

CMS Proposed Staffing Mandate

CALL TO ACTION

Due November 6, 2023



Nursing Home Regulations

The Center for Medicare and Medicaid Services (CMS) is the **federal regulatory agency**, under the US Department of Health and Human Services, over nursing homes. Nursing homes must be in compliance to receive payment under the Medicare and Medicaid programs.

Agencies create **regulations** (also known as "rules") under the authority of Congress to help government carry out public policy.

To certify a Skilled Nursing Facility (SNF) or Nursing Facility (NF), a **state surveyor** completes a Life Safety Code (LSC) survey, a Standard Health Survey, and an Emergency Preparedness Survey at a minimum, every 12-15 months.

State surveyors identify **"deficiencies"** which could result in civil money penalties, temporary managers, directed plans of correction, in-service training, denial of payment for new admissions, and State monitoring can be imposed before a facility has an opportunity to correct its deficiencies.



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Why Did CMS Issue This Proposed Rule?

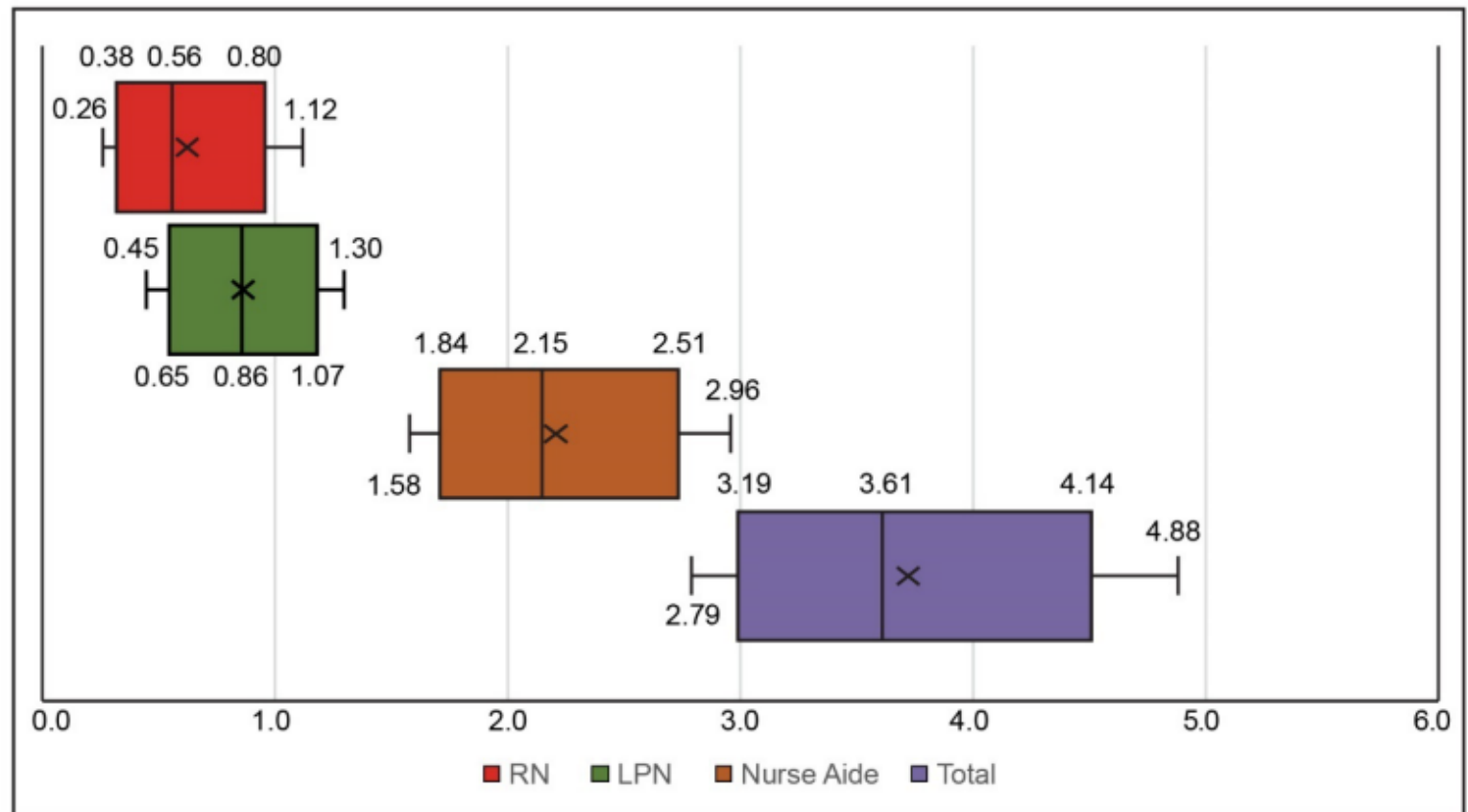
- Started in Feb 2022 with **President Biden’s “call to action”** during his State of the Union Speech to improve quality in nursing homes
- CMS funded an Abt Associates **Staffing Study** to identify a minimum staffing requirement in June 2023
- The Staffing Study was primarily conducted between May and December 2022, with some additional analytic work completed in 2023 – **478 pages**
 - 360 nursing home staff, residents, and family members interviewed
 - 684 stakeholder listening session attendees for sharing their experiences and insights.
 - Observation of more than 8,000 instances of clinical care

