

# National Citizens' Coalition for NURSING HOME REFORM

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## On January 1, 2003, Nursing Homes Must Begin Posting Their Nurse Staffing Levels “In a Clearly Visible Place” on Every Shift

On January 1, 2003, all nursing homes that participate in Medicare and Medicaid will be required to begin posting “in a clearly visible place” the number of nursing staff on duty on each shift. Those who must be included in the daily posting are:

- Registered nurses, licensed practical nurses, and nurse aides *directly responsible for resident care*.

The requirement was enacted as Section 941 of the 2000 Benefits Improvement and Protection Act (BIPA). If properly monitored and enforced, the law will be a strong tool to help residents, families, consumer groups, and ombudsmen monitor staffing adequacy, quality of care, and compliance with state and federal staffing requirements. Please alert and educate others – residents, families, consumer advocates, local ombudsmen, community and professional groups with an interest in nursing homes, and workers – about this provision.

### Making the Law Work to Improve Quality Care

Several shortcomings in the law and the government’s sluggish enforcement have created the need for consumer advocates to take extra steps to assure that its intent is met:

- **The law does not require separate posting for each unit.** Consumers may have to do their own count to determine how many nursing staff are actually available to care for residents in different sections or wings of the facility. Ask the administrator or director of nursing to post the information on each unit. Also, although the law does not require it, you may want to ask for the *names* of the staff on duty to be posted. This information will help residents and families keep track of who is working on a shift.
- **It does not require the facility to post how many residents are in the facility or on each unit at the time the numbers are posted.** Therefore, consumers should get a count of residents so they can calculate staffing ratios. NCCNHR recommends a minimum of one direct caregiver (including nurses and nursing assistants) to five residents on the day shift; one to 10 on the evening shift; and one to 15 on the night shift. Research has affirmed that at lower levels, residents cannot get quality care. If your state has minimum staffing requirements, determine whether the facility is meeting them.
- **The Centers for Medicare and Medicaid Services directed state survey agencies in an October 10 memorandum to verify that the information has been posted – but it says that “at this time” surveyors do not have to audit whether it is accurate.** This affirms the importance of consumer advocates monitoring the accuracy of the posted numbers. We suggest that if you find inaccurate information displayed, you discuss your concern with the administrator or director of nursing. If you still feel that the posted numbers are wrong and that the facility is not willing to correct its reports, file a complaint with the state survey agency. Regardless of CMS’s inaction, Congress did not intend for consumers to be given inaccurate information.

**Further Guidance Needed**

In the October memorandum to state survey agencies, CMS said it will develop further guidance on the law's requirement that the information be displayed in a "uniform manner." The memo does not address several "significant issues" singled out by Senators Charles Grassley (R-IA) and John Breaux (D-LA) in a letter to CMS Administrator Tom Scully in August. ([Read letter here](#)) The senators said facilities should receive federal guidance on issues "such as separate reporting for agency personnel, a clear definition of 'direct responsibility' for resident care, and how to present staffing data in a way that makes the presentation most useful for residents, families, and members of the public." Clearly these questions and others need clarification, and NCCNHR will continue to work with the senators' offices and CMS to get clarification through regulations and guidelines.\*

In the meantime, remember that the law is a *minimum* requirement. Facilities can do more, and states can require more.

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\* S. 2879, a bill introduced by Grassley, Breaux and Senator Jay Rockefeller (D-WV) would require nursing homes to file their nurse staffing information in quarterly reports to CMS that the state would audit for accuracy. CMS would report the data on Nursing Home Compare. The bill was attached to the Senate's "Medicare giveback" package, which would restore some Medicare funds for skilled nursing facilities that lapsed October 1 (as well as funds for doctors and other Medicare providers). The giveback bill did not pass the Senate in 2002, and its fate – along with the staffing provision – is uncertain as this is being written in December 2002.

*For more information about what consumers can do to improve staffing in their nursing homes, order **Nursing Home Staffing: A Guide for Residents, Families, Friends and Caregivers** from NCCNHR. Single copies are \$7.50 plus \$3 for shipping and handling.*