



The National

CONSUMER VOICE

for Quality Long-Term Care

A Guide to Submitting Comments on the Interim Final Rule Rescinding Minimum Staffing Standard in Nursing Homes

January 15, 2026

▶ 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

► Agenda

- 1) Overview and background.
- 2) The 12/3/25 Proposed Rule.
- 3) Responses to 12/3/25 rule.
- 4) How to comment.
- 5) Questions?



The Minimum Staffing Rule

▶ The numbers

- ▶ 24/7 RN nursing requirement.
 - ▶ Currently nursing homes are only required to have an RN eight hours per day, with the remaining hours made up with either LPNs or RNs.
- ▶ Total staffing minimum is 3.48 hours per resident day (HPRD).
 - ▶ Very modest. Less than the national average.
 - ▶ .55 RN HPRD.
 - ▶ 2.45 CNA HPRD.
 - ▶ Remaining .48 can be made up with RNs, LPNS, or CNAs.
- ▶ Facilities are still required to have “sufficient staff”. Not one size fits all.

▶ Delayed Implementation

- ▶ For all facilities: Compliance with facility assessment requirements 90 days after the publication date of the final rule.
- ▶ Rural facilities:
 - ▶ 3.48 HPRD for total nurse staffing and the 24/7 onsite RN must be implemented 3 years after the publication date of the final rule.
 - ▶ 0.55 RN and 2.45 NA HPRD must be implemented 5 years after the publication date of the final rule.
- ▶ For urban facilities:
 - ▶ 3.48 HPRD for total nurse staffing and the 24/7 onsite RN must be implemented 2 years after the publication date of the final rule.
 - ▶ 0.55 RN and 2.45 NA HPRD at must be implemented 3 years after the publication date of the final rule.

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.

Where the Rule Stands

- ▶ H.R. 1 postponed implementation of numeric standard until September 2034.
- ▶ Two federal district court cases blocked implementation of the numeric parts of the rule, holding that CMS exceeded its regulatory authority.
 - ▶ AHCA v. Kennedy, N.D. Tex. 2025; Kansas v. Kennedy, N.D. Iowa, 2025).
 - ▶ Facility assessment and Medicaid transparency requirements were not blocked.



Staffing Matters

► Staffing Matters

- ▶ Fewer COVID cases and deaths during COVID.
- ▶ Fewer falls, pressure ulcers, rehospitalizations.
- ▶ Lower resident mortality in higher staffed homes.
- ▶ Better dementia care outcomes.
- ▶ See citation sheet. <https://theconsumervoice.org/wp-content/uploads/2026/01/Citation-Guide-for-Commenting-on-Rule.pdf>



New Rule Rescinding Staffing Rule

December 3, 2025 Interim Final Rule

- ▶ Medicare and Medicaid Programs; Repeal of Minimum Staffing Standards for Long-Term Care Facilities. (Federal Register, Vol. 90, No. 230, 55687).
- ▶ Rescinds staffing requirements.
 - ▶ 24/7 RN requirement.
 - ▶ Total HPRD requirement.
 - ▶ CNA, RN individual requirements.
- ▶ Immediately effective February 2, 2026.
- ▶ Keeps in place enhanced facility assessment requirements and Medicaid transparency requirements.

► Reasons for Rescission

- ▶ H.R. 1 postponing implementation until 2034.
- ▶ Concerns about nursing homes, not residents.
 - ▶ Facility compliance.
 - ▶ Rural facilities and tribal communities.
- ▶ Workforce challenges.
- ▶ District court decisions.
- ▶ One-size-fits all.
- ▶ Largely parroting nursing home industry talking points.



Arguments Against Rescission

▶ H.R. 1 Does Not Require Recission

- ▶ If Congress wanted to rescind the rule, it could have. Instead, it postponed implementation for ten years.
- ▶ To comply with Congress's intent, CMS should issue a new regulation complying with H.R. 1. It does not follow that CMS should just rescind the law.
- ▶ "Regulatory confusion" is easily resolved by issuing a regulation reflecting new timeline.
- ▶ Facilities now have ten years to comply with the law!

Facility Compliance and Rural Facilities

- ▶ There is no evidence that rural facilities or facilities located in tribal areas will have a more difficult complying with standard.
 - ▶ CMS's own study showed staffing was almost identical in rural and urban areas
- ▶ Facilities now have TEN YEARS to get ready for compliance
 - ▶ Even then, facilities facing genuine compliance concerns will have waiver opportunities.

► Workforce Challenges

- Challenges many nursing homes face in staffing are self-inflicted.
 - Nationally, annual nursing home direct care staff turnover stands at 50%.
 - Turnover driven by job quality.
 - Nursing homes can hire, but cannot retain staff.
- Thousands of nursing homes staff well above the minimum standard, mostly non-profit homes.
 - Belies the claim that nursing homes cannot meet the standard.
 - Non-profits staff almost an hour more than for-profit homes.

► Work force challenges continued

- For-profit nursing homes divert money away from residents and workers to profits through related party transactions, real estate leveraging, and other tactics.
 - Billions funneled annually through related party companies with no accountability.
 - Potentially, 68% of nursing home profits hidden in related party transactions.
- Staffing rule would have required nursing homes to invest in jobs and workers to raise staffing levels.

► District Court Decisions

- Both federal cases were at the district court level.
- Could both be appealed.
- As CMS asserted in its filings defending the rule, it has broad regulatory authority to set a standard to ensure the proper use of Medicare and Medicaid dollars.

► Not One Size Fits All

- ▶ Highly effective and disingenuous nursing home industry talking point.
- ▶ The minimum staffing standard is a floor. The May 2024 final rule's enhanced facility assessment requirements explicitly call on nursing homes to assess the needs of all residents and provide sufficient staff to meet those needs. (42 C.F.R. 483.71)
- ▶ The May 2024 rule itself states that many nursing home residents will need more care.
 - ▶ Therefore, 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. (89 Fed. Reg. 92, 40883).
- ▶ A minimum staffing standard sets a level at below which nursing home residents are at a higher risk of harm.



Staffing Going Forward

► Staffing Going Forward

- ▶ If CMS rescinds rule, facilities are still required to have “sufficient” staff.
- ▶ CMS must still ensure nursing homes have sufficient staff to meet the needs of all residents.
- ▶ What is CMS’s plan to address the staffing crisis in nursing homes?
- ▶ The 12/3/25 rule is silent.

► Staffing Going Forward Continued

- CMS must adopt a model to meet the staffing needs of all residents.
 - Be grounded in resident acuity, recognizing that staffing needs vary widely based on clinical complexity, functional limitations, cognitive status, and behavioral health needs.
 - Ensure that every resident's needs are fully met, by aggregating residents' needs across a facility and accurately calculating and meeting staffing requirements.
 - Account for the skills and competencies required to deliver high-quality care, including the appropriate skill mix of RNs, LPNs/LVNs, CNAs, and specialized staff.



Your Comments

► Your comments

- Who you are.
- Why staffing matters to you, your organization, and the folks you represent.
- Share anecdotes and stories.
 - Don't be afraid to be shocking.
 - CMS and the public need to know the consequences of understaffing.
- Staffing matters.

► Your Comments Continued

- ▶ Rebut reasons for the rule's rescission using our arguments or your own.
- ▶ Stress the importance of staffing using data/studies.
- ▶ Call on CMS to adopt staffing enforcement strategies based on the needs of all residents.

► How to comment

- Submit comments here:
<https://www.regulations.gov/commenton/CMS-2023-0144-46539>
- Can either comment on that page or upload your comments.



Questions



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