

F725

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§483.35 Nursing Services

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e).

§483.35(a) Sufficient Staff.

§483.35(a)(1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

- (i) Except when waived under paragraph (e) of this section, licensed nurses; and**
- (ii) Other nursing personnel, including but not limited to nurse aides.**

§483.35(a)(2) Except when waived under paragraph [(e)] of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

INTENT §483.35(a)(1)-(2)

To assure that there is sufficient qualified nursing staff available at all times to provide nursing and related services to meet the residents' needs safely and in a manner that promotes each resident's rights, physical, mental and psychosocial well-being.

DEFINITIONS §483.35(a)(1)-(2)

"Nurse Aide," as defined in §483.5, is any individual providing nursing or nursing-related services to residents in a facility. This term may also include an individual who provides these services through an agency or under a contract with the facility, but is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants as defined in §488.301.

GUIDANCE §483.35(a)(1)-(2)

NOTE: Cite this Tag only if there are deficiencies related to the **sufficiency** of nursing staff.

If the survey investigation reveals that there are not sufficient staff in areas other than Nursing Services, refer to:

- F741, §483.40(a) for any staff caring for residents with dementia or a history of trauma and/or post-traumatic stress disorder;
- F801, §483.60(a) for Food and Nutrition staff;
- F826, §483.65(b) *for* Specialized rehabilitative services; *and*
- F839, §483.70(f) *for* Administration for any other staff not referenced above.

NOTE: The actual or potential physical, mental, or psychosocial resident outcomes related to noncompliance cited at F725 should be investigated at the relevant tags, such as Abuse at §483.12, Quality of Life at §483.24, and/or Quality of Care at §483.25.

Many factors must be considered when determining whether or not a facility has sufficient nursing staff to care for residents' needs, as identified through the facility assessment, resident assessments, and as described in their plan of care. A staffing deficiency under this requirement may or may not be directly related to an adverse outcome to a resident's care or services. It may also include the **potential** for physical or psychosocial harm.

As required under Administration at F838, §483.70(e) an assessment of the resident population is the foundation of the facility assessment and determination of the level of sufficient staff needed. It must include an evaluation of diseases, conditions, physical or cognitive limitations of the resident population's, acuity (the level of severity of residents' illnesses, physical, mental and cognitive limitations and conditions) and any other pertinent information about the residents that may affect the services the facility must provide. The assessment of the resident population should drive staffing decisions and inform the facility about what skills and competencies staff must possess in order to deliver the necessary care required by the residents being served.

PROCEDURE: §483.35(a)(1)-(2)

Although federal regulations do not define minimum nursing staff ratios, many States do. If a facility does not meet State regulations for staffing, do NOT cite that as a deficiency here, *but* refer to Administration, F836, §483.70(b). In addition, *even* if a facility meets the State's staffing regulations that is not, by itself, sufficient to demonstrate that the facility has sufficient staff to care for its residents. *Compliance with State staffing standards is not necessarily determinative of compliance with Federal staffing standards that require a sufficient number of staff to meet all of the residents' basic and individualized care needs. A facility may meet a state's minimum staffing ratio requirement, and still need more staff to meet the needs of its residents. Additionally, the facility is required to provide licensed nursing staff 24 hours a day, 7 days a week.*

Surveyors must determine through information obtained by observations, interviews and verified by record reviews, whether the facility employed sufficient staff to provide care and services in assisting residents to attain or maintain their highest practicable level of physical, mental, and psycho-social well-being. *The facility is responsible for submitting staffing data through the CMS Payroll-Based Journal (PBJ) system (Refer to F851, §483.70(q)). This data can be obtained through the Certification and Survey Provider Enhanced Reports (CASPER) reporting system. This PBJ Staffing Data Report contains information about overall direct care staffing levels, including nurse staffing. Surveyors will utilize the P B J Staffing Data Report available through CASPER reporting system to identify concerns with staffing. The Long Term Care Survey Process (LTCSP) software application will alert the surveyors of specific dates that require further investigation related to staffing. Surveyors are expected to verify infraction dates indicated on the PBJ staffing data report. If concerns were identified on this report, as well as from other*

sources, refer to the critical element pathway of Sufficient and Competent Staffing, and the probes noted below.

