

FEATURED ARTICLE

PROPOSED CMS MINIMUM STAFFING STANDARDS FOR LONG-TERM CARE FACILITIES

CMS Staffing Mandate: The Details

In early September, the U.S. Department of Health and Human Services (HHS), through the Centers for Medicare & Medicaid Services (CMS), issued their proposed rule on Minimum Staffing Standards for Long-Term Care Facilities. This proposed rule builds on the President's Action Plan for Nursing Home Reform launched in 2022. The mandate includes three primary components:

- Minimum nurse staffing standards of 0.55 hours per resident day (HPRD) for Registered Nurses (RNs) and 2.45 HPRD for Nurse Aides (NAs)
- A requirement to have an RN onsite 24 hours a day, 7 days a week
- Enhanced facility assessment requirements to ensure facilities are making thoughtful, person-centered staffing plans and decisions focused on meeting resident needs, including staffing levels above the proposed minimums as indicated by resident acuity⁽¹⁾

CMS is holding a 60-day period for comments, ending November 6th. From there, the policy will be amended, if necessary, and then it could take 6-18 months before it is finalized.

Once established, non-rural facilities will have 60 days after the publication date to meet facility assessment requirements, two years for the RN provision, and 3 years for the minimum nursing staffing period. Rural facilities will have 60 days, 3 years, and 5 years for each of these phases, respectively. Facilities can apply for a temporary waiver if they meet the hardship requirements, such as the inability to hire staff after earnest attempt. This staffing mandate, once finalized, would likely go into effect in 2026 or 2027⁽²⁾.

Staffing Mandate Challenges

Many industry leaders have expressed concern over how these requirements can be met considering current labor shortfalls and the challenging economic environment.

A recent report from CLA's Proposed Staffing Mandate Report calculated that 94% of facilities registered with CMS did NOT meet all three criteria, including 80% that did not meet the 24/7 RN staffing standard⁽³⁾. In fact, according to the Keiser Family Foundation, in over half the states less than a quarter of nursing facilities would meet the required HPRD, and this can vary widely from state-to-state, including 100% compliance in Alaska and 0% in Louisiana⁽⁴⁾.

The CLA report also estimates that the industry will need an additional 102,154 full time equivalent hires to accommodate the requirements. However, from the start of the COVID-19 pandemic to the low in April 2022, Nursing Care Facilities lost a total of 240,700 jobs and have only gained back 90,400 by September 2023⁽⁵⁾. This indicates that it could potentially take several years to get to the necessary levels.

In January 2023, AHCA published their State of the Nursing Home Industry report where 77% of survey responders faced moderate to high levels of staffing shortages. In fact, 24% of those facilities closed a unit, wing or floor due to the labor shortage⁽⁶⁾.

Other workforce issues, like the lack of faculty and supervisors for clinical placements, have resulted in a record number of qualified applicants being denied admission to nursing schools across the country⁽⁷⁾. Then, once a student graduates, they may face longer than normal processing times to get their license due to the same workforce shortages within state licensing departments⁽⁸⁾. This, coupled with the number of nurses retiring or planning to leave the industry altogether, has made it difficult to keep nursing facilities fully staffed even before the proposed mandate.

For those that can staff their nursing facilities to meet the new mandate levels, there will still be significant financial hurdles. CMS estimated that it will cost the industry \$4 billion to meet the new standards. However, CLA, using more updated cost reports that consider the 14.7% wage increases in 2022, estimates the cost will be closer to \$6.8 billion. As inflation pressures and wage increases continue, even tighter operating margins are causing concern among industry operators.

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CMS data already shows that the number of nursing properties has dipped below 15,000. While occupancy has increased significantly since the pandemic to an average of 81.5% nationally⁽⁹⁾, some properties have been forced to keep census down in order to staff for the rising number of higher acuity patients. Many are concerned that areas with fewer available nursing staff will find it impossible to fulfill mandate staffing levels and be forced to close their doors for good.

Forward-Thinking Solutions

While the mandate is cause for concern, the benefit of what could likely be several years of lead time before the mandate goes into effect has some operators starting to focus on solutions now. Many industry stakeholders have also noted that federal and state reimbursement would need to increase to help pay for the rise in workforce costs. In FY2022, 44 states increased nursing facility reimbursement rates⁽¹⁰⁾. For example, Pennsylvania will receive a 17.5% reimbursement increase in 2023.

In Monroe County, NY, \$11 million in federal funds will go towards expanding two nursing workforce development programs for long-term care facilities⁽¹¹⁾. Some operators have begun to

reach out to Licensed Practical Nurses (LPNs) to discuss the potential for them to upskill to RNs, while others have already begun to focus on recruiting more RNs over the less expensive LPNs, who were not included in the proposed mandate. Elmbrook Management in Oklahoma is offering career paths to RNs for CNAs and LPNs by helping financially, but also by allowing their nurses to teach at area colleges and to bring students to their facilities for clinicals, which creates a pathway to recruitment. The senior living workforce shortage has also fueled a boom in related technologies focused on solutions for better recruitment and onboarding, engagement to reduce turnover, and efficiency to reduce burnout and the need for overtime hours.

