ratios, 81 Fed. Reg. 68688, 68785 (Oct. 4, 2016)
 - Each facility must conduct and document a facility-wide assessment to determine the resources that are necessary to care for its resident population competently during both day-to-day operations and emergencies.
 - Facility assessment must be reviewed and updated annually, as necessary, and whenever the facility plans for or has any change in its facility or population that would require a substantial change to any part of the assessment.
 - Assessment must address or include evaluation of the resident population, the facility's resources, and a facility-based and community-based risk assessment that utilizes the all-hazards approach.



Facility Assessment (2016): Preamble to final regulations



- Preamble says:
 - Facilities must “thoroughly assess their resident population and the resources that are needed to provide the care they need.” (p. 68785)
 - Facilities must “conduct and document a thorough assessment and analysis of their resident population, staff and staff competencies, and resources to determine not only the resources they need to obtain in order to care for their resident population competently.” (p. 68786)



Facility Assessment: Surveyor Guidance, State Operations Manual, Appendix PP



- Appendix PP, F383, pp. 679-682
 - Each facility could conduct assessment however it chose
 - Assessment of the resident population “must include an evaluation of diseases, conditions, physical, functional or cognitive status, acuity of the resident population, and any other pertinent information about the residents that may affect and plan for the services the facility must provide.”



Appendix PP (cont'd)



- Facility assessment “must include an evaluation of the overall number of facility staff needed to ensure sufficient number of qualified staff are available to meet each resident’s needs; . . . A competency-based approach to determine the knowledge and skills required among staff to ensure residents are able to maintain or attain their highest practicable physical, functional, mental, and psychosocial well-being and meet current professional standards of practice; . . . Also includes any ethnic, cultural, or religious factors that may need to be considered to meet resident needs, such as activities, food preferences, and any other aspect of care identified. Finally, the assessment should consider a review of individual staff assignments and systems for coordination and continuity of care for residents within and across these staff assignments.”



Impact of Facility Assessment Process Since 2016



- Minimal; Facility Assessment has largely been ignored in survey process since then
 - Few F838 deficiencies cited (158 in FY 2021; 261 in FY 2022; 173 in FY 2023)
 - Few harm or jeopardy-level deficiencies (4 in FY 2021; 2 in FY 2022; 3 in FY 2023), so little, if any, enforcement



Facility Assessment in New Final Staffing Rule (2024)



New requirements:

- New standalone section at §483.71 largely repeats language of §483.70(e), except
 - New language says assessment must use “evidence-based data-driven methods”
 - Assessment must be “consistent with and informed by individual resident assessments as required under §483.20 of this part”
 - Incorporation of language from the State Operations Manual, Appendix PP, into regulatory language



Facility Assessment requirements (2024), §483.71



- As before, facility must conduct and document a facility-wide assessment to determine resources (including staff number, competencies, and skill sets) that are needed to provide care to the facility's residents
- Facility assessment must be reviewed and updated as necessary and at least annually
- Facility must include nursing home leadership, direct care staff, and, new at §483.71(b)(1)(iii), “must also solicit and consider input received from residents, resident representatives, and family members”



Facility Assessment (2024): Preamble to final rule

- “we believe that national minimum staffing standards in LTC facilities and the adoption of a 24/7 RN and enhanced facility assessment requirements, will help to advance equitable, safe, and quality care sufficient to meet the nursing needs for all residents and greater consistency across facilities.” (p. 40881)





Facility Assessment (2024): Preamble to Final Rule

- “when assessing the sufficiency of a facility’s staffing it is important to note that any numeric minimum staffing requirement is not a target and facilities must assess the needs of their resident population and make comprehensive staffing decisions based on those needs. Often, that will require higher staffing than the minimum requirements. The additional requirements in this rule to bolster facility assessments are intended to address this need and guard against any attempts by LTC facilities to treat the minimum staffing standards included here as a ceiling, rather than a floor (baseline).” (p. 48883)





Facility Assessment (2024): Preamble to Final Rule



- Additional references to many facilities needing higher staffing levels than 3.48 HPRD, 24/7 RN :
 - “We expect that many facilities will need to staff above the minimum standards to meet the acuity needs of their residents depending on case-mix and as mandated by the facility assessment required at § 483.71.” (p. 40891)
 - “We emphasized in the proposed rule and reiterate here that facilities are also required to staff above the minimum standard, as appropriate, to address the specific needs of their resident population (88 FR 61369). We expect that most facilities will do so in line with strengthened facility assessment requirements at § 483.71 (88 FR 61368).” (p. 40892)
 - “all LTC facilities must provide adequate staffing to meet their specific population’s needs based on their facility assessments. In many cases, facilities will need higher levels of staffing as a result.” (p. 40948)



