

## Trade Associations and Nursing Homes Sue to Block CMS Staffing Mandate

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Robin P. Amicon

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Last week, the American Health Care Association (ACHA), the Texas Health Care Association (THCA), and three Texas nursing homes sued the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) over the CMS Minimum Staffing Rule in the U.S. District Court for the Northern District of Texas. The rule, which was finalized last month, revises existing federal regulations and creates new minimum staffing mandates for long term care facilities that participate in the Medicaid and Medicare programs.

In the lawsuit, the organizations said the staffing mandate rule “explicitly and brazenly” departs from previous nursing home staffing requirements and argued that CMS and HHS do not have the authority to require nursing homes to meet specific staffing requirements and ratios.

Under the rule, nursing homes are required to provide a minimum of 3.48 hours of nursing care per resident day, which will include at least 0.55 hours of care from a registered nurse (RN) per resident day and at least 2.45 hours of care from a nurse aide per resident day. The rule also requires nursing homes to have a RN on site 24 hours a day, seven days a week. Currently, CMS requires at least eight consecutive hours of RN presence each day. CMS predicted 79% of long term care facilities nationwide would have to increase hiring to meet these requirements. There will also be temporary hardship exemptions for facilities where it is difficult to find staff.

Currently, the rule is scheduled to be phased in with a staggered timeline, depending on where a facility is located. Non-rural nursing homes must meet the staffing requirements by May 2027, while rural nursing homes have until May 2029 to be in full compliance.

In the lawsuit, the ACHA and the THCA claim the rule’s “onerous” requirements will exacerbate the industry’s staffing crisis and could disrupt patients’ access to care, with many facilities being forced to close.

HHS and CMS have reported that they intend to defend the mandate.

Vorys will continue to monitor this lawsuit and any other related developments pertaining to the staffing mandate. Please contact Robin Amicon or your regular Vorys attorney if you have any questions or concerns about this case or the mandate requirements.