Nursing Home Staffing Levels

Nursing Home Staffing Levels

In 2022Q2, the mean RN staffing level in U.S. nursing homes was 0.67 HPRD, the mean LPN staffing level was 0.88 HPRD, the mean nurse aide staffing level was 2.22 HPRD, and the mean total nurse staffing level (RNs, LPNs, nurse aides) was 3.76 HPRD. However, there is considerable variation in nurse staffing levels across nursing homes around those means, with many nursing homes staffing at considerably higher levels and many nursing homes at considerably lower levels (**Exhibit 4.1**).

Exhibit 4.1: Distribution of Nurse Staffing Levels in U.S. Nursing Homes, 2022Q2 (in HPRD)



Proposed (**Unfunded**) Staffing Mandate Overview

24/7 RN Coverage

- In-Person 24/7 RN coverage in each nursing home (SNF and NF) regardless of size or services
- Towns with population over 5,000 (Urban) would have to comply in 2 years
- Towns with population under 5,000 (Rural) would have to comply in 3 years

Hours Per Resident Day Requirement

.55 RN and 2.45 CNA

- **.55 RN** 84.7% of SD Nursing homes meet this rate
- **2.45 CNA** 30.6% of SD Nursing homes meet this rate
- CMS did not take into account the hours that **LPNs** work in a nursing home – which is a critical position in our SD nursing homes

Towns in South Dakota considered “Urban” according to the proposed rule

To qualify as an urban area, the territory identified according to criteria must encompass at least 2,000 housing units or have a population of at least 5,000.

Aberdeen	Alcester	Belle Fourche	Beresford
Box Elder	Brandon	Bridgewater	Brookings
Canistota	Canton	Centerville	Corsica
Dell Rapids	Garretson	Harrisburg	Huron
Lead	Madison	Marion	Mitchell
New Underwood	Pierre	Rapid City	Sioux Falls
Spearfish	Sturgis	Summerset	Tea
Vermillion	Viborg	Watertown	Yankton

South Dakota Nursing Supply

Primary Employment Settings As shown in Table 18 and Figure 16, most RN respondents held primary employment in a hospital, 38.3% (6,610), ambulatory care setting, 12.1% (2,082), or 'other' setting, 10.5% (1,808).

Secondary Employment Settings A total of 8.9% (1,530) of respondents worked for two or more employers. The majority were employed in 'other' settings, 29.6% (453), ambulatory care, 15.7% (240), and nursing home/extended care, 10.3% (159). See Table 18 and Figure 16.