Facility assessment (2024): Preamble to final rule



- Explaining the reason for the designation of facility assessment requirement as a distinct regulatory requirement, CMS writes:
 - “the facility assessment requirements are the foundation for any LTC facility’s planning for the staffing and other resources that are necessary to provide the appropriate care required for its resident population. This merits a separate requirement and also emphasizes the importance of the facility assessment.” (p. 40906)
- “The facility assessment is an important complement to the minimum staffing requirements finalized as part of this rule as it sets standards that must be met for staffing based on actual resident case-mix, not just the floor (baseline) created by the minimum staffing requirements.” (p. 40906)



Facility assessment (2024): Preamble to final rule



- Facility assessment process is where resident acuity is considered:
 - “if the facility assessment was conducted according to the requirements finalized in this rule, LTC facilities should know the number of staff, the competencies, skills sets they need, and the other resources needed to care for residents in their facilities. This should enable LTC facilities to adjust their staffing and other resources to compensate for resident acuity and changes needed in daily staffing.” (p. 40908)
 - “LTC facilities should continue using the facility assessment to determine staffing needs above the finalized minimum standards to provide safe and quality care based on resident acuity.” (p. 40912)
- Rejecting the “one-size-fits all” argument:
 - “With the facility assessment requirement, each individual LTC facility assesses its own resident population and the resources needed to care for them, which will often result in facilities needing to staff higher than the minimum staffing requirements.” (p. 40908)



Facility assessment (2024): Preamble to final rule

- “The facility assessment is the foundation for LTC facilities to assess their resident population and determine the direct care staffing and other resources, to provide the required care to their residents. The facility assessment must be conducted and developed with the intent of using it to inform decision making, especially about staffing decisions. The facility assessment must be used to develop and maintain the staffing plan or the plan to maximize recruitment and retention of direct care staff. The facility assessment should identify the numbers of staff, types of staff, the required competencies and skill sets that staff require to care for the resident population. Thus, the facility assessment would inform the staffing plan the LTC facility requires.” (p. 40909)





Initial hopeful response to facility assessment in 2024



- CMS refers to Facility Assessment 172 times in preamble
- CMS says it will prepare a “template” for facilities to use
- CMS stresses in regulatory language and in preamble (quoted above) that facility assessment process will show that “many” facilities need to staff at higher than the mandatory minimum levels
- CMS increases cost estimates for conducting facility assessment from 22 hours total staff time (\$1,758) to 62 hours (\$4,955) (pp. 40938-40939)
- New references to facility assessment in rules on QAPI, infection control, and training requirements

+ Facility Assessment (2024): Concerns

- CMS duties: (1) define the requirement for facilities, (2) conduct surveys to determine compliance, (3) impose penalties for noncompliance
- CMS does not appear to be doing any of those tasks for the facility assessment process
 - Although CMS has promised a “template,” it will not be prescriptive about identifying specific “evidence-based, data driven methods”
 - CMA and others proposed that CMS choose Harrington, Medicare SNF Part A payment methodology, or another recognized evidence-based data-driven methodology





Facility Assessment: Concerns



- Survey:
 - Preamble says surveyors “cannot determine the quality of the facility assessment,” but “an LTC facility could be cited for non-compliance if its facility assessment failed to contain all the requirements set forth in new §483.71 and failed to determine a direct care staffing plan consistent with facility resident acuity levels.” (p. 40909)
 - However, CMS is not planning on (1) training surveyors in how to determine compliance with facility assessment process or (2) requiring surveyors to determine compliance with facility assessment process in every survey
- Enforcement:
 - CMS is not planning to give state survey agencies any specific guidance on enforcement

+ Enforcement of staffing requirements

- CMS intends to use the standard survey and enforcement system to impose penalties/remedies for noncompliance with staffing requirements: “We will survey facilities for compliance with the updated LTC requirements in the rule and enforce them as part of CMS’s existing survey, certification, and enforcement process.” (p. 40876), and 40882, using the “substantial compliance” standard (p. 40878)
 - CMS also alludes to “more data-driven enforcement,” include use of Payroll Based Journal (PBJ) system (p. 40883 and p. 40888)
 - CMS intends to provide more guidance in advance of implementation date (p. 40888) – so, presumably, soon, for facility assessment
 - “rigorous data-driven enforcement will be critical to the successful implementation of this rule” (p. 40889)



+ Enforcement of staffing requirements

- CMS says facilities not receiving an exemption from specific staffing requirements “will have the opportunities afforded by the enforcement process to address any noncompliance deficiency citations, such as informal dispute resolution processes and administrative and judicial appeals” (p. 40901)





