

THE FEDERAL PROPOSED STANDARD FOR NURSING HOME STAFFING: HOW DOES IT IMPACT OHIO'S NURSING HOMES?



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INTRODUCTION

Residents of Ohio's nursing homes experience substantial physical and/or cognitive limitations, with the average individual having between four and five activity limitations in areas such as bathing, dressing, and transferring from their bed. Additionally, six in ten Ohio nursing home residents have cognitive impairments as a result of some form of dementia. These limitations mean that the provision of high-quality direct care is essential to making the nursing home a good place to live. While having a high-quality workforce is a challenge across many employment sectors, the long-term services industry has been particularly impacted by the COVID and post-COVID workforce shortages. It is not an understatement to say that the direct care nursing challenges faced by the industry today have never been greater.

In response to concerns about direct care staffing challenges in nursing homes across the nation, on September 6, 2023, the Centers for Medicare and Medicaid Services (CMS) proposed new federal rules to establish minimum nursing staff standards for nursing homes. The proposed rule would establish two minimum nursing staff standards.¹ The first is that all nursing homes would be required to have at least 0.55 hours per resident day (HPRD) of registered nurses (RNs). The second is that all nursing homes would have to have 2.45 HPRD of nurse aides (NAs), which includes state-tested nurse aides and medication aides. The proposed minimums were designed to be phased-in with rural nursing homes having five years to comply and urban nursing homes having three years to comply once the final rule was published.

The current federal regulations require nursing homes to have sufficient nursing staff levels to meet the needs and preferences of their residents. There is no federal staffing standard that spells out a specific minimum number of nursing staff.² Ohio's nursing staff regulations require nursing homes to have a sufficient number of nursing staff "to meet the needs of the residents in an appropriate and

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3%
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timely manner,” but unlike the federal regulations, Ohio has a minimum nursing staff standard. Nursing homes must have at least 2.5 hours per day (HPRD) of nursing staff to provide direct care to residents.³ So, the proposed CMS changes could have a substantial impact on nursing homes both in Ohio and across the nation.

As a result, the proposed rule has prompted varying levels of support and pushback from a wide range of stakeholders including providers, advocates, policymakers, and industry experts. Supporters endorse the proposed rules’ goals of promoting quality of care and safety for residents. However, critics question the proposed rules’ feasibility in the midst of an ongoing labor market crisis for impacted positions as well as potential resource issues impacted by funding at the state and federal levels. Moreover, other potential challenges such as the impact of state-based Medicaid reimbursement rates are not explicitly addressed by CMS’ proposed staffing rules.

Ohio represents 6.3% of the nation’s providers and is the sixth largest state in terms of nursing home beds. In early 2023, there were 946 nursing homes in the state that had data reported on the Care Compare website.⁴ CMS’s proposed nursing staff rules could have a significant impact on Ohio’s nursing home industry, especially considering they are more stringent than Ohio’s current nursing staff regulations. A closer examination of Ohio provides a snapshot into the potential impact of the proposed rule on the industry.

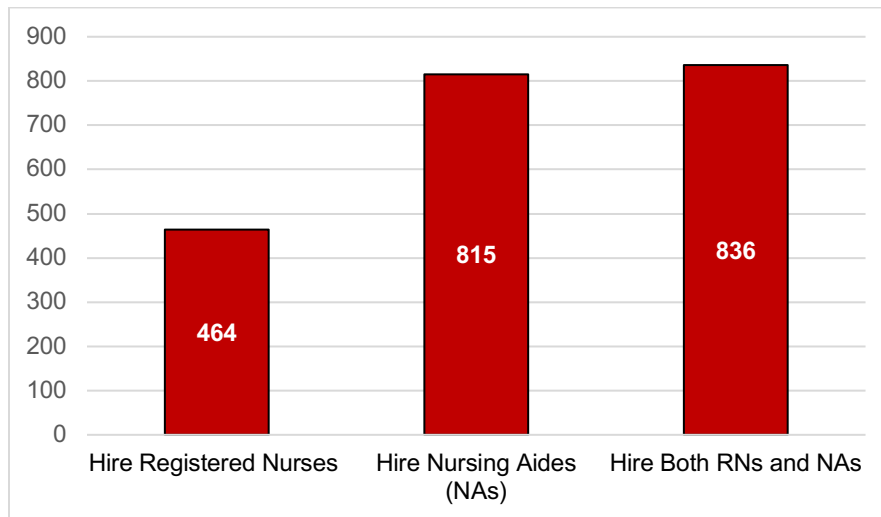
OHIO SPOTLIGHT

Nationally, 51% of the 14,993 nursing homes currently meet the proposed federal standards for RNs, 28% for NAs, and 19% meet both proposed standards (Table 1). Based on today’s staffing patterns, the percentage of Ohio’s nursing homes that would meet the overall proposed standard is 10%. Ohio has approximately the same proportion of nursing homes currently meeting the proposed CMS RN standard (50% for Ohio homes versus 51% for the nation), but Ohio has a smaller proportion of nursing homes that currently meet the NA standard of 2.45 HPRD (12% for Ohio versus 28% for the nation).

