

§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 §483.71.

§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 (f) 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 (f) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

INTENT

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

“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.

“Licensed Nurse” means any nurse that requires the successful completion of a National Council Licensure Examination (NCLEX-PN or NCLEX-RN). At a minimum this would include a Licensed Practical Nurse (LPN) or a Registered Nurse (RN). Licenses and titles are defined and protected by the Nurse Practice Act (NPA) for usage in the public. They are privileged and granted by the Board of Nursing (BON) after meeting the requirements of graduating from accredited nursing educational programs, passing professional board examinations, background checks, and paying applicable fees.¹

“Charge Nurse” is a licensed nurse with specific responsibilities designated by the facility that may include staff supervision, emergency coordinator, physician liaison, as well as direct resident care.

“Scope of Practice” describes the services that a qualified health professional is deemed competent to perform and permitted to undertake – in keeping with the terms of their professional license.²

GUIDANCE

As required under Administration at F838, §483.71 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 *contributes to the identification of* 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 *on any given day.*

The facility is required to provide licensed nursing staff 24-hours a day, along with other nursing personnel, including but not limited to nurse aides. The facility must also designate a licensed nurse to serve as a charge nurse on each tour of duty.

Concerns such as falls, weight loss, dehydration, pressure ulcers, elopement and resident altercations can also offer insight into potential insufficient numbers of staff available in the facility. Surveyors must discuss these concerns during team meetings and investigate how or if these adverse outcomes are related to sufficient staffing.

Compliance with State staffing standards does not necessarily determine compliance with Federal staffing standards that require a sufficient number of staff to meet all of the residents’ basic and individualized care needs. 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).

Cite this F-Tag only if there is non-compliance related to a facility not providing services by sufficient number of nursing personnel (licensed and non-licensed), not providing

licensed nursing staff 24-hours a day, and/or does not have a licensed charge nurse on each tour of duty.

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.*

INVESTIGATIVE PROCEDURES

Use the Sufficient and Competent Nurse Staffing Critical Element Pathway, along with the above interpretive guidance, and the procedures below, when determining if the facility meets the requirements for, or investigating concerns related to sufficient staffing.

The facility is responsible for submitting staffing data through the CMS Payroll-Based Journal (PBJ) system (Refer to F851, §483.70(p)). *When completing the offsite preparation for a recertification survey, the team coordinator must obtain the PBJ Staffing Data Report and evaluate PBJ data submitted by the facility. This data is available through PBJ reports that can be obtained through CMS' survey system. This report, titled PBJ Staffing Data Report, must be utilized by surveyors on at least every recertification survey. The report contains information about overall direct care staffing levels as well as licensed nurse staffing.*

While many factors may need to be considered when determining if 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, the PBJ Staffing Data Report provides very clear and distinct areas that could identify deficient practices. The steps below must be followed to determine the facility's compliance with F725, using the PBJ Staffing Data Report as a starting point.

The PBJ Staffing Data Report identifies if the facility:

- 1. Reported no RN hours (F727);*
- 2. Failed to have Licensed Nursing Coverage 24-hours/day (F725);*
- 3. Reported excessively low weekend staffing (F725);*
- 4. Has a one-star Staffing Rating (F725); and*
- 5. Failed to submit PBJ data for the quarter (F851).*

The staffing domain of the Five Star Quality Rating system is based on six specific measurements that are derived from the PBJ data submitted by the facility. ([Five Star Quality Rating System User's Guide](#)).

Furthermore, the PBJ Staffing Data Report identifies specific infraction dates for when a facility reported they had no RN hours and failed to have a licensed nurse on duty for 24-hours in a day.

