

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 438, 442, and 483

[CMS–3442–F; CMS–3442–CN]

RIN 0938–AV25

Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and technical errors in the final rule that appeared in the May 10, 2024 *Federal Register*, entitled “Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (referred to hereafter as the “Minimum Staffing final rule”). The effective date of the Minimum Staffing final rule is June 21, 2024.

DATES: This document is effective June 21, 2024.

FOR FURTHER INFORMATION CONTACT: The Clinical Standard Group’s Long Term Care Team at HealthandSafetyInquiries@cms.hhs.gov for information related to the minimum staffing standards. Anne Blackfield, (410) 786–8518, for information related to Medicaid institutional payment transparency reporting.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2024–08273 of May 10, 2024 (89 FR 40876), there were typographical and technical errors that are identified and corrected in this correcting document. These corrections are effective as if they had been included in the Minimum Staffing final rule. Accordingly, the corrections are effective June 21, 2024.

II. Summary of Errors

A. Summary of Errors in the Preamble

On page 40876, we made a typographical error in the implementation date for §§ 438.72(a) and 442.43 that must be implemented by all States and territories with Medicaid-certified nursing facilities and intermediate care facilities for individuals with intellectual disabilities.

On page 40895, we included an incorrect citation at footnote number 62.

On page 40898, Table 2: Requirements for the LTC Staffing Statutory Waivers by Facility Type, portions of the table content were omitted.

On page 40901, we included incorrect links for the Bureau of Labor Statistic’s Occupational Employment and Wage Statistics Query System and the data source used to calculate the population for each MSA or non-MSA using population estimates from the United States Census Bureau.

On page 40909 we included an incorrect citation at footnote number 67.

On page 40911, we made an error in describing the Census Bureau definition of “urban” as one that used “counties” for the unit of measure.

On pages 40919, 40920, 40923, and 40929, we made typographical errors in regulatory citations.

On page 40930, we made a typographical error in a reference to page numbers in the *Federal Register*.

On pages 40931 and 40932, we made typographical errors in regulatory citations.

On page 40934, we made typographical errors in the summary of regulatory language changes.

On page 40935, we included an incorrect link for the May 2022 National Occupational Employment and Wage Statistics.

On page 40948, we included an incorrect citation at footnote number 96.

On page 40949, we included an incorrect table number reference.

On page 40992, we included incorrect links for the May 2022 National Occupational Employment and Wage Statistics.

B. Summary of Errors in the Regulation Text

On page 40995, in the regulation text for § 442.43(b), we made a reference to “State directed payments as defined in § 438.6(c) of this chapter”. However, this definition of State directed payments was moved to § 438.2 in the Managed Care Access, Finance, and Quality final rule (89 FR 41002). We are correcting this error.

On page 40998, in the regulation text for § 483.35(h)(2)(iv), we made an incorrect cross-reference to § 483.71(b)(4), which does not exist.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the *Federal Register* before the provisions of a rule take effect. In addition, section 553(d) of the APA mandates a 30-day

delay in effective date after issuance or publication of a substantive rule.

Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements. Section 553(b)(B) of the APA authorizes an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. Similarly, section 553(d)(3) of the APA allows the agency to avoid the 30-day delay in effective date where good cause is found and the agency includes in the rule a statement of the finding and the reasons for it. In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements.

This document merely corrects technical errors in the Minimum Staffing final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies that were proposed, subject to notice and comment procedures, and adopted in the Minimum Staffing final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the Minimum Staffing final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the *Federal Register* document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

IV. Correction of Errors in the Preamble

In FR Doc. 2024–08273 of May 10, 2024 (89 FR 40876), make the following corrections:

A. Correction of Errors in the Preamble

1. On page 40876, first column, sixth paragraph under the heading **DATES**, lines 1 through 7, the sentence that reads “The regulations at §§ 438.72(a) and 442.43 must be implemented by all States and territories with Medicaid-certified nursing facilities and intermediate care facilities for individuals with intellectual disabilities

beginning May 10, 2028.” is corrected to read “The regulations at §§ 438.72(a) and 442.43 must be implemented by all States and territories with Medicaid-certified nursing facilities and intermediate care facilities for individuals with intellectual disabilities beginning June 21, 2028.”.

2. On page 40895, footnote number 62 that reads “42 CFR 483.35, *https://*

www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/factsheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.” is corrected to read “42 CFR 483.35(b)(1)”.