Table 18: RN Employment Settings

Employment Settings	Primary		National Data ¹		Secondary	
			Primary			
Ambulatory care setting	2,082	12.1%	10.4%		240	15.7%
Assisted living facility	175	1.0%	0.5%		41	2.6%
Community health	262	1.5%	2.0%		36	2.4%
Correctional facility	74	0.4%	0.7%		11	0.7%
Dialysis center	175	1.0%	1.1%		18	1.2%
Home health	431	2.5%	3.4%		98	6.4%
Hospice	181	1.0%	1.8%		20	1.3%
Hospital	6,610	38.3%	57.5%		0	0.0%
Insurance claims/benefits	673	4.0%	2.0%		7	0.5%
★ Nursing home/extended care	931	5.4%	3.9%		159	10.3%
Occupational health	108	0.6%	0.7%		7	0.5%
Other	1,808	10.5%	9.6%		453	29.6%
Policy/planning/regulatory/licensing agency	51	0.3%	0.3%		0	0.0%
Public health	167	1.0%	1.7%		23	1.5%
School health services	228	1.3%	2.3%		37	2.4%
School of nursing	222	1.3%	2.1%		116	7.6%
APRNs	1,869	10.8%	--		--	--
Unemployed/retired/volunteer/other emp.	1,188	6.9%	--		--	--
No response	10	0.1%	--		264	17.3%
Total	17,245	100.0%	100.0%		1,530	100.0%

22% of LPNs work in SD Nursing Homes

Job Openings in South Dakota

Occupation Profile for Multiple Occupations in South Dakota

Jobs Available Table

The table below shows the number of job openings advertised online in South Dakota for the occupations selected on September 5, 2023 (Jobs De-duplication Level 2) Opens in a new browser window.

Data	Licensed Practical and Licensed Vocational Nurses	Nursing Assistants	Registered Nurses
Job Openings	382	380	985

Source: Online advertised jobs data
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**South Dakota RN Nursing
School Throughput:**