Table 1: Percent of U.S. and Ohio Nursing Homes Currently Meeting Proposed Standards				
Minimum Staffing Standard	United States (%)		Ohio (%)	
	No	Yes	No	Yes
0.55 HPRD of Registered Nurses	49	51	50	50
2.45 HPRD of Nursing Aides	72	28	88	12
Meets Both Minimum Standards	81	19	90	10

Based on the number of nursing homes operating in early 2023, 464 nursing homes would need to hire RNs, 815 nursing homes would need to hire NAs, and 836 nursing homes would need to hire both RNs and NAs in order to meet these proposed standards (Figure 1).

Figure 1: Number of Ohio Nursing Homes That Would Need to Hire Staff to Achieve Compliance with Proposed Standards



LOCATION BY COUNTY

Analyzing staffing levels by county provides additional insights into the potential impact of the proposed rule on Ohio's nursing homes. Based on current staffing levels, 10 counties have 100% of their nursing homes staffing above the proposed 0.55 HPRD for RNs and 6 counties have zero nursing homes meeting the proposed RN standard (Figure 2). There are no counties in which all nursing homes are staffed above the 2.45 HPRD NA proposed standard, and only four counties have 50% of nursing homes staffed above the 2.45 HPRD NA standard. Almost half of all Ohio counties (41 of the 88 counties) have 0% of nursing homes currently staffed above the 2.45 HPRD proposed standard for NAs (Figure 3). There are no counties in which all nursing homes meet both proposed standards, and more than half the counties (46 out of 88 counties) have no nursing homes meeting both proposed standards (Figure 4). Figures 2-4 also illustrate that rural counties represent a larger proportion of counties where zero facilities meet the proposed standards.

Figure 2: Counties Where No Nursing Homes Met Proposed Standard for Registered Nurse Staffing

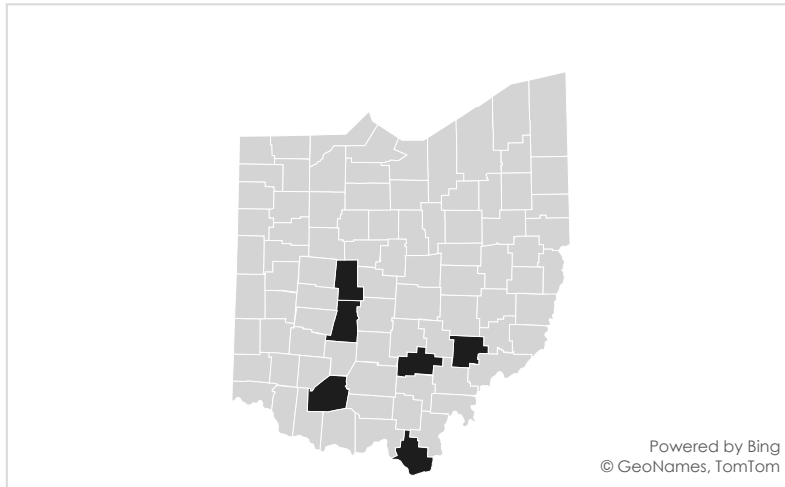


Figure 3: Counties Where No Nursing Homes Met Proposed Standard for Nursing Aide Staffing