3. On page 40898, Table 2, is corrected to read:

TABLE 2: Requirements for the LTC Staffing Statutory Waivers by Facility Type

Facility Type*	NFs*	SNFs*
Statutory Citation	Section 1919(b)(4)(C)(ii) of the Act	Section 1819(b)(4)(C)(ii) of the Act
Regulatory Citation and requirements for participation that can be waived	<p>§ 483.35(e) Nursing services. Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis (<i>final rule redesignates this paragraph as paragraph (f)</i>)</p> <p>The <u>State</u> can waive the following requirements:</p> <ol style="list-style-type: none"> 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. 2. The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week (<i>final rule revises to must have a RN onsite 24 hours per day, for 7 days a week</i>). 	<p>§ 483.35(f) Nursing services. SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week. (<i>final rule redesignates this paragraph as (g) and revises title</i>)</p> <p><u>The Secretary</u> can waive the following requirement:</p> <ol style="list-style-type: none"> 1. The facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week (<i>final rule revises to must have a RN onsite 24 hours per day, for 7 days a week</i>).
Criteria that must be met to be eligible for the statutory waiver	<ol style="list-style-type: none"> 1. The facility must demonstrate to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel. 2. The State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility. 3. The State finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility. 4. A waiver is subject to annual State review. 	<ol style="list-style-type: none"> 1. The facility is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area. 2. The facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week. 3. The facility either— <ul style="list-style-type: none"> • Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hours period, OR • Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the

Facility Type*	NFs*	SNFs*
	<p>5. In granting or renewing a waiver, a facility may be required by the State to use other qualified, licensed personnel.</p> <p>6. The State agency granting a waiver of such requirements provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with a mental disorder who are eligible for such services as provided by the protection and advocacy agency.</p> <p>7. The facility must notify residents of the facility and their resident representatives of the waiver.</p>	<p>physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty;</p> <p>4. The Secretary provides notice of the waiver to the Office of the State Long-Term Care Ombudsman (established under section 712 of the Older Americans Act of 1965) and the protection and advocacy system in the State for individuals with developmental disabilities or mental disorders; and</p> <p>5. The facility must notify residents of the facility and their resident representatives of the waiver.</p> <p>6. The waiver is subject to annual renewal by the Secretary.</p>
<p>*Note: The State has its own independent discretion to waive the requirements issued under section 1919(b)(4)(C) of the Act. Therefore, dually-certified facilities must meet the requirements outlined for both SNFs and NFs, whichever is more stringent.</p>		

4. On page 40901, third column, first partial paragraph,

a. Lines 19 and 20, the parenthetical that reads “(available at <https://data.bls.gov/oes/#/home>)” is corrected to read “(available at <https://www.bls.gov/oes/tables.htm>)”.

b. Lines 26 through 29, the parenthetical that reads “(available at <https://www.census.gov/data/tables/timeseries/demo/popest/2020s-countiestotal.html#v2022>)” is corrected to read “(available at <https://www.census.gov/data/tables/time-series/demo/popest/2020s-counties-total.html>)”.

5. On page 40909, footnote number 67 that reads “<https://www.osha.gov/sites/default/files/publications/OSHA3905.pdf>” is corrected to read “Recommended Practices for Anti-Retaliation Programs. OSHA, OSHA 3905–01/2017. Accessed at www.https://www.osha.gov/sites/default/files/publications/OSHA3905.pdf. Accessed on March 1, 2024.”

6. On page 40911, second column, first partial paragraph, lines 8 through 14, the sentence that reads “For example, if we were to use the Census Bureau’s definition of ‘urban’, 2,645 counties would be classified as urban,⁷³ while if we were to use OMB’s definition of ‘urban’, 1,252 counties would be considered ‘urban.’⁷⁴” is corrected to read “For example, if we

were to use the Census Bureau’s definition of ‘urban’, 2,645 areas (combination of counties, cities, census designated areas) would be classified as urban,⁷³ while if we were to use OMB’s definition of ‘urban’, 1,252 counties would be considered ‘urban.’⁷⁴”

7. On page 40919, in the second column,

a. First full paragraph, line 9, the regulatory citation that reads “§ 442.43(c)” is corrected to read “§ 442.43(b)”.

b. Second full paragraph, line 15, the regulatory citation that reads “§ 442.311(e)” is corrected to read “§ 441.311(e)”.

8. On page 40920, first column, first paragraph, line 9, the regulatory citation that reads “§ 442.43(c)” is corrected to read “§ 442.43(b)”.

9. On page 40923, second column, first partial paragraph, line 5, the regulatory citation that reads “§ 442.43(a)(2)(ix)” is corrected to read “§ 442.43(a)(2)(x)”.

10. On page 40929, first column, first partial paragraph, line 27, that regulatory citation that reads “§ 442.311(e)(2)” is corrected to read “§ 441.311(e)(4)”.

11. On page 40930, third column, last paragraph, lines 12 and 13, the **Federal Register** citation that reads “88 FR 61831 through 61833” is corrected to read “88 FR 61381 through 61383”.

12. On page 40931, third column,

a. Second paragraph, line 1, the regulatory citation that reads “§ 442.43(d)(1)” is corrected to read “§ 442.43(d)”.

b. Third paragraph, line 1, the regulatory citation that reads “§ 442.43(d)(2)” is corrected to read “§ 442.43(d)(1)”.

13. On page 40932, first column, a. First partial paragraph, line 2, the regulatory citation that reads “§ 442.43(d)(3)” is corrected to read “§ 442.43(d)(2)”.

b. First partial paragraph, line 7, the regulatory citation that reads “§ 442.43(d)(3)” is corrected to read “§ 442.43(d)(2)”.

c. First full paragraph, line 1, the regulatory citation that reads “§ 442.43(d)(4)” is corrected to read “§ 442.43(d)(3)”.

