

New Nursing Home Staffing Rule May Take Years to Finalize

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As part of the Biden-Harris Administration's Nursing Home Reform initiative, the Centers for Medicare & Medicaid Services (CMS) submitted a proposed rule on September 6, 2023, calling for Medicare and Medicaid-certified nursing homes to provide a 24/7 RN and a minimum of 0.55 hours of care from a registered nurse and 2.45 hours of care from a nurse aide per resident per day. Once the rule is finalized, non-rural nursing homes will have three years to comply, while rural nursing homes will have five years.

CMS expects the new staffing minimums to lead to an estimated Medicare savings of \$2.5 billion over 10 years as a result of fewer hospitalizations and emergency department visits, as well as increased resident discharges to home or the community.^[1] Further, minimum staffing standards are meant to provide staff at Long-Term Care facilities with the support needed to care for residents and reduce staff turnover and burnout, which in turn could lead to improved quality of resident care and staff. While the proposed rule attempts to strike a balance between cost and benefit, many commentators do not necessarily agree that such balance was met.

With this type of regulation, the public is given the opportunity to comment on the proposal, all of which are reviewed by the agency. The comment period of the proposed rule on minimum staffing ran from September 6, 2023 through November 6, 2023, racking up well over 40,000 comments.^[2] Though commentators in general were seemingly not opposed to a minimum staffing proposal, the main concern related to lack of funding and lack of availability of medical personnel for hire.^[3]

While some believe the reviewing of the comments could take around a year, these types of regulations have a three-year window to be finalized. Given the significant number of comments to be reviewed by the agency, as well as other avenues of opposition, it is plausible that a finalized rule will not be issued until mid-2026.

We will continue to monitor.

[1] <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=0938-AV25>

[2] <https://www.mcknights.com/news/cms-may-take-3-years-to-finalize-nursing-home-staffing-rule/>

[3] <https://skillednursingnews.com/2023/11/nursing-home-industry-floods-cms-with-staggering-40k-plus-comments-on-staffing-proposal/>