893 RNs graduate

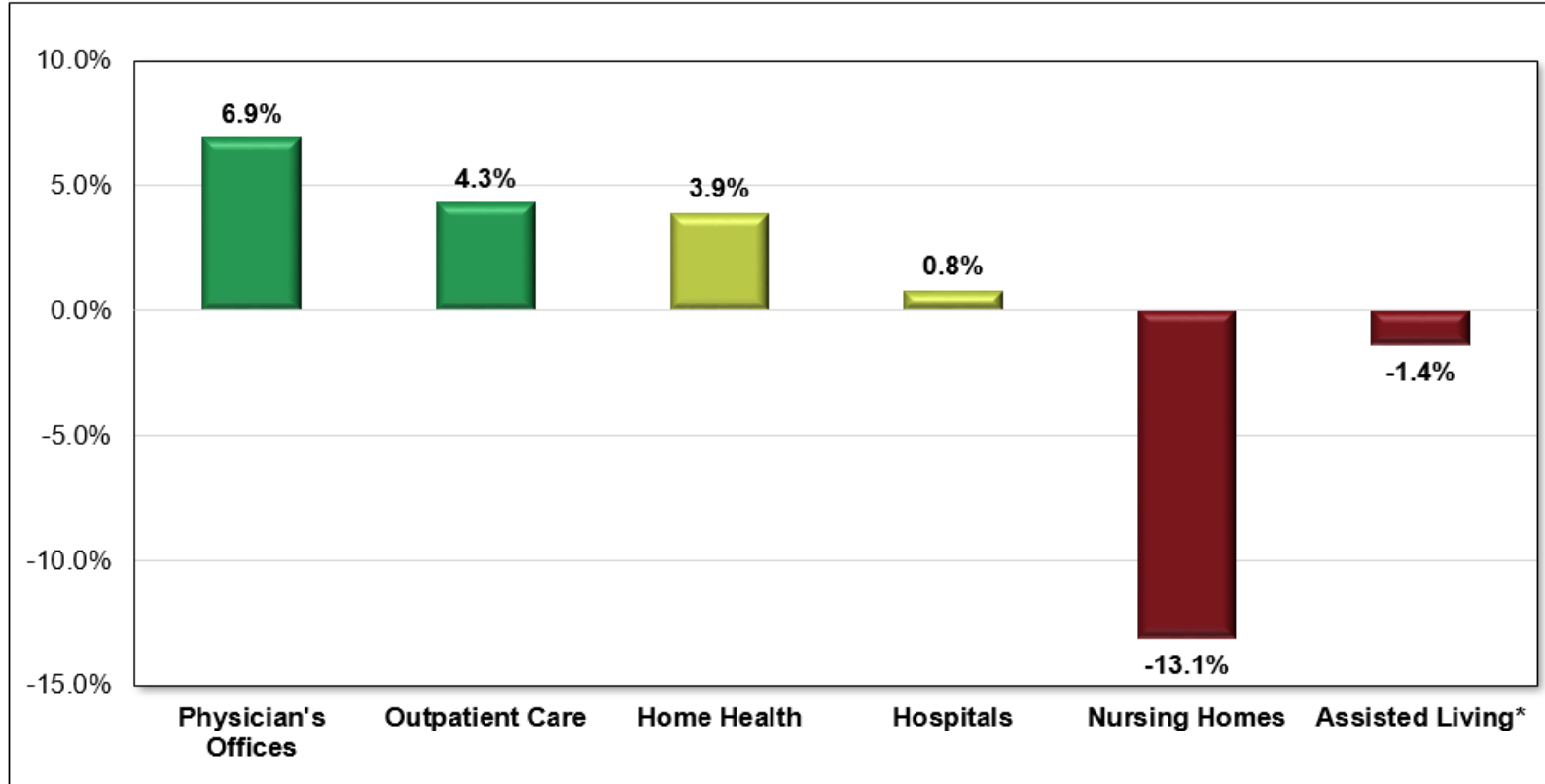
1083 Applicants

73% Remain in SD

**Percentage of Nurses
Expected to Retire by
2027: 15.1%**

Percent Change in Health Care Sector Employment

March 2020 - December 2022



*Assisted Living change: March 2020 - November 2022

**Workers are
exiting the
nursing home
industry**

**61% of nursing
homes limit new
admissions due
to workforce
issues.**

Source: Bureau of Labor Statistics, January 2023

South Dakota Nursing Home Closures

2020-2023

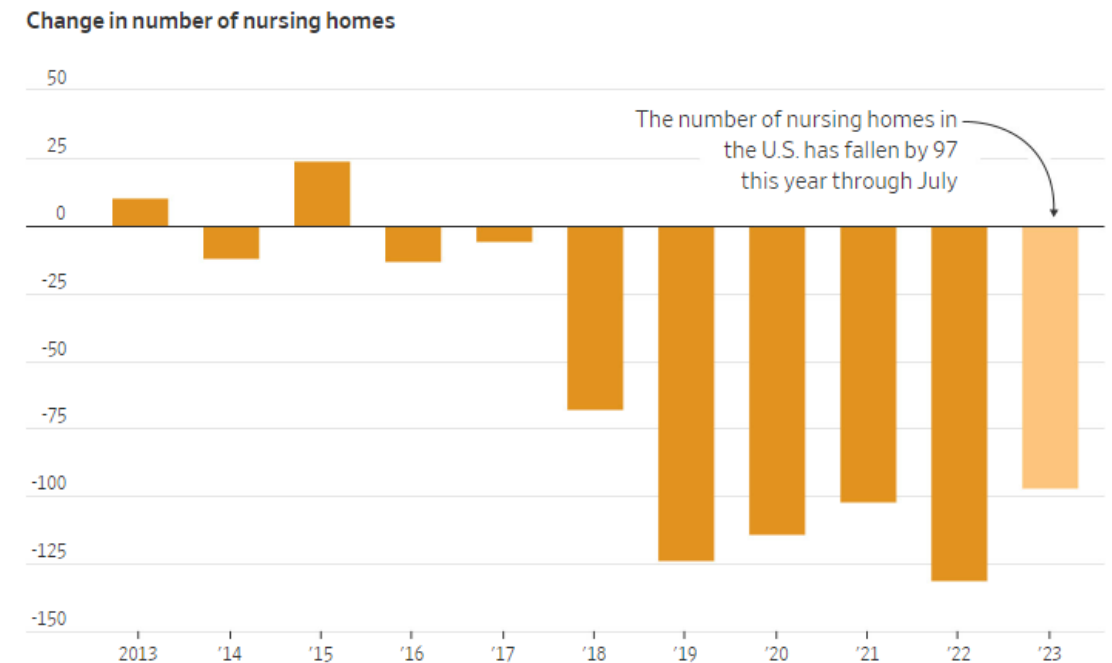
- Custer
- Ipswich
- Lennox
- Clear Lake
- Salem
- Armor
- Elk Point
- Arlington
- Martin