14. On page 40934, a. In the second column, sixth paragraph, lines 7 through 11, the sentence that reads “Additionally, we are finalizing the newly redesignated paragraph (a)(2)(xi) with a modification to include nurses and other staff that providing that clinical supervision.” is corrected to read “Additionally, we are finalizing the newly redesignated paragraph (a)(2)(xi) with a modification to include nurses and other staff providing clinical supervision.”

b. In the third column, third paragraph, lines 5 through 6, the phrase “and added a cross-reference to

§ 442.43(b)(3).” is corrected to “and in § 442.43(b)(1) added a cross-reference to § 442.43(b)(3).”

15. On page 40935, third column, eighth paragraph, lines 3 through 8, the sentence that reads “Unless otherwise indicated, we obtained all salary information from the May 2022 National Occupational Employment and Wage Estimates, BLS at https://www.bls.gov/oes/current/oes_nat.htm.” is corrected to read “Unless otherwise indicated, we obtained all salary information from the May 2022 National Occupational Employment and Wage Estimates, BLS at <https://www.bls.gov/oes/tables.htm>.”

16. On page 40948, footnote number 96, that reads “<https://data.cms.gov/summary-statistics-on-use-and-payments/medicare-service-type-reports/cms-program-statistics-medicare-skilled-nursing-facility>.” is corrected to read “<https://data.cms.gov/provider-data/dataset/4pq5-n9py>.”

17. On page 40949, third column, first full paragraph, line 2, the table reference that reads “table 21” is corrected to read “table 31”.

18. On page 40992,

a. In the second column, first full paragraph, lines 1 through 9, the sentence that reads “Using the wage information from the Bureau of Labor Statistics, May 2022 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm, for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$123.06 per hour, including overhead and fringe benefits.” is corrected to read “Using the wage information from the Bureau of Labor Statistics, May 2022 National Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/tables.htm>, for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$123.06 per hour, including overhead and fringe benefits.”

b. In the third column, second paragraph, lines 1 through 9, the sentence that reads “Using the wage information from the Bureau of Labor Statistics, May 2022 National Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oes_nat.htm, for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$123.06 per hour, including overhead and fringe benefits.” is corrected to read “Using the wage information from the Bureau of Labor Statistics, May 2022 National Occupational Employment and Wage Estimates, <https://www.bls.gov/oes/tables.htm>, for medical and health

service managers (Code 11–9111), we estimate that the cost of reviewing this rule is \$123.06 per hour, including overhead and fringe benefits.”

B. Correction of Errors in the Regulation Text

§ 442.43 [Corrected]

■ 1. On page 40995, third column, seventh paragraph, the regulation text for § 443.43(b) introductory text, line 22, the reference “§ 438.6(c)” is corrected to read “§ 438.2”.

§ 483.35 [Corrected]

■ 2. On page 40998, second column, sixth full paragraph, line 2, in the regulation text for § 483.35(h)(2)(iv), the reference “§ 483.71(b)(4)” is corrected to read “§ 483.71(c)(4)”.

Wilma Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2024–13795 Filed 6–21–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AD02

Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF); Corrections

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Correcting amendments.

SUMMARY: On March 1, 2024, the Department of Health and Human Services published a final rule to improve child care access, affordability, and stability in the Child Care and Development Fund. Some amendments in the final rule could not be incorporated due to technical inaccuracies in the instructions. Additionally, that document inadvertently failed to update certain amended cross-references. This document makes technical changes to correct the final regulations.

DATES: Effective on June 24, 2024.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202–690–6499 or megan.campbell@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: The “Improving Child Care Access, Affordability, and Stability in the Child

Care and Development Fund (CCDF)” rule, published at 89 FR 15366 on March 1, 2024, included inaccurate amendatory instructions for § 98.16 and inadvertently failed to update certain amended cross-references. This document corrects the final regulations.

List of Subjects in 45 CFR Part 98

Child care, Grant programs—social programs.

Accordingly, 45 CFR part 98 is corrected by making the following correcting amendments:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858.

■ 2. Amend § 98.2 by revising the definition of *Sliding fee scale* to read as follows:

§ 98.2 Definitions.

* * * * *

Sliding fee scale means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(l);

* * * * *

■ 3. Amend § 98.16 by:

■ a. Revising paragraph (x);

■ b. Redesignating paragraphs (y) through (ii) as paragraphs (bb) through (ll);

■ c. Adding new paragraphs (y) through (aa); and

■ d. Revising newly redesignated paragraphs (ee), (ff), and (kk).

The additions and revisions read as follows:

§ 98.16 Plan revisions.

* * * * *

(x) A description of the supply of child care available regardless of subsidy participation relative to the population of children requiring child care, including care for infants and toddlers, children with disabilities as defined by the Lead Agency, children who receive care during nontraditional hours, and children in underserved geographic areas, including the data sources used to identify shortages in the supply of child care providers;

(y) A description of the Lead Agency’s strategies and the actions it will take to address the supply shortages identified in paragraph (x) of this section and improve parent choice specifically for families eligible to participate in CCDF, including:

(1) For families needing care during nontraditional hours, which may include strategies such as higher