



Staffing Mandate Talking Points: Lawsuit Response

*Older Americans and their families deserve quality nursing home care they can count on:
Let's get it right!*

The staffing mandate imposed by CMS is an overreach that places an undue financial burden on states, providers, and Americans, and LeadingAge states are pushing back. Not only does CMS lack the statutory authority to issue such a mandate, but the associated costs are substantial. America's current infrastructure of long-term care cannot sustain staffing mandates until they are supported by adequate funding and available staff.

- LeadingAge is already a co-plaintiff in a suit filed in Texas arguing CMS's lack of authority to issue such a mandate. Now, 21 LeadingAge state affiliates, 20 Attorneys General, and two Kansas-based non-profit nursing home providers have joined forces for a parallel suit filed in the northern district of Iowa. Alongside Attorney Generals from Iowa, Kansas, and South Carolina, additional Attorneys General include Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Missouri, Montana, Nebraska, Oklahoma, North Dakota, South Dakota, Utah, Virginia, and West Virginia. This suit highlights the financial reality of the mandate and the trickle-down costs to Americans. Pro bono legal services have been secured to represent LeadingAge Iowa and other state affiliates who have joined the suit.
- The parallel lawsuit bolsters efforts in Texas and provides another way to oppose the mandate and protect access to long-term care.
- The financial impact based on hours per resident day (HPRD) for Certified Nurse Aide (CNA) minimums calculated at a mean wage of \$18.45 according to Iowa Workforce Development is \$4,687.96 per day. The financial impact for increasing Registered Nurse (RN) hours to meet the minimum standard at a mean wage of \$35.87 per hour is \$1,246.12 per day for our nursing home members. We believe this number is less than the actual impact due to Payroll Based Journal (PBJ) data limitations in calculating 24/7 RN coverage. These together total more than \$2.16 million annually for LeadingAge Iowa nursing home members alone, imposed on an already struggling sector.
- 1 in 2 nursing home residents participate in the Iowa Medicaid program, signifying the majority burden of this mandate will fall to Iowa taxpayers.

There is an insufficient nursing workforce pipeline to achieve the standards outlined in the Final Rule.

- LeadingAge Iowa anticipates nearly a third of members will need to increase nursing department staff to achieve compliance with the Final Rule. That's in addition to the current 3,658 RN job openings and 707 NA job openings in Iowa in October 2024, per Iowa Workforce Development.
- According to the Iowa Board of Nursing, the number of RNs in Iowa went down by 5.5% (3,413) in FY2023 as compared to FY 2022. In 2022, 1,786 RNs passed the Licensure Examination meaning that Iowa only replaced roughly 1/3 of the RNs lost that year.
- Iowa Board of Nursing data also indicates that hospitals are the largest employer of RNs in Iowa at 46%, with Long Term Care at 7.5%. Nursing home providers are already at a disadvantage in this labor market and this rule will have a cascading effect on the whole health care system including state agencies and state hospitals.
- In the Final Rule, CMS increased the total staffing hours from 3 to 3.48 to include LPNs, who now count for 0.48 hours. However, limited funding is prompting providers to reconsider the effectiveness of using LPNs versus RNs, given LPNs contribute to only a fraction of the required hours.

Ensuring older adults and families can receive quality care is a shared goal. For the first time in decades, our federal government is committed to meaningful action to ensure America's older adults and families can receive quality care wherever they reside. LeadingAge and our nonprofit, mission-driven aging services providers share the administration's goal.

The administration isn't getting it right yet. The President's goal—equitable access to quality care for older Americans and families when and where they need it—is spot on. Unfortunately, the current approach isn't going to get us there. Several recent actions, including the proposed nursing home staffing mandate and home health reimbursement cuts, are working against care providers and older adults, jeopardizing access to care.

When it comes to the nursing home staffing mandate, the administration failed to consider two major issues: the ongoing workforce crisis and the Final Rule's astronomical implementation costs. Overall, CMS's punitive regulatory approach to achieve quality care is arcane and broken—and this rule compounds that and is simply not viable.

The cost of implementing the staffing mandate will damage nursing homes. The cost of delivering quality care already far exceeds Medicaid reimbursement, and this unfunded mandate will further jeopardize nonprofit and mission-driven nursing homes' ability to continue to serve older adults and families—forcing them to consider limiting admissions or even closing.

Nursing homes can't cover the multi-billion-dollar price tag of CMS' Final Rule. The CMS-commissioned Abt study, which provides the foundational analysis for the Final Rule, acknowledges that “additional staffing costs, estimated in the billions, could be a parallel barrier to implementation.” CMS' Final Rule estimates the cost of meeting these ratios over 10 years will be \$40.6 billion, with an average annual cost of \$4.06 billion. Our estimates, based on actual salaries instead of the average salary data CMS used, are closer to \$7.1 billion for the first year. How can the administration expect nursing homes to absorb billions of dollars in implementation costs?

The Final Rule's paltry funding for 'a national campaign to support staffing' barely scratches the surface of what's needed to recruit, train and pay the additional professionals that would be required to meet the mandate. While CMS has also announced \$75 million to support the

long-term care workforce, no other funding has been identified to assist long-term care providers in meeting these requirements. Nursing homes rely on Medicaid for much of their revenue and cannot simply raise prices to cover rising expenses like Taco Bell or Target.