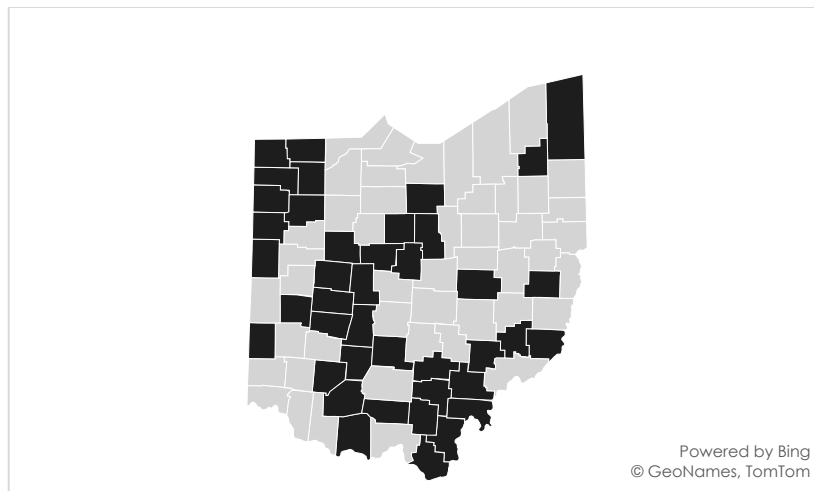
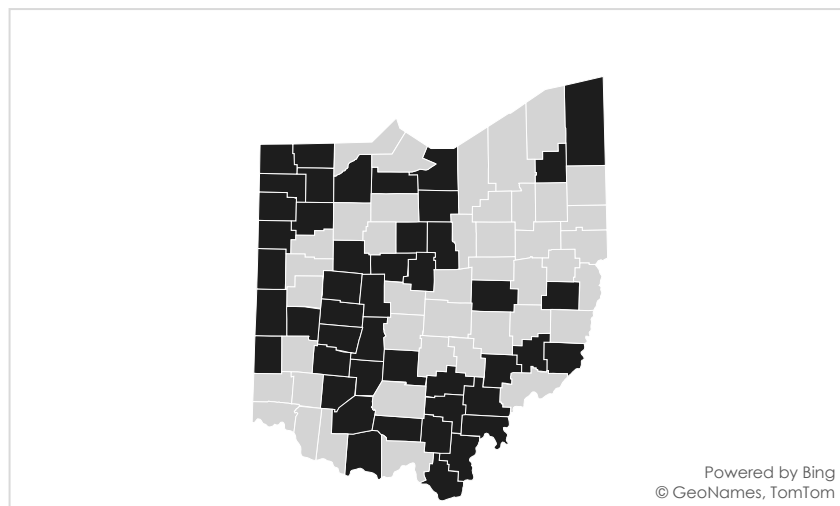


Figure 4: Counties Where No Nursing Homes Met Proposed Standard for Both Nursing Aide and Registered Nurse Staffing



OWNERSHIP

Research has shown that nursing home ownership (for-profit, non-for-profit, and government) is associated with nursing staff levels, with not-for-profits having higher staffing levels than for-profit and government operated nursing homes. At present, for-profit providers represent approximately 80% of Ohio's nursing homes. For-profit nursing homes are less likely to meet the proposed federal staffing standards than not-for-profit and government nursing homes (Table 2). Currently, 46% of for-profit nursing homes' are above the 0.55 RN HPRD standard, compared to 67% for not-for-profits, and 62% for government operated nursing homes. For the NA standard, 6% of for-profits and 38% of not-for-profit and government nursing homes currently staff above 2.45 HPRD. The percentage of for-profit nursing homes meeting both of the proposed standards is 5%, with 31% of not-for-profit and government providers meeting both proposed standards.

Table 2: Percent Nursing Homes Currently Meeting Proposed Standards by Ownership

Ownership Type	% Staffed above 0.55 HPRD of Registered Nurses	% Staffed above 2.45 HPRD of Nursing Aides	% Staffed Above Both Standards
For profit	46	6	5
Not-for-profit	67	38	31
Government	62	38	31
Total	50	12	10

MEDICAID PAYER MIX

In Table 3, nursing homes are divided into four categories based on the proportion of resident days paid by Medicaid, also known as the Medicaid payer-mix. As the proportion of residents supported by Medicaid increases, the percentage of nursing homes currently meeting each proposed staffing standard decreases. Currently, 25% of nursing homes with a high Medicaid payer-mix (85%+ Medicaid resident days) would meet the proposed RN standard, compared to 73% of nursing homes with a low Medicaid payer-mix (0-59% Medicaid resident days). For the proposed NA standard, 4% of nursing homes with a high Medicaid payer-mix would meet the criteria compared to 24% with a low Medicaid payer-mix. The pattern continues for the staffing above both standards, with high Medicaid payer-mix nursing homes having the lowest proportion of nursing homes meeting each threshold (3%).

Table 3: Percent of Nursing Homes Currently Meeting Proposed Standards by Medicaid Resident Days

Medicaid Resident Days	% Staffed above 0.55 HPRD of Registered Nurses	% Staffed above 2.45 HPRD of Nursing Aides	% Staffed Above Both Standards
0%-59%	73	24	20
60%-74%	48	9	7
75%-84%	39	5	3
85%+	25	4	3

NUMBER OF BEDS

Larger nursing homes may have economies of scale, which allows them to staff more efficiently. The size of a nursing home is commonly measured by the number of beds. In Ohio, the average number of beds for nursing homes is 90, and larger nursing homes are less likely to be currently staffing to the proposed RN and NA standards. Currently, a smaller proportion (37%) of nursing homes with 100+ beds are currently staffed to the proposed RN standard compared to 72% of smaller nursing homes with 1-59 beds. This is also the case for the proportion of nursing homes staffed above the proposed NA standard (9% of the 100+ beds category versus 21% of the 1-59 beds category) and staffed above both proposed standards (7% of the 100+ beds category versus 18% of the 1-59 beds category).

