



Tips for Submitting Comments on Proposed Rule CMS-3442-P (Minimum Staffing Standards)

A proposed rule with a 60-day comment period was published on September 6 that outlines proposed minimum staffing standards for nursing homes. LeadingAge will submit comments on the proposed rule, and we encourage members to do so as well. We have compiled the following tips and links below to help.

We are not offering a template or form letter. The Centers for Medicare & Medicaid Services (CMS) must read, review, and consider each unique comment submitted, but comments that are identical must only be analyzed once. We are looking to share as much varied information—individual anecdotes, impressions, and narratives—as possible. Use the material in this guide to help frame your comments. The most important thing providers can offer is illustrative narratives of what the situation looks like on the ground, in your nursing home community. This makes your comment powerful and effective.

Also, know that there is no limit to the number of comments that can come from a particular organization. If you feel that more than one leader, staff member, family member, or resident has an important story to tell or points to make, encourage them to comment as well.

How to Write Your Comments

Begin by introducing yourself and telling why this rule matters to you. You might tell a little about the organization for which you work, the residents you serve, or the job you do. Just remember to get appropriate permissions before sharing any identifying information.

Don't feel obligated to comment on every aspect of the rule. Choose what matters most to you, whether that is one issue or four issues. Identify the issue, tell why you support or oppose it, and offer an alternative to issues you oppose. Explain how your alternative will help meet the same objective more effectively.

Hit the sweet spot of concise and constructive. Provide enough information to make your point. Remember, you are shaping policy, not simply casting a vote.

How to Submit Your Comments

Comments must be received by CMS by **Monday, November 6, 2023**. Remember to reference file code CMS-3442-P in your comments. Comments can be submitted one in three ways:

Electronically: Comments can be submitted electronically via the Federal Register. Access the rule [here](#), then click on “Submit a Formal Comment” near the top of the page. You may type your comments directly into the text box, or you may attach a file containing your comments.

By regular mail: Comments may be submitted by mail and must be received before the close of the comment period. Mail written comments to:

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-3442-P
P.O. Box 8016
Baltimore, MD 21244-8016

By express or overnight mail: Comments may be submitted by express or overnight mail to:

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-3442-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

Main Points of the Rule

The rule proposes four main provisions:

- 24/7 Registered Nurse (RN) staffing
- Minimum hours per resident per day (HPRD) staffing for RNs and nurse aides
- Enhanced Facility Assessment requirements
- Medicaid payment transparency reporting

24/7 RN: CMS proposes minimum staffing standards for nursing homes to include an RN on-site and available to provide direct resident care 24 hours per day, seven days per week. This would replace the existing requirement at 42 CFR §483.35(b)(1) for an RN 8 hours per day, seven days per week. As proposed, Director of Nurse (DON) hours would count toward the 24/7 requirement, but CMS is also soliciting feedback on whether DON hours should be excluded. The existing waiver at 42 CFR §483.35(f) would be retained and modified for the 24/7 RN requirement. Waiver of this requirement would not exempt the nursing home from compliance with minimum HPRD requirements. If finalized, this requirement would be implemented two years from the date the final rule is published (three years for rural nursing homes).

Minimum HPRD: CMS proposes minimum staffing standards of 0.55 HPRD for RNs and 2.45 HPRD for nurse aides. These are minimum standards by which every nursing home would be required to comply. Additional staffing beyond these minimums may be required, depending upon individual nursing home factors such as resident acuity, staff skill sets and competencies,

and nursing home operations. CMS includes in the proposed rule a process by which nursing homes could be eligible for exemption from this requirement.

To qualify for an exemption from the HPRD minimum staffing standards, nursing homes would need to meet three criteria: location (being located within an area of medium or low provider-population ratio for the nursing workforce or 20 miles or more from the nearest long-term care facility), demonstration of good faith efforts to recruit and retain staff to meet requirements, and documentation of financial commitment.

Nursing homes would be ineligible for exemption if they meet any of the following criteria: failure to submit payroll-based journal (PBJ) data, designation as a Special Focus Facility, findings of pattern or widespread insufficient staffing resulting in actual resident harm, or insufficient staffing at immediate jeopardy level in the past 12 months. Exemption from the HPRD requirements would not automatically waive the 24/7 RN requirement for the nursing home. If finalized, this requirement would be implemented three years from the date the final rule was published (five years for rural nursing homes).

Facility Assessments: CMS proposes to enhance Facility Assessment requirements by requiring that they are evidence-based and data-driven, include considerations of residents' physical and behavioral health issues and be developed with input from facility staff including leadership, management, direct care staff or their representatives, and staff providing other services. Facility Assessments would need to drive staffing decisions, including a plan for staffing across all shifts to include days, evenings, nights, and weekends. Facility Assessments would need to include a staffing recruitment and retention plan and a staffing contingency plan to be utilized in situations that do not activate the emergency plan. If finalized, this requirement would be implemented 60 days from the date the final rule is published.

Medicaid Payment Transparency: CMS proposes to require state Medicaid agencies to annually report the percentage of Medicaid payments spent on compensation of direct care and support staff for every long-term care facility and intermediate care facility for individuals with intellectual disabilities (ICF/IID). This information would be reported on the federal Medicaid website and states would be required to maintain the information on a state-level website. While not a provider requirement, this provision could directly impact nursing homes through increased administrative and reporting burdens. The extent of the burden would be dependent upon the process established by the state Medicaid agencies to obtain the necessary data from individual nursing homes.

Points to Consider for Commenting

Our members' concerns with these proposed standards focus on three main points:

- Insufficient workforce supply with which to staff to these proposed standards
- Inadequate funding for nursing homes to pay additional staff
- Displacement of Licensed Practical Nurses (LPNs)

Workforce: CMS estimates that nearly 90,000 new RNs and nurse aides will be required to meet these proposed standards. Nearly 79% of nursing homes will need to staff up but where will these staff come from?

Funding: CMS estimates that it would cost nursing homes \$349 million per year to comply with the 24/7 RN requirement and more than \$4.2 billion per year to comply with the HPRD requirements. CMS states that nursing homes “would be expected to bear the burden of these costs, unless payors increased rates to cover costs,” but states that Medicare SNF payments would not be impacted by this rule and is unwilling to initiate action to address variable and often inadequate Medicaid rates paid by states.

LPNs: Licensed Practical Nurses are not included in the proposed HPRD minimum staffing standards. CMS cites a lack of evidence of a consistent relationship between LPNs and quality and safety. CMS requests feedback on an alternative staffing standard that would include LPNs; however, the alternative standard would include LPNs as part of a total nurse staffing standard of 3.48 HPRD. The 3.48 HPRD standard would retain the currently proposed 0.55 HPRD for RNs and 2.45 HPRD for nurse aides, then nursing homes would make up the additional 0.48 HPRD with whatever nursing staff were most appropriate, including LPNs.

Remember that you are the expert on your lived experience. Consider including in your comments the reality of how these proposed standards will impact your nursing home on a day-to-day basis, such as how much it will cost your nursing home to recruit and train the staff needed to be compliant, how many existing staff you will lose in the next five years due to expected changes such as retirement, or how many individuals will not be served if your nursing home has to take beds offline due to the inability to meet staffing standards.

Resources to Assist You as You Write

- [Proposed Rule](#) by the Centers for Medicare & Medicaid Services
- LeadingAge [summary of provisions](#) and [in-depth analysis](#)
- Abt Associates [report on the Nursing Home Staffing Study](#) and [report overview](#)
- For more tips on writing comments, check out this resource: [Tips for Submitting Effective Comments](#)