1. *Review the PBJ Staffing Data Report during offsite prep for every recertification survey or as applicable for abbreviated surveys.*
 - a. *For every recertification survey, the Team Coordinator (TC) must document in the Long-Term Care Survey Process (LTCSP) software application offsite preparation screen, any discrepancies identified in the PBJ Staffing Data Report to inform all team members of staffing concerns prior to the team entering the facility.*

Note: CMS expects every team member to be aware of the offsite preparation information prior to entering the facility.
2. *Identify if the facility is triggered for reporting **NO licensed nursing** coverage 24-hours/day. If this metric is triggered on the PBJ Staffing Data Report:*
 - a. *During the entrance conference, the TC must inform the facility of these infraction dates and that a citation at F725 will be issued unless evidence is provided that shows the facility had licensed nursing coverage 24-hours/day on those infraction dates. Acceptable evidence is timecards, timesheets, or payroll information that clearly shows licensed nurse coverage on the dates in question. A schedule of who was supposed to work is **NOT** acceptable.*
 - b. *If the facility does not provide acceptable evidence, a citation at **F725** must be cited at a **minimum of scope and severity of “F”**. The scope and severity may be increased based on further investigation throughout the survey. If the facility does provide the evidence that there was 24-hour licensed nursing coverage, surveyors must continue to conduct investigations as described below to assess compliance with the requirements for facilities to have sufficient nurse staffing.*

Note: *If the facility failed to have licensed nursing coverage 24-hours/day, (e.g., four or more days as indicated by the PBJ Staffing Data Report or for even just one day as indicated through general investigations), **F725 must be cited**.*

If the surveyor is aware of the absence of licensed nurse (LN) coverage on one or more days use the following questions to provide insight into severity that may have already been identified, such as incidents that caused harm or placed residents in immediate jeopardy (IJ) for serious harm when a licensed nurse was not available.

Director of Nursing or Administrator

- *How often are there days with no LN onsite available to provide care for residents?*
- *What types of services or care are not provided when there is no LN staff in a 24-hour period?*

Front line staff (e.g., nurse aides, LPN/LVN, RN)

- *Are you aware when there isn't a LN available to provide services to the residents?*
- *Are you aware of any residents who needed LN services (i.e., medications or treatments) and did not receive it due to no available licensed nurse? If so, please explain.*
- *Who do you notify in the event of an emergency when there is no licensed nurse available?*
 - *If the staff member is not aware of who to notify, ask if they've ever experienced this situation and what actions did they take? Was any resident harmed?*
 - *If the staff member is aware of who to notify, what direction were they given? Was any resident harmed?*

If the facility did not trigger for any of the 3-staffing metrics on the PBJ Staffing Data Report pertaining to F725, (Failed to have Licensed Nurse Coverage 24-hours/day, Reported Excessively Low Weekend Staffing, or Has a One-star Rating Ratio) then the surveyor must ask generalized questions about the facility's ability to provide sufficient staffing. Refer to those probes provided in the LTCSP software application.

*After the Initial Pool and finalized sample of the recertification survey, and as needed during abbreviated surveys, surveyors should follow the interview and observation probes included on the **Sufficient and Competent Nurse Staffing Critical Element Pathway** while finalizing investigations related to QoL and QoC as well as sufficient staffing, some of which are listed below.*

Staff Interviews for triggered PBJ Staffing Data Report areas

*If the facility triggered for **One Star Staffing Rating**, surveyors must interview at least two additional front-line staff (e.g., housekeeping, dietary, and/or maintenance) with focused questions such as:*

- *Have you noticed the facility not having enough staff, especially during the last six months?*
- *Have you observed the facility not having enough staff to meet residents' needs, such as residents waiting a long time for someone to help them? How often does this happen?*

- *Do you ever smell bad odors when you are walking through the facility, for example, when a resident did not receive toileting or incontinence assistance in a timely manner?*
- *Do you ever hear residents or their friends and family complain about not enough staff to provide the care needed?*

*If the facility triggered for **Excessively Low Weekend Staffing**, surveyors must interview at least two additional front-line staff (housekeeping, dietary, and/or maintenance) with focused questions such as:*

- *Are there ever times when there are not enough staff to take care of the residents on the weekends? For example, are any residents calling for assistance for extended periods of time? If so, can you describe what happened to any residents affected?*
 - *If there have not been enough staff during those times, do you know who you can alert to ensure that the residents needs are met?*
 - *If you have ever notified that person, what was their response?*
- *Have weekend activities ever been canceled due to lack of staffing to get residents up and dressed to attend (e.g., church services or day trips)?*
- *Are beds left unmade and rooms messy on the weekend?*

Additionally, if the facility triggered for Excessively Low Weekend Staffing, then review the Facility Assessment to evaluate if the facility assessed resident needs and acuity to determine the number of qualified staff needed to meet each resident's needs (see §483.71).