Funding goes hand in hand with quality care, yet our country's highly fragmented, patchwork approach to financing the caregiving services and other supports older Americans and families need to age well, is not up to the job. The Biden Administration's Final Rule is disappointingly silent on this issue. Care costs money, but Medicaid reimbursements, which provide the lion's share of nursing homes' funding, doesn't fully cover the cost of quality care. Regulations and enforcement, even with the best intentions, just can't change that math.

- **The mandate will require tens of thousands of more workers—and there are simply not enough people to hire.** No fewer than 90,000 new highly skilled, frontline caregivers would be needed to meet the mandate. In an economy with 1.6 open jobs for every 1 available job seeker, it's meaningless to mandate staffing levels that simply cannot be met.

The staffing mandate's emphasis on registered nurses is unrealistic. The Final Rule includes two RN staffing minimums: 3,267 additional RNs would be needed to meet the 24-7 requirement, and 12,639 additional RNs would be needed to meet the minimum hours per resident day. Nurses are in short supply throughout the health care sector—and hospitals lure available RNs with lucrative bonuses and benefits that many nonprofit nursing homes can't match.

CMS' research that is the Final Rule's basis ignores the essential contributions of Licensed Practical Nurses (LPN). Nursing homes across the country rely on LPNs to provide many of the essential services as part of a diversified nursing team. The Final Rule overlooks the on-the-ground reality of today's nursing home workforce. LPNs need to count toward either RN or CNA mandated ratios.

CMS' Abt study focused narrowly on one aspect of care: medical outcomes. It overlooks the other critical aspects of quality-of-life for long-stay residents. Caring for older adults in nursing homes requires not only a specialized understanding of their healthcare and functional needs, but also a dedication to their multidimensional quality-of-life needs. Providers should follow evidence and experience to determine the right staffing model to deliver quality, person-centered care for their residents.

Quality nursing home care is achieved with a staffing model based on the needs of its residents that includes the right mix of good leaders, trained medical caregivers and engaged social support staff. Setting an arbitrary minimum isn't going to guarantee the right model. Nurses, CNAs, LPNs, social workers therapists, activities directors and others are all fundamental to quality short- and long-stay nursing home care.

Nursing homes aren't the only part of the healthcare system that will be affected if the administration doesn't stop the implementation of The Final Rule. The administration has said it's committed to ensuring access to home and community based care, but their actions are working against that goal, as homecare and hospice providers – already navigating workforce challenges – will be short even more workers if they move to nursing homes. And nursing homes are in competition with hospitals for attracting new hires. Shuffling the relatively small number of

care workers available between settings won't solve the problem. If President Biden is serious about improving care, he must take a holistic view of older adults' long-term care needs.

There's a real human impact if they don't get this right—and it's not just people in nursing homes who will suffer. The Final Rule will undercut equity and access to care across the aging services spectrum. Nursing homes will be forced to close their doors or limit admissions; hospitals will continue to be backed up with patients who can't be discharged to nursing homes. Home health providers are already rejecting referrals and some face closure due to financial pressures and workforce shortages. There won't be anywhere for older adults and families to access care. And, of course, communities of color and less affluent individuals will feel the deepest impact.

Nursing homes are not all the same. Many nonprofit and mission-driven nursing homes, including LeadingAge Iowa members, are rooted in faith traditions that have long played a special and critical role in communities nationwide. We are mission-minded, values-driven organizations; our leaders and staff often have deep ties to the communities in which we deliver care and services. Our organizations have stood the test of time—some for over 100 years as key pillars of our cities and towns. Rhetoric condemning these organizations with broad strokes erodes the public's trust in and devalues the irreplaceable role staff and administration play in the lives of the people they serve.

Dedicate resources to meaningful solutions to the workforce crisis. Instead of impractical and ineffective new rules, the Administration and Congress should invest in serious solutions to tackle the aging services workforce crisis in America:

- Stop the Final Rule until there are enough qualified applicants and adequate funding to address staffing levels realistically throughout the long-term care continuum
- Develop and invest in a robust workforce development strategy that includes:
 - prioritizing immigration reform to help build the pipeline of workers
 - increasing funding and work with states to increase Medicaid reimbursement rates to cover the cost of care and increase wages; and
 - replicating existing successful training programs and expand opportunities for interested applicants to pursue careers as RNs, LPNs and CNAs.

We all share the goal of equitable access to the highest quality care for older adults—and building a more robust workforce would go far toward helping the country achieve that goal. There is no issue more pressing for nursing homes than the workforce crisis — and that's having a direct impact on older adults and families that need care. The bottom line is without staff, there is no care, and the national caregiver crisis is happening in real time. Policymakers in Congress and the Administration must deliver immediate support to expand and enhance the workforce. Every month they wait to confront the growing difficulties in access to care will mean hardships for more older adults and more American families.

We stand ready to help federal leaders get it right. LeadingAge is a longtime trusted partner for federal experts, and we are uniquely qualified to help get it right. Together we can get it right!