

# PUBLICATION

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## Fundamentals of CMS Updates to Appendix PP of the State Operations Manual: Nursing Services

October 24, 2022

### F725: Nursing Services

Noncompliance at deficiency tag F725 will be cited if the surveyors find that a facility does not have a sufficient number of skilled licensed nurses, nurse aides, and other nursing personnel to provide care and respond to each resident's basic and individual needs, as required by the resident's diagnoses, medical condition, or plan of care. Except when waived, facilities are also responsible for ensuring licensed nurse coverage 24 hours a day and for ensuring that a licensed nurse is designated to serve as a charge nurse on each tour of duty.

### The SOM Revisions to F725 Direct the Surveyors to Assess the Sufficiency of Nursing Staff

The new SOM provides guidance to surveyors regarding how to assess whether nurse staffing is in line with federal standards. Facilities must ensure that there are enough licensed staff to provide direct services to residents, as well as to assist and monitor all the aides that the licensed staff are responsible for supervising. Under the revisions, compliance with state staffing regulations alone is not sufficient. The surveyors will have a software tool that will assist them in identifying specific dates that require further investigation regarding staffing and will verify the data using the CMS Payroll Based Journal (PBJ) system. If the surveyor becomes aware of absences of licensed nursing staff in a 24-hour period, the SOM updates outline specific inquiries that the surveyors must make, including interviewing the direct care staff and the Director of Nursing or Administrator. Additionally, surveyors are advised to investigate the inappropriate use of devices or practices to manage residents' behaviors or activities, which may suggest that a facility is using these measures to compensate for lack of sufficient staff.

### Key Takeaways

The new SOM guidance emphasizes the importance of meeting the *federal* standards for facility staffing, regardless of any state's requirements for staffing levels, or lack thereof. The federal standard does not mandate a ratio or specific number of staff to demonstrate sufficiency but requires that there be sufficient qualified nursing staff to provide services to not only meet the residents' needs, but to do so in a manner that promotes each resident's rights, physical, mental, and psychosocial well-being.

### F727: Registered Nurse

Noncompliance at deficiency tag F727 will be cited if the surveyors find that a facility does not have a registered nurse on staff to provide services at least eight consecutive hours a day, seven days a week, unless the need for a higher level of registered nurse coverage is demonstrated by the facility assessment.

### SOM Revisions to F727 Provide Guidance on Investigating the Registered Nurse Requirements

The new SOM clarifies the requirement that facilities use the services of a registered nurse for at least eight consecutive hours per day, seven days per week. Facilities are expected to identify, through facility assessments, when the acuity level of the resident population may require the services of additional registered nurse(s) for more coverage than the minimum that the regulation requires. Facilities may choose to

have differing tours of duty for their licensed nursing staff as long as the eight hours worked by an RN are consecutive within each 24-hour period.

The facility must also generally designate a registered nurse to serve as the Director of Nursing at least 40 hours per week. Exceptions are allowed in two instances. First, if the facility has obtained a waiver of one or both of the requirements from either the state or CMS, as appropriate. Second, if the facility has an average daily occupancy of 60 or fewer residents, in which case the Director of Nursing may serve as a charge nurse.

### **Key Takeaways**

The new SOM guidance directs surveyors to confirm that a facility is in compliance with this requirement of participation by reviewing the Payroll-Based Journal (PBJ) Staffing Data Report and interviewing the staff. Proper documentation is essential to demonstrating compliance under this tag.

For specific guidance or more information about this alert, please contact [Howard Sollins](#), [Stefanie Doyle](#), or any other member of [Baker Donelson's Long Term Care Team](#).