Interview questions for use whether or not the facility triggered any of the PBJ areas

Facility Residents and/or Resident Representatives

- *Has the facility informed you that care could not be provided because there wasn't a LN available?*

Nursing Staff

During interactions with staff, ask if they feel they have enough staff to meet resident needs and the training/skills needed to provide the care required. If no, additionally interview staff using the probes below to further evaluate staff sufficiency.

- *Do you have enough time to complete your required assignments each day? If not, why, and what assignments are you not able to complete? Who do you report this to?*
- *Are you able to participate in care planning, attend team meetings and trainings, take meal breaks and provide the care residents need?*
- *How often are you asked to stay late, come in early, or work overtime? Tip: this assists in determining the frequency of open shifts, which provides insight into the extent of any staffing issues in the facility.*
- *Are you aware of who is the designated charge nurse on each shift?*

Dietary/Kitchen/Dining Staff

Interview staff if concerns related to resident food, weight loss, or nutrition are identified and are potentially related to nurse staffing.

- *Do you hear residents complain about their food getting cold while they wait to be assisted by nursing staff?*
- *Do you see food trays come back untouched that might indicate insufficient nursing staff?*
- *Are you aware of any residents that might be absent because nursing staff was not available to assist them to the dining room?*

Observations

Upon entrance to the facility, during the initial pool of the recertification survey, per the LTCSP, and throughout various times of day, surveyors should immediately and independently tour the facility and document any of the following:

- *Are there offensive odors? If so, what is the source?*
- *Do residents receive timely assistance with care needs, such as toileting and eating?*
- *Are residents still in bed and not dressed mid-morning or remain unkempt or unclean for extended periods of time?*
- *Are residents' care activities consistent with the time of day/night and their individual personal preferences, rather than at a time that is convenient for staff (e.g., bathing residents during normal hours of sleep)?*
- *Do staff rush when providing resident care (e.g., neglecting to explain what they are doing when assisting residents)?*
- *Are call devices and alarms responded to timely? If concerns about staff responsiveness exist, monitor when the resident's call device is activated and record the response time of the staff.*
- *Are residents yelling out, crying, sitting around the nurse's station or in hallways without staff intervention, or wandering unsupervised and at risk?*
- *Are residents showing signs of sedation making it easier (i.e., convenient) for staff to care for or monitor residents, indicating the potential use of unnecessary psychotropic medications/chemical restraints?*
- *Are devices or practices in use that restrict freedom of movement (e.g., position change alarms or reclining chairs) making it easier for staff to care for or monitor residents, indicating the potential use of physical restraints?*
- *Are there delays in residents receiving their medications timely?*
- *When observing care or services provided by nursing staff, do they demonstrate competency according to professional standards?*

*During the resident council interview surveyors must ask residents if they receive the help and care they need without waiting a long time. If concerns are identified, the surveyor is directed to the **Sufficient and Competent Nurse Staffing Critical Element Pathway** where they would follow pertinent probes to verify any non-compliance with sufficient staffing in the facility.*

As surveyors are finalizing investigations into the facility's ability to provide sufficient staffing to meet the resident's needs for quality of life and quality of care, interview the DON and Administrator to identify the facility's process used to ensure resident needs are met during difficult staffing occurrences.

Negative findings would be an indicator of noncompliance. CMS expects the survey team to discuss any negative findings regarding sufficient staffing as a team during team meetings. For example, the LTCSP Procedure Guide requires the survey team to discuss potential staffing concerns at the end of the first day and at least the end of each subsequent day the team is onsite for the recertification survey.