PROBES:

- When interviewing staff, residents and others, are concerns raised with the amount of time staff are available to provide care and services, such that there is not sufficient time allowed to provide the necessary care and services to a resident? If so, verify these concerns through observations and record review if necessary.
- Does the facility assessment describe the type and level of staff required to meet each resident's needs as *assessed* under §483.70(e). Does the type and level of the staff onsite reflect the expectations described in the facility assessment?
- Does the workload or assignments of the nursing staff allow them time to participate in team meetings, care planning meetings, attend training, spend time caring for residents and take time for breaks including meal breaks?
- *Are the numbers of licensed staff sufficient such that those staff members have enough time to provide direct services to residents as well as to assist and monitor all of the aides they are responsible for supervising?*
- Do residents and families report that nursing staff are responsive to residents' request for assistance, such as call bells typically answered promptly? Do they feel that they can have a conversation with a direct caregiver and not feel rushed?
- Are there any indications of delays in responsiveness for staff such as pungent odors, residents calling out, or residents wandering with inadequate supervision?
- Are there any indications of *inappropriate* use of devices or practices to manage residents' behaviors or activities *that may suggest facility staff are using these devices or practices to compensate for lack of sufficient staff? Examples include high numbers and/or inappropriate use of position-change alarms, positioning residents in chairs that limit their movement, or residents who are subdued or sedated?*
- Are residents who are unable to use call bells or otherwise communicate their needs checked frequently (e.g., each half hour) for safety, comfort, bathroom needs positioning, and offered fluids and other provisions of care? Have care problems associated with a specific unit, day or tour of duty been identified by the facility? For example, does documentation show that skin integrity issues are identified more on days following a long weekend? *Does the facility have adequate staff to monitor residents at risk for wandering?*
- Has the use of overtime hours increased? (If overtime hours have increased substantially, it can indicate that there is not sufficient staff or a back-up plan when staff call-out).
- When there are staff call-outs, did the facility fill those positions in a timely manner? *Does the facility have licensed nursing staff 24 hours a day?*
- *If the surveyor is made aware of the absences of licensed nursing staff in a 24 hour period:*
 - *Interview direct care staff;*

- *Are you ever made aware of the absence of licensed nursing staff during your shift?*
- *When was the last time that licensed staff was not available during your shift?*
- *How often does this occur?*
- *How does this impact residents in the facility?*
- *Are you aware of any residents that missed medications or treatments due to no available licensed nurse?*
- *Who do you notify in the event of an emergency and there is no licensed nurses available?*
- *Interview the Director of Nursing or Administrator;*
 - *When was the last time that licensed nursing staff were not available on a shift?*
 - *How often does the facility not have licensed nursing staff at all times?*
 - *What is the facility's policy when there is not a licensed nurse available in a 24 hour period?*
 - *How does the facility provide care to residents that require a licensed nurse if one is not available to work?*
 - *How does this impact residents in the facility?*

Concerns such as falls, weight loss, dehydration, pressure ulcers, as well as the incidence of elopement and resident altercations can also offer insight into the sufficiency of the numbers of staff. Surveyors must investigate if these adverse outcomes are related to sufficient staffing.

KEY ELEMENTS OF NONCOMPLIANCE

To cite deficient practice at F725, the surveyor's investigation will generally show that the facility failed to do any one of the following:

- Ensure there are a sufficient number of skilled licensed nurses, nurse aides, and other nursing personnel to provide care and respond to each resident's *basic needs and individual needs as required by the resident's diagnoses, medical condition, or plan of care*; **or**
- Ensure licensed nurse coverage 24 hours a day, except when waived; **or**
- Ensure a licensed nurse is designated to serve as a charge nurse on each tour of duty, except when waived.