Enforcement: resident advocates' recommendations



- Resident advocates recommended
 - Automatic civil money penalties when PBJ data indicate noncompliance with numerical staffing requirements
 - Automatic ban on admissions when facility does not meet staffing requirement or does not have sufficient staff
 - AARP blog and letters to Members of Congress (May 7, 2024) supporting final rule and saying facilities that do not meet staffing requirements “should not be admitting new residents”

Medicaid Transparency

- ▶ States will be required to annually report, by facility, the percentage of Medicaid payments spent on compensation for direct care workers and support staff.
 - ▶ Nursing facilities
 - ▶ Intermediate Care Facilities for Individuals with Intellectual Disabilities
- ▶ The information will need to be posted publicly by the state in a clear and understandable way.
- ▶ CMS will also report this data on its website.



Resources

Final Rule Summary



ISSUE BRIEF

Final Rule Summary

Minimum Staffing Standards for Long-Term Care Facilities

On Monday, April 22, 2024, the Centers for Medicare & Medicaid Services (CMS) released the long-awaited [final rule](#) implementing a minimum staffing standard in nursing homes. The culmination of a two-year process, including a request for information, a study, and a comment period, CMS has introduced a staffing rule designed to address the poorest-performing homes in the United States.

The final total staffing rule is well below the 4.2 hours of direct care per resident per day (HPRD) supported by Consumer Voice¹, and includes numerous waivers and delays in implementation for some areas for at least five years. While Consumer Voice recognizes the rule as an important first step in obtaining adequate staffing in nursing homes, continued advocacy is necessary to ensure all residents receive high-quality nursing care.

Below is a detailed summary of the rule by section of the Federal Code.

42 C.F.R. § 483.35 Nursing Services

(b)(1) This section implements the new requirement that nursing homes must provide 3.48 HPRD. To meet this standard, a facility must meet or exceed at least:

- (i) .55 HPRD of Registered Nurse (RN) care; and
- (ii) 2.45 HPRD of Nurse Aide (NA) care.

To meet the remaining .48 HPRD of care, CMS is giving facilities the flexibility to use RNs, NAs, or Licensed Practical Nurses (LPNs).

Critical language is included under **(b)(3)**, which is included here in its entirety:

Compliance with minimum total nurse staffing hours per resident day as set forth in one or more of the hours per resident day requirements of paragraph (b)(1) of this section should not be construed as approval for a facility to staff only to these numerical standards. **Facilities must ensure there are a sufficient number of staff with the appropriate competencies and skills sets necessary to assure resident safety and to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments, acuity and diagnoses of the facility's resident population in accordance with the facility assessment at § 483.71.** (Emphasis added)

¹ Consumer Voice in its comments on the proposed rule relied heavily on a recent staffing study conducted by CMS that documented better health outcomes at staffing levels higher than in the proposed rule. In fact, the study showed that to keep delayed and omitted care below 10%, 4.2 HPRD, composed of 2.8 CNA HPRD and 1.4 HPRD of licensed nurse care was necessary. Consumer Voice's comments here: <https://bit.ly/3Utgwcy>

1

- ▶ Issue Brief Summarizing the Final Minimum Staffing Standard
https://theconsumervoice.org/uploads/files/issues/Final_Rule_Summary.pdf

Finding Staffing Data

The screenshot shows the Long Term Care Community Coalition website. The header includes the organization's logo, social media icons, a search bar, and a 'DONATE' button. A navigation menu contains 'Who We Are', 'Learning Center', 'Data Center', 'Our Work', and 'LTC in NY'. The main heading is 'Nursing Home Staffing Data'. Below this, there is introductory text about staffing importance and a list of quick links for quarterly staffing data from 2022 Q3 to 2023 Q4. An important note mentions a new staffing standard from May 2024.

The screenshot shows the Data.CMS.gov website search results. The search query is 'Payroll Based Journal Daily Nurse Staffing'. Two results are displayed, both for 'Payroll Based Journal Daily' datasets. The first result is for 'Nurse Staffing' and the second is for 'Non-Nurse Staffing'. Each result includes a brief description of the data and quick links for 'Data Dictionary' and 'Download'.

- ▶ Finding Information on Staffing in Your State, Community, Facility
nursinghome411.org/data/staffing/

- ▶ Daily Staffing Data from CMS
<https://data.cms.gov/quality-of-care/payroll-based-journal-daily-nurse-staffing>

LTCCC Fact Sheet: How to Provide Input for Your Facility's Staffing Assessment

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

PROVIDE INPUT IN YOUR FACILITY'S STAFFING ASSESSMENT: TIPS FOR RESIDENTS AND FAMILY MEMBERS

FACT SHEET

Residents and families, and resident and family councils, can play a very important role in improving care and quality of life in a nursing home. This is even more true now that the Biden Administration has issued its rule¹ mandating minimum nursing home staffing.

