

MINIMUM STAFFING RULES FOR LONG-TERM CARE FACILITIES TOSSED OUT BY FEDERAL COURTS AND BUDGET BILL: KEY POINTS FOR MEDICARE AND MEDICAID HEALTHCARE PROVIDERS

Insights
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A federal judge in Iowa recently struck down key parts of a Biden-era final rule that set new minimum staffing standards for long-term care facilities as a condition of participation in Medicare or Medicaid programs. The June 18 decision was not the first blow to the requirements, which would have rolled out in phases starting next year, and it likely won't be the last. If enacted, President Trump's "One Big Beautiful Bill," which is now on its way to a House-wide vote after the Senate passed a revised version of it yesterday, would place a nearly 10-year pause on the new standards. We'll explain everything healthcare providers of LTC services need to know about these rapidly evolving developments and give you five practical steps you can considering taking now.

Quick Background: Medicare and Medicaid Staffing Rules for Long-Term Care Facilities

Long-term care (LTC) facilities that wish to participate in Medicare or Medicaid must meet certain requirements, including minimum standards for nursing care.

- **General Legal Framework.** The participation requirements for skilled nursing facilities (Medicare) and nursing facilities (Medicaid) are set out in various sections of the Social Security Act (SSA) and federal regulations issued by the Centers for Medicare and Medicaid Services (CMS), a federal agency within the Department of Health and Human Services (HHS). States are free to impose

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additional or more stringent enrollment requirements for Medicaid.

- **Required Minimum Standards for Nursing Care.** The SSA generally requires LTC facilities to provide “24-hour licensed nursing service which is sufficient to meet nursing needs of its residents” and to use “the services of a registered nurse at least 8 consecutive hours a day, 7 days a week.” Last year, CMS issued a final rule that, among other things, established new minimum staffing standards as part of the [Biden administration’s nursing home reform initiative](#), as discussed further below.

The 2024 CMS Final Rule’s Minimum Staffing Standards

The [final rule](#) created new staffing requirements for Medicare and Medicaid certified LTC facilities.

- **24/7 RN Mandate.** Each facility must have a registered nurse (RN) physically on-site 24 hours a day, 7 days a week.
- **HPRD Minimums.** Facilities must meet “hours per resident day” (HPRD) minimums – a metric designed to measure how much care nursing home residents receive from staff each day. Specifically, each facility must provide at least 3.48 total nurse staffing HPRD, including 0.55 HPRD for RNs and 2.45 HPRD for nurse aides.

The regulations, which technically took effect June 21, 2024, set phased implementation deadlines, allowing LTC facilities more time to get into compliance with the new requirements. The phased implementation dates for the 24/7 RN and HPRD requirements were set to roll out starting in 2026 and become effective for all facilities by May 10, 2029.

Opposition to the 2024 CMS Final Rule. Some opponents of rule have claimed that, while intended to improve safety, the rule is too rigid for the realities of the complex healthcare industry. The rule is also inconsistent with the long-standing SSA standard as providing the necessary flexibility for healthcare providers to tailor staffing to meet the unique needs of their residents. Others have raised concerns that the rule will cost many millions of dollars to implement, even in states that already have comprehensive staffing standards, as well as concerns related to nursing workforce shortages, training challenges, and administrative burdens.

Key Parts of the Rule Were Just Set Aside Nationwide (Again) by a Federal Judge



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On June 18, a federal court in Iowa struck down the 24/7 RN and HPRD requirements of the 2024 CMS final rule. The [*Kansas v. Kennedy*](#) decision was a major win for the plaintiffs, which include 20 Republican-led states, 17 affiliates of a trade association of non-profit nursing facilities, and two Kansas nursing home facilities. The plaintiffs filed the lawsuit in October last year, alleging that the CMS rule violated the Administrative Procedures Act (APA). Below are the key points from the district court's ruling:

- **The 24/7 RN requirement conflicts with the SSA's 8-hour floor.** After acknowledging that the requirement is "not plainly incongruous with the statutory language," the court concluded that the 24/7 RN rule exceeds CMS's authority because it "replaces the Congressionally-established floor of 'at least 8 hours per day' with a floor of 24 hours per day." (In contrast, the court found that the rule's HPRD requirements do *not* conflict with federal law – but, as discussed below, the court set aside the HPRD requirements for a different reason.)
- **No "clear congressional authority" for 24/7 RN and HPRD requirements.** The court concluded that both requirements violate the "major questions doctrine" – a heightened judicial standard for reviewing agency action in "extraordinary cases." The court said that these requirements trigger the major questions doctrine because they have "vast economic implications, risk healthcare facility closures or impede into an area typically within state-law domain."
- **The enhanced facility assessment (EFA) requirement remains in effect.** The court did uphold the final rule's EFA requirement, which took effect on August 8, 2024, for all facilities. To comply, LTC facilities must conduct evidence-based assessments to determine specific needs of each resident in the facility and make adjustments as necessary based on any significant changes in the resident population. Facilities also must develop a staffing plan consistent with these objectives.

