

A Hard Path to Hardship Exemptions

Background: In April 2024, the Administration issued its Nursing Home Minimum Staffing Rule final rule. As part of the rule, the Centers for Medicare and Medicaid Services (CMS) outlined a hardship exemption process for centers that meet a specific set of criteria. CMS specifies that one or more of the staffing mandate requirements may be exempted for facilities found non-compliant and who meet the eligibility criteria.

However, **these exemptions are in name only:** the process to receiving an exemption is cumbersome and not-user friendly for providers. It requires facilities to jump through multiple, penalizing hoops just to demonstrate they can't find workers.

During the comment period, AHCA urged CMS to create an exemptions process that includes all facilities, is attainable for those who need it, is not punitive, and creates a process in which facilities can get the support they need to continue to provide quality care. CMS disregarded these solutions.

Despite being intended to help nursing homes who are working in good faith to meet the staffing mandate requirements, the process to an exemption is complex.

SURVEY→CITATION

- **A facility cannot request this exemption, it requires evaluation during survey.**
- **It also requires a facility to be found noncompliant.** So, a facility must be cited before ever having the chance to even ask for an exemption.

PROVE HARDSHIP & GOOD FAITH EFFORTS TO HIRE

- Then, in order to qualify, **the facility must be in a location where the local workforce is 20% below the national average.** When the entire country is facing a shortage of caregivers, this is an arbitrary benchmark. **Several states will not qualify at all: Wyoming, South Dakota, and Nebraska.**
- From there, **the facility must demonstrate to surveyors its good faith efforts to hire, including a demonstrable financial commitment.** It perpetuates a current problem for the agency, which is inconsistent and subjective interpretation by surveyors.

AVOID EXCLUSIONS

- **Certain facilities will be excluded:** those in the Special Focus Facility program, facilities with missed PBJ submissions, or facilities with certain citations within the past 12 months. This again just reinforces an oversight system that piles on fines and citations without doing anything to help these facilities improve.

REPEAT

- The exemption **expires at the next standard recertification survey.**

CMS estimates that 25% of facilities will meet these extensive criteria, which means **75% will not qualify.** When 99% of nursing homes are actively trying to hire workers and 94% of facilities can't meet this mandate, this isn't a realistic program.

TELL CONGRESS:

CMS and the Administration need to hear that a complicated, unrealistic exemptions process will neither help expand the profession nor support quality care. We need a better path to progress. Help us grow the long term care workforce and find the caregivers needed to meet the increasing demand for skilled care in our nation's nursing homes.

"We are deeply concerned that Administration officials are pointing to this exemption process to try to alleviate the substantial concerns of the long term care community and many lawmakers on both sides of the aisle. But the devil is in the details, and the reality is that the process is arduous and unrealistic.

Ultimately, without a viable path for many facilities to attain an exemption, they will be forced to downsize or close—reducing seniors' access to care.

-- Holly Harmon, Senior Vice President of Quality, Regulatory and Clinical Services

Sources:

<https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/AHCANCAL-Releases-Statement-in-Response-to-Senate-Aging-Committee-Hearing.aspx>

<https://www.mckinsey.com/industries/healthcare/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce>

AHCA
AMERICAN HEALTH CARE ASSOCIATION

AHCA/NCAL Legislative Staff Contact:
GR@ahca.org
www.ahcancal.org

NCAL
NATIONAL CENTER FOR ASSISTED LIVING

IMPROVING LIVES by DELIVERING SOLUTIONS for QUALITY CARE