Table 4: Percent of Ohio Nursing Homes Currently Meeting Proposed Standards by Number of Beds

Number of Beds	% Staffed above 0.55 HPRD of Registered Nurses	% Staffed above 2.45 HPRD of Nursing Aides	% Staffed Above Both Standards
1-59 beds	72	21	18
60-79 beds	58	15	12
80-99 beds	42	8	5
100+ beds	37	9	7

DISCUSSION AND IMPLICATIONS

Based on current nursing staff levels, the vast majority of Ohio's nursing homes would need to increase their nursing staff levels for RNs and NAs to achieve compliance with the CMS' minimum staffing standards as outlined in their proposed rule. While the proposed rule would result in higher RN and NA staffing levels in many Ohio nursing homes, there remains many questions about the impact of the proposed rule on Ohio nursing homes from both a cost and staffing perspective.

A critical question is where are these direct care staff going to come from? Throughout the pandemic, more than one-third of Ohio's nursing homes reported direct care staff shortages. As of May 2023, 26.9% of nursing homes in Ohio reported having a shortage of NAs, and 25.8% reported a shortage among licensed nurses, which include RNs.⁵ Additionally, nursing homes are having a hard time retaining their nursing staff, with data from the 2021 Ohio Biennial Survey of Long-Term Care Facilities finding that about four in ten NAs leave their job within one year, and nursing homes rating their retention problems as 7.3 for NAs and 6.4 for licensed nursing staff on a 10-point scale (1= low to 10 = very serious).⁶ Given the recent difficulty in finding workers, many nursing homes have turned to temporary agency staff to assure they have enough nursing staff in their facilities. Following national trends, the proportion of nursing staff hours provided by agency staff in Ohio increased to 11% in 2022, which also have significantly higher costs than employing a worker directly. Increasing labor costs and a demonstrated growing reliance on agency staff has further implications for the cost of compliance.

For-profit and larger nursing homes are the most likely to need to increase their RN and NA staffing levels, however, the largest obstacle is among nursing homes that are highly reliant on Medicaid. As illustrated in Table 3, nursing homes with the greatest proportion of resident days paid for by Medicaid are the least likely to have current nursing staff levels consistent with the proposed standards. However, these nursing homes are also the least likely to be able to pay for additional staff. The Medicaid daily payment rate of \$226 is currently lower than Medicare fee-for-service (\$506 per day), Medicare Advantage (\$400 per day), and Medicare MyCare (\$449 per day), and for self-pay (\$256 for a semi-private room) in 2021. Additionally, a recent report found that in 2019, Ohio's Medicaid payment rate averaged 86% of estimated costs, and that 86.4% of Ohio nursing homes had Medicaid payment rates that did not cover the estimated cost of caring for a resident on Medicaid.⁷ While the state has increased Medicaid rates since 2019, the increased use of agency staff and wages paid to directly employed staff have increased labor costs. A critical policy question is whether nursing homes that have residents predominately supported by Medicaid could feasibly afford to increase staffing levels to be in compliance with the proposed rule without increases in Medicaid payment rates.

Finally, there are yet to be determined issues that could affect cost and compliance. Licensed Practical Nurses (LPNs) are not covered by the proposed standards. Based on scope of practice laws, LPNs can perform many of the same tasks as RNs under appropriate supervision. Furthermore, LPNs also provide much of the same direct care as NAs. Therefore, the lack of clarity of LPNs within the proposed rule creates a level of uncertainty around how CMS' proposed regulations would impact nursing home operations. Additionally, the proposed rule may change. The prospective alternative standards highlighted in the proposed rule included the addition of a 3.48 HPRD minimum for total nursing staff. There are also clarifications on the specific criteria for certain designations (e.g., rural versus urban identifications, inclusion of roles such as the Director of Nursing in the RN standard, which this analysis included towards the standard) which are also influential determinants in implementation and compliance for nursing homes. Hence, although the goal of the proposed rule is to ultimately improve the quality of care provided to residents in nursing homes, current data support that the rule's specifications may not fully anticipate the pragmatic realities and challenges facing Ohio's nursing home providers in achieving the expected staffing.

Acknowledgements

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