If you have any questions related to this article or any other issue, please reach out to the Ziegler representative in your region.

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Sources: **(1)** CMS.gov, 9/2023. **(2)** [Skilled Nursing News](#), “Timeline a Win, But RN Provision Draws Ire as Nursing Home Industry Reacts to CMS’ Staffing Proposal” Amy Stulick. Sept 5, 2023. **(3)** CLA Proposed Staffing Mandate Report, 9/2023. **(4)** KFF Analysis of Nursing Home Compare, August 2023. **(5)** bls.gov 9/2023. **(6)** Access to Care Report, 2023, AHCA. **(7)** American Association of Colleges of Nursing, May 2, 2023 **(8)** NPR.org, “Nurses Are Waiting 6 Months or More for Licenses Despite Hospitals’ Need for Nurses”. March 9, 2022. Austin Fast. **(9)** NICMAP Skilled Nursing Report, 7/23. **(10)** Keiser Family Foundation, SFY 2022 [States Reporting Provider Rate Increases](#). Three states listed as Not Reported. 10/23. **(11)** McKnights “County Gets Creative with Federal Funding to Alleviate LTC Staffing Shortage”. Jessica R. Towhey. 10/16/2023.

NOT-FOR-PROFIT SENIOR LIVING RATINGS ACTIONS

AS OF OCTOBER 20, 2023

ORGANIZATION	RATING AGENCY	RATING/ OUTLOOK	TYPE OF ACTION	DATE
Greencroft Obligated Group (IN)	Fitch	BBB- Stable	Affirmed Rating Affirmed IDR*	10/18/23
Fellowship Village nka FellowshipLIFE (NJ)	Fitch	BBB- Stable	Downgraded Rating Downgraded IDR*	10/20/23
Masonic Villages of the Grand Lodge (PA)	S&P	A Stable	Assigned Rating Affirmed Rating	10/20/23

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* IDR – Issuer Default Rating

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INTEREST RATES/YIELDS

WEEK ENDING OCTOBER 20, 2023

	CURRENT	LAST WEEK	52-WK AVG
30-Yr MMD	4.53%	4.24%	3.61%
Senior Living 30-Yr “A”	6.19%	5.50%	5.24%
Senior Living 30-Yr “BBB”	6.59%	6.30%	5.65%
Senior Living Unrated	7.44%	7.15%	6.46%
Senior Living New Campus	8.29%	8.00%	7.43%
SIFMA Muni Swap Index	4.19%	3.19%	3.11%

	CURRENT	WEEKLY AVERAGE	SPREAD TO MMD
ZSLMLB Index [†]	6.66%	6.59%	2.13%

[†] Ziegler Senior Living Municipal Long Bond Index

Source: Bloomberg BVALS

MARKET REVIEW

MONEY MARKET RATES

	10/20	Last week
Prime Rate	8.50	8.50
Federal Funds (weekly average)	5.31	5.31
90 Day T-Bills	5.47	5.50
30-Day Commercial Paper (taxable)	5.34	5.31
Libor (30-day)	5.44	5.44
SOFR	5.30	5.31
7 Day Tax-Exempt VRDB	4.19	3.19
Daily Rate Average	4.33	2.96

COMPARATIVE YIELDS

TAXABLE REVENUE

	GOVT	A		MMD	NR*	BB	BBB	A	AAA
2 Year	5.16	5.91	1 Year	3.78	6.03	5.78	5.18	4.08	3.93
5 Year	4.95	5.95	5 Year	3.49	5.84	5.64	4.99	3.99	3.69
7 Year	5.01	6.41	7 Year	3.54	5.99	5.79	5.14	4.19	3.79
10 Year	4.99	6.79	10 Year	3.59	6.29	5.94	5.29	4.34	3.94
30 Year	5.11	7.46	30 Year	4.53	7.53	7.03	6.38	5.53	5.08

(* Representative of institutional sales)

TAX-EXEMPT MARKET INDICATORS

	THIS WEEK	LAST WEEK	CHANGE
Bond Buyer			
20 Bond Index	4.19	3.97	+0.22
11 Bond Index	4.09	3.87	+0.22
Revenue Bond Index	4.47	4.25	+0.22
30 Year MMD	4.53	4.24	+0.29
Weekly Tax-Exempt Volume (Bil)	6.07	1.06	+5.01
30 Day T/E Visible Supply (Bil)	10.51	10.99	-0.48
30 year "A" Rated Hospitals as a % of 30 Year Treasuries	108.2	108.0	+0.02

Source: Bloomberg