Ultimately, U.S. District Court Judge Leonard Strand vacated the 24/7 RN and HPRD requirements provided in the 2024 CMS final rule. He issued the vacatur order with nationwide effect, and noted that he did not do so lightly:

“The defendants correctly note that the APA does not specify vacatur as the appropriate remedy when a court finds that a rule violates the APA. Indeed, I have deep concerns about a single United States District Judge taking actions that have the effect of operating as a nationwide injunction, applying beyond the parties to the particular case. For that reason, had I concluded that a preliminary injunction was appropriate, I would have limited that form of relief to the parties to this case.”

Judge Strand, who in January denied the plaintiffs’ request for a preliminary injunction after finding that they had not adequately demonstrated irreparable harm, concluded that vacatur was the appropriate remedy in this context based on his “final determination that CMS lacked the authority to promulgate the HPRD requirements and 24/7 RN requirement” and 8th Circuit precedent.

Remedy Determination Critically Important. Judge Strand’s discussion of nationwide injunctions versus nationwide vacatur “universal” remedies – is particularly noteworthy due to the [SCOTUS June 27 decision limiting courts’ power to issue nationwide injunctions](#). SCOTUS clarified in a footnote that [Trump v. CA](#) does not resolve the “distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action.” In other words, the landmark SCOTUS decision should directly impact the June 18 decision in *Kansas v. Kennedy*.

Not the First Blow to the 2024 CMS Final Rule

Earlier this year, a federal judge in Texas similarly set aside the 24/7 RN and HPRD requirements in a consolidated APA action brought by healthcare associations, nursing and LTC facilities, and a political subdivision of Texas. In the [April 7 decision](#), Judge Matthew Kacsmaryk held that both requirements exceed CMS’s authority because they effectively amend SSA requirements established by Congress. He also said that vacatur is the “default remedy for unlawful agency action” in the 5th Circuit, and that it must operate nationwide.

The Trump administration’s HHS, which has surprised many by defending the Biden-era final rule, recently appealed the Texas district court’s decision, and the case is now pending before a 5th Circuit appeals court.

Trump's "One Big Beautiful Bill" would pause the CMS staff standards until 2034. The president's signature policy bill – which the Senate passed yesterday thanks to Vice President JD Vance' tiebreaking vote – contains various provisions that would impact the healthcare industry, including \$1 trillion in Medicaid according to the Congressional Budget Office's latest estimate. If enacted, the law would also place a moratorium on the 24/7 HPRD requirements under the Biden-era CMS rule, prohibiting HHS Secretary (currently, Robert F. Kennedy, Jr.) from implementing, administering, or enforcing those requirements until after September 30, 2034. The House could vote on the bill as early as today or tomorrow.

5 Steps for Nursing Homes and Other Healthcare Providers of Services in LTC Facilities

In light of the recent court decisions setting aside parts of the 2024 CMS final rule, as well as the One Big Beautiful Bill's fate hanging in the balance, providers of services in LTC facilities may question what they should do next. Here are five steps you can take now as these developments play out:

- **Consider pausing your compliance prep for the 24/7 RN and HPRD mandates.** The recent district court decisions offer relief from the onerous staffing mandates. You're no longer required (for now) to meet the 24/7 RN or the formula-based HPRD benchmarks. However, don't throw away your compliance plans just yet, as things may change as a result of HHS's pending appeal of at least one of the cases or other legal action.
- **Keep up with rapidly evolving developments.** In addition to following the ongoing litigation over the 2024 CMS final rule, you should also watch out for updates on the One Big Beautiful Bill, including whether Congress makes any further changes to the Medicare or Medicaid provisions and whether the bill ultimately becomes law.
- **Stay focused on the EFA,** which remains in effect and will be a critical compliance area going forward. Think of it as a more rigorous, data-driven update to the existing facility assessment requirement, with an emphasis on demonstrating that your staffing matches the specific needs of your residents.
- **Continue preparing for Medicaid institutional payment transparency reporting,** a component of the 2024 CMS

rule that was left untouched by the recent court rulings and must be implemented by all states and territories with Medicaid-certified nursing facilities and intermediate care facilities for individuals with intellectual disabilities beginning May 10, 2028.

- **Work with counsel** to ensure your current staffing and assessment processes are compliant with Medicare and Medicaid participation requirements as this area of the law continues to rapidly evolve. You should also work together to continue brainstorming options to address the national staffing shortage in healthcare workers.

Conclusion

We will continue to monitor developments and provide updates as warranted, so make sure you subscribe to [Fisher Phillips' Insight System](#). If you have any questions, please contact the authors of this insight or any attorney in our [Healthcare Industry Group](#).