The new rule calls for a minimum of 24/7 registered nurse (RNs) presence in every facility plus a minimum of 3.48 hours of nursing staff time per resident per day (HPRD). **For more information on the new rule, visit <https://nursinghome411.org/federal-staffing-standard/>.**

Importantly, this is just a bare minimum. Nursing homes must also conduct a facility assessment to ensure that they have sufficient staff, with the appropriate skills and competencies, to meet the needs of their residents based on each individual's acuity, care needs, and goals.

The new federal nursing home staffing rule requires nursing homes to solicit and consider input from residents and family members in conducting the facility assessment. Following are the relevant provisions in the regulations and tips to use to ensure that your input is solicited.

Note: Information below is directly quoted or paraphrased from the Code of Federal Regulations (CFR), federal guidance, or other resources (see footnotes). Federal standards are applicable to all residents in licensed U.S. nursing homes, including short-term, long-term, private pay, Medicaid, Medicare, or privately insured.

Facility Assessment

42 C.F.R. § 483.71(b)

The facility must conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations (including nights and weekends) and emergencies. The facility must review and update that assessment, as necessary, and at least annually. The facility must also review and update this assessment whenever there is, or the facility plans for, any change that would require a substantial modification to any part of this assessment.

- In conducting the facility assessment, the facility must ensure active involvement of the following participants in the process:
 - Nursing home leadership and management, including but not limited to, a member of the governing body, the medical director, an administrator, and the director of nursing; and

¹ Available at <https://www.federalregister.gov/documents/2024/05/10/2024-08273/medicare-and-medicare-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicare>.

- Direct care staff, including but not limited to, RNs, LPNs/LVNs, NAs, and the representatives of the direct care staff, if applicable.
- **The facility must also solicit and consider input received from residents, resident representatives, and family members.**
- Facilities must use evidence-based methods when care planning² for their residents, including consideration for those residents with behavioral health needs.
- Facilities are required to develop a staffing plan to maximize recruitment and retention of staff.³

Tips for Residents and Family Members

Know Your Rights: Every resident, no matter their age, disability, or payment source, has the right to receive services that enable them to maintain their highest practicable level of function and live with comfort and dignity. Nursing homes must provide sufficient staff, with the appropriate competencies, to provide these services. For helpful resources, see LTCCC's [Fact Sheets](#).

Educate Yourself on Staffing Standards: Familiarize yourself with [federal](#) and [state](#) staffing standards. This knowledge can help you better understand whether staffing levels at the nursing home meet required standards.

Document Specific Concerns: If you notice specific staffing issues, [document these occurrences](#). Providing specific examples can strengthen your case when advocating for changes in staffing levels.

Collaborate with Other Families and Residents: There is strength in numbers! A unified voice is more likely to be heard and taken seriously by nursing home management.

Attend Family and/or Resident Council Meetings: If your nursing home has a family and/or resident council, attend the meetings to discuss various aspects of care, including staffing. Attend regularly to stay informed and to voice any concerns or suggestions regarding staffing levels. If your nursing home does not have family and/or resident councils, [start one!](#)

Establish Open Communication: Make sure the nursing home administration and staff know that you are interested in providing feedback on staffing issues.

Be Constructive and Respectful: When providing feedback, be constructive and respectful in your approach. Focus on finding solutions that benefit both residents and staff.

Ask for the Assessment: Ask the nursing home administrator to see the assessment to ensure your concerns are addressed (note: they are not obliged to share it with residents or families).

Utilize Suggestion Boxes or Feedback Forms: Some nursing homes have suggestion boxes or feedback forms where you can anonymously provide input on staffing or other issues. If possible, keep a record of your suggestion to see if it is being implemented.

Schedule Regular Meetings with Management: If you have specific concerns about staffing, consider scheduling a meeting with the nursing home management to discuss them in detail. This allows you to have a focused discussion and ensure that your concerns are heard.

Follow Up Regularly: Don't assume that once you've provided feedback, your job is done. Follow up regularly to ensure that your concerns are addressed and to track any improvements in staffing levels or practices.

² See LTCCC's fact sheet, Resident Assessment & Care Planning. Available at <https://nursinghome411.org/facts-resident-assess-plan/>.

³ See CMS's fact sheet, Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule. Available at <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicare-programs-minimum-staffing-standards-long-term-care-facilities-and-medicare-0>.



Questions?



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