2015-2019

- Hudson
- Huron
- SF Covington
- Madison
- Mobridge
- Tripp
- Bryant
- Rosholt
- White

The Upheaval at America's Disappearing Nursing Homes, in Charts

Patients spend months waiting in hospitals for nursing-home beds



Note: Nursing-home counts are based on the number of facilities with federal certification numbers at year-end. Data for 2023 are through July.

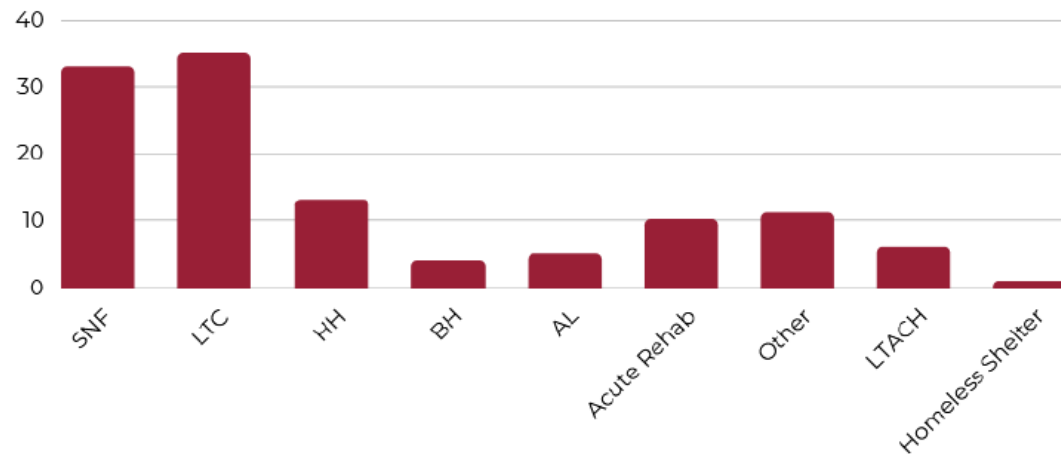
Source: Centers for Medicare and Medicaid Services

Hospital Impact - Lack of Post-Acute Beds

Patients Awaiting Discharge > 7 Days in SD Hospitals



Patients Awaiting Discharge to Post-Acute Setting > 7 Days by Facility Type



On average it costs a hospital \$1,000 per day to care for these patients. The estimated impact at the time of the survey was \$2.26M.