POTENTIAL TAGS FOR ADDITIONAL INVESTIGATION

- *F741, for any staff caring for residents with dementia or a history of trauma and/or post-traumatic stress disorder;*
- *F801, for Food and Nutrition staff;*
- *F826, for Specialized rehabilitative services;*
- *F839, for Administration for any other staff not referenced above; and*
- *F838, for Facility Assessment.*

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; *this must be done by utilizing the PBJ Staffing Data Report. If the facility triggers on the report under the category of "No Licensed Staff," a citation at F725 should be issued at a minimum severity and scope of "F;"* **or**
- Ensure a licensed nurse is designated to serve as a charge nurse on each tour of duty, except when waived.

DEFICIENCY CATEGORIZATION

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 *one* week 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 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 PBJ Staffing Data Report reviewed during offsite preparation for the recertification survey indicated the facility had 4 days in the previous quarter when there were no licensed nurses in the facility for all 24-hours of each day. The facility failed to provide evidence that there were licensed nurses in the facility on all of these days. The facility had many residents in each unit in the facility with complex medical needs such as tracheostomies, feeding tubes, pressure ulcers requiring multiple treatments daily, and residents who were identified as high-risk for falls. After a thorough investigation, the team determined the absence of a licensed nurse in the facility created the likelihood of serious injury, harm, impairment or death for many residents throughout the facility (widespread) therefore, the scope and severity was determined to be at "L".*

Examples of Level 3, actual harm that is not immediate jeopardy include, 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. *No* help arrived *before* 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. The licensed nurse on duty was unable to assess the resident for any injuries or provide medication for pain. During interview, the licensed nurse stated she was occupied with urgent needs from other residents. 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 *with a fracture to the same hip* and required surgery to repair the re-fractured hip.

- *The PBJ Staffing Data Report reviewed during offsite preparation for the survey showed there were no licensed nurses in the facility for a total of seven days that quarter. This was verified with the facility during the survey. The survey software displayed there was one off-site selected resident with the MDS indicators of major infection of pneumonia and one re-hospitalization. The resident was part of the survey sample, and the surveyor's investigation confirmed that leading up to the re-hospitalization, the resident was to have received an intravenous antibiotic once a day for three days for a respiratory infection. Interviews and record review confirmed the resident missed the third dose because the Certified Medication Aide could not administer it within their scope of practice. A licensed nurse was not present that day and the medicine was omitted. Although that day was not one of the PBJ-Staffing Data Report specific infraction dates, it was determined by record review that the facility failed to have Licensed Nursing Coverage 24-hours/day on that day as well.*

The PBJ Staffing Data Report supported citation of a facility under tag F725 at a widespread scope of non-compliance with no actual harm, but that has a potential for more than minimal harm, that is not immediate jeopardy. However, the onsite survey found a resident had experienced harm due to a significant medication error and subsequent hospitalization for the treatment of pneumonia due to the facility failing to have Licensed Nursing Coverage 24-hours/day. Due to these survey findings regarding harm to one resident and the PBJ Staffing Data Report demonstrating widespread noncompliance, the facility was cited at the severity level of actual harm that is not immediate jeopardy for failure to have Licensed Nursing Coverage 24-hours/day.

Examples of Level 2, no actual harm, with potential for more than minimal harm, that is not immediate jeopardy include, 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 *causing* anxiety. Refer to the Psychosocial Outcome Guide for additional direction.

- *The PBJ Staffing Data Report revealed a facility did not have 24-hours of licensed nurses for at least four days, as submitted by the facility to the PBJ system. The facility failed to provide evidence, such as through timecards or payroll information, showing that licensed nurses were onsite during all the dates listed on the report. The survey did not find evidence of harm or immediate jeopardy to residents. Therefore, the facility is cited at a scope and severity of "F," due to the potential for causing more than minimal harm for any resident in the facility.*

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.

¹ *Nurse Practice Act*

² *American Nurses Association*

