

Nursing Home Staffing Proposal Faces Industry Pushback

By [Yeji Jesse Lee](#) · [Listen to article](#)

Law360 (October 27, 2023, 5:48 PM EDT) -- The [American Hospital Association](#) filed a comment Thursday opposing a recent proposal by the [Centers for Medicare and Medicaid Services](#) that would establish minimum staffing requirements in long-term care facilities, saying that mandated staffing ratios would not solve the issues faced by these facilities.

While some advocates have argued that the proposal doesn't go far enough to ensure adequate staffing in nursing homes, industry groups like the [American Health Care Association](#), [LeadingAge](#) and American Hospital Association have voiced their opposition to the proposal, arguing that staffing ratios don't guarantee quality care and that the current shortage of nurses in the workforce would force facilities to reduce patient admissions in order to comply with the regulations.

In its comment on the proposal on Thursday, the AHA described the proposal from CMS as "an overly simplistic approach" to a complex issue.

"We strongly agree with CMS that staffing is an integral part of delivering safe care. Yet, achieving safe staffing entails far more than simply meeting policymaker-set minimum thresholds or ratios," the AHA said on Thursday, adding that instead of imposing numerical staffing ratios, CMS should develop "a different approach that builds upon the knowledge and experiences of nurses and other caregivers themselves."

If put into effect, CMS' proposal would be the first time the federal government has imposed comprehensive minimum requirements for staffing in nursing homes. It comes in light of the COVID-19 pandemic, which the agency said in a September statement "tragically caused unprecedented illness and death among nursing home residents and workers" and "exacerbated staffing challenges experienced in many facilities."

The proposal would require nursing homes to have enough staff to ensure that each resident in the facility could receive more than half an hour of care from a registered nurse and almost 2.5 hours of care from a nurse aide per day. It would also require facilities to have a registered nurse on-site 24 hours a day, seven days a week.

"Establishing minimum staffing standards for nursing homes will improve resident safety and promote high-quality care so residents and their families can have peace of mind," [U.S. Department of Health and Human Services Secretary Xavier Becerra](#) said in a statement at the time of the proposal's announcement.

"Comprehensive staffing reforms can improve working conditions, leading to higher wages and better

retention for this dedicated workforce."

A spokesperson for CMS told Law360 on Friday that the agency believes the proposed requirements are "achievable and necessary," noting that the framework proposes a staggered implementation over a five-year period for facilities based on geographic locations. They added that the proposal also offers exemptions to nursing homes that struggle to hire staff despite best efforts.

"Despite CMS' existing staffing requirements, chronic understaffing persists," they said. "It is imperative that LTC facilities are adequately staffed based on resident acuity and need, and this proposed rule is a first step toward that goal."

However, health care industry groups have pushed back against CMS, arguing that the requirements would not only be ineffective, but might also be impossible for some facilities.

"A wide range of health care organizations have already expressed significant concerns about the impact of the proposed rule," Akin Demehin, senior director of quality and patient safety at the AHA, told Law360 on Friday. "As we describe in our letter, the rule carries the potential for significant unintended consequences for patients and providers across the entire health care continuum."

Demehin added that the AHA hopes the agency will "pivot away from its one-size-fits-all thresholds, and instead work with nursing homes, hospitals, Congress and the administration on more sustainable long-term strategies to invest in and support the nursing workforce and the delivery of high-quality care in nursing facilities."

CMS said in a September statement that it estimates around three-quarters of nursing homes would have to improve staffing in order to meet the new requirements, adding that the agency has launched a \$75 million staffing campaign with the [Health Resources and Services Administration](#) to build up staffing.

"This is probably one of most significant policy proposals in the skilled nursing space that's ever been made by CMS," said [Hooper Lundy & Bookman PC](#) managing shareholder Mark Reagan, who represents the American Healthcare Association, California Association of Health Facilities and Massachusetts Senior Care Association.

"There is a tremendous difference of opinion about whether numerical staffing requirements make sense," he said, adding that he believes a one-size-fits-all approach would hinder rather than help facilities because they would struggle to ensure there are enough staff to meet requirements, rather than focus on the care that needs to be delivered.

The proposal is currently undergoing a public comment period, which will close on Nov. 6.

--Editing by Alanna Weissman.

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