Aug 2023 Survey

Estimated Costs To Comply

Estimated Additional **Yearly Costs** to Meet Proposed Staffing Regulation (Adjusted for Missing SNFs)

South Dakota

SNF Count	Missing Data SNF Count	RN = .55	Aide = 2.45	RN 24/7 after RN = .55	Total Cost	Cost per SNF
98	4	\$4,369,460	\$12,703,806	\$1,604,453	\$18,677,719	\$190,589

USA Total Annual Cost: \$7,138,167,385

24/7 RN = A minimum of 5 RNs would be needed to cover all shifts every 8 hours, 7 days a week, with each RN working 5 days a week.

.55 RN HPRD = If broken out into 8-hour shifts, this would mean a facility with 100 residents would need two RNs on staff for each 8-hour shift and a third RN for one shift during the day.

2.45 HPRD = A facility with 100 residents would need approximately ten CNAs per each 8-hour shift.

CMS should withdraw the proposed rule immediately

- The study is incomplete, lacks evidence, and disproportionately affects rural areas
- The labor pool does not exist – this is not achievable
- South Dakota lacks housing to support more labor in our small communities
- Nursing homes already rely on expensive contract/travel staff to fill positions
- Nursing homes operate on a very thin (or negative) margin and cannot afford this **unfunded mandate**
- Many 5-star facilities today would not meet this mandate
- Nursing homes rely on Medicaid for much of their revenue and cannot simply raise prices to cover rising expenses
- Private pay residents may end up paying more to cover the cost of added labor.
- Nursing homes rely on LPNs to provide essential services. LPNs need to count towards either the RN or CNA ratio
- One size fits all policy does not work
- This mandate will lead to more closures, contributing to health and safety issues

Impact of Closures

- Fewer seniors (and upcoming baby boomers) will have **access** to nursing home care. Where will they go?
- Pressure on **hospitals** who are not able to safely discharge a patient to the appropriate level of care - adding uncompensated cost to hospitals and taking up acute beds
- Pressure on **home health agencies** who also have workforce issues, travel constraints, risk of serving high-acuity patients, readmissions penalties and limited availability and inability to care for homebound patients long term
- **Hospice patients** who lack family/caregiver once cared for in nursing facilities may be forced to be cared for in hospitals or at home without adequate support to ensure their safety and well-being putting extra strain on hospice providers and hospitals
- Pressure on **Home and Community Based Services** that will be inundated with referrals to care for Seniors and those with serious illness in their homes for which they are not adequately staffed
- Pressure on **caregivers** who may need to quit jobs or change living situations to attempt to care for Seniors at home, especially if their community is already resource scarce for care in the home
- **Communities will suffer** by losing a business and it's supporting services, including employees and residents who may need to move away to find new work or support for a family member

Call to Action

- We need every resident, family member, healthcare worker, administrator, board member and supporting organizations to write an individual letter to CMS **BEFORE NOVEMBER 6**
- The most important thing you can offer is illustrative narratives and data of what the situation looks like on the ground, in your nursing home or healthcare community. Explain the impact this rule would have on your operations or community. This makes your comment powerful and effective
- When writing the letter, share your name, state, community info, employment info (if applicable) and why this rule matters to you

How to Submit Your Comments

- Comments must be received by CMS by Monday, November 6, 2023
- Remember to reference file code CMS-3442-P in your comments
- Comments can be submitted:
 - Electronically: Comments can be submitted electronically via the Federal Register. Access the rule (<https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid#open-comment>) then click on “Submit a Formal Comment” near the top of the page. You may type your comments directly into the text box, or you may attach a file containing your comments.
 - By regular mail: Comments may be submitted by mail and must be received before the close of the comment period. Mail written comments to: Centers for Medicare & Medicaid Services Department of Health and Human Services **Attn: CMS-3442-P** P.O. Box 8016 Baltimore, MD 21244-8016
 - By express or overnight mail: Comments may be submitted by express or overnight mail to: Centers for Medicare & Medicaid Services Department of Health and Human Services **Attn: CMS-3442-P** Mail Stop C4-26-05 7500 Security Boulevard Baltimore, MD 21244-1850

Thank you!

Please reach out to me if you need help or have questions.

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