DEFICIENCY CATEGORIZATION

Once the survey team has completed its investigation, analyzed the data, reviewed the regulatory requirements, and determined that noncompliance exists, the team must determine the severity of each deficiency, based on the harm or potential for harm to the resident.

An example of Level 4, immediate jeopardy to resident health and safety includes, but is not limited to:

- A resident with a Stage 4 pressure injury, did not receive skin assessments and treatments for two weeks due to the absence of the only trained wound nurse on the resident's scheduled skin assessment days. No accommodations were made for coverage in the absence of this wound nurse and no other nursing staff were trained to provide this care. The pressure injury became infected during this timeframe and resulted in the resident being hospitalized requiring IV antibiotics for sepsis. Failure to provide sufficient staff with the necessary skill set to provide skin assessments and treatments *created the likelihood for serious injury, harm, impairment or death for the resident.*
- *A resident had complained of chest pain and shortness of breath after eating their evening meal. The nursing assistant stated they would inform the licensed nurse. The nursing assistant was informed there would be no licensed nurse available onsite. At 10:00 p.m. the resident was found unresponsive with minimal respirations. Because there was no licensed nurse on duty at that time, the nursing assistant called 911 and the resident was sent to the emergency room.*
- *The survey team was made aware the facility had 4 days in the previous quarter of PBJ submission when there were no licensed nurses in the facility for all 24 hours of each day. After a thorough investigation, the team determined the absences of a licensed nurse in the facility created the likelihood for serious injury, harm, impairment or death for all residents.*

Examples of Level 3, actual harm (physical or psychosocial) that is not immediate jeopardy includes, but are not limited to:

- A resident's room has a strong smell of urine. Upon further investigation, the surveyor discovers the resident is incontinent and has soiled undergarments. Upon interview, the resident stated he called for help about an hour ago and was told by staff that they were short-staffed today and would get to him as soon as they could. He also mentioned that this happens almost every day and he is embarrassed to ask staff for help to clean himself up, so he remains withdrawn in his room until a staff member can assist him. Refer to the Psychosocial Outcome Guide for additional direction.
- *A resident was admitted to the facility with a recently repaired hip fracture and required assistance with ambulation. The resident used the calling device to request assistance to the bathroom. After several minutes no help arrived so the resident attempted to ambulate with a walker to the bathroom without assistance. The resident subsequently fell and was found by nursing assistants. The resident was assisted back to bed by the nursing assistants and complained of pain in the area of the recently repaired hip fracture. There was no licensed nurse on duty to assess the resident for any injuries or provide medication for pain. The next morning the resident complained of increased pain in the area of the repaired hip fracture. After assessment by the day shift licensed nurse the resident was sent to the hospital. The resident was admitted and required surgery to repair the re-fractured hip.*

Examples of Level 2, no actual harm, with potential for more than minimal harm, that is not immediate jeopardy includes, but are not limited to:

A resident's family complained that their loved one's personal hygiene was never completed in a timely manner due to lack of staff. When interviewed, staff stated that they typically assist this resident once the care is completed for all other residents in their assignment since it takes longer to provide care for him. This resulted in the resident occasionally missing occupational therapy. There has been no *recent documented* decline in ADL function but there is a potential for decline.

- Residents complain that they are not allowed choices such as receiving showers consistently on the days or at times they prefer due to inadequate staffing. *Review of staffing data submitted via the PBJ system revealed the facility had a one-star staffing quality rating. Follow up interviews with the staffing coordinator revealed that only one CNA was available to provide showers, and therefore residents' preferences for timing of showering could not be met cause anxiety. Refer to the Psychosocial Outcome Guide for additional direction.*

Severity Level 1: No Actual Harm with Potential for Minimal Harm

- The failure of the facility to provide sufficient staffing including licensed nurses creates a risk that is more than minimal harm. Therefore, Severity Level 1 does not apply for this regulatory requirement.*