

**Congressional Briefing:  
Staffing, Transparency, and Accountability with Equity**

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The first major improvements in nursing home (NH) quality and regulations were made with passage of the OBRA 1987 Nursing Home Reform Act. While the Act required NHs to have “sufficient staff” to meet the needs of residents, it did not require minimum direct care staffing levels.

In 2001, CMS issued a seminal study that showed the need for a minimum of 4.1 total nursing hours per resident day (hprd) (including 0.75 registered nurse (RN) hprd, 0.55 licensed vocational or practical nurse hprd, and 2.8 nursing assistant (NA) hprd) to prevent harm and jeopardy for long stay residents.<sup>1</sup> Since that time, other research studies have verified this minimum standard.

Many experts and professional associations have recommended establishing minimum nurse staffing standards and efforts to increase nursing home staffing along with 24 hour per day RN coverage.<sup>2 3 4 5 6 7 8 9 10 11 12</sup> The National Academies of Sciences, Engineering, and Medicine (NASEM) 2022 report also calls for increased staffing and setting a minimum standard taking into account that “the types of residents and the complexity of their needs have changed dramatically.”<sup>13</sup>

**President Biden Has Proposed Staffing Improvements By:<sup>14</sup>**

- establishing a minimum nursing home staffing requirement
- creating career pathways to good-paying jobs,
- making sure that nurse aide training is affordable,
- ensuring adequate compensation
- ensuring free and fair choice to join a union.

As part of this plan, CMS asked for public comments in June on establishing mandatory minimum staffing levels for long term care facilities.

**Strong Evidence Supports Minimum NH Staffing Standards**

Nursing care is the core service provided by NHs to both short and long-stay residents. Higher nurse staffing levels, especially RN staffing levels, improve resident outcomes, including:

- better functional improvement, and reduced incontinence, urinary tract infections and catheterizations, pain, pressure ulcers; weight loss and dehydration, use of antipsychotics, restraint use, infections, falls,

rehospitalization and emergency department use, missed care, adverse outcomes, as well as lower mortality rates, and fewer deficiencies.<sup>15</sup> Infection control problems are more common at homes with fewer nurses and aides.<sup>16</sup>

- NHs with higher RN and total nursing staffing have higher overall quality ratings and less findings of abuse. As nursing home staffing levels increase, there is a continuous improvement in turnover rates and quality.<sup>17</sup>
- During the pandemic, low staffing levels were found to be associated with COVID-19 resident infections and deaths.<sup>18 19</sup>

### **The Failure to Establish Minimum Staffing Has Led to Racial Inequities for Residents.**

Facilities with a higher percentage of racial and ethnic minority residents are more likely to have lower RN levels, and less-skilled workers, and poor quality of care.<sup>20 21</sup>

### **Nurse Staffing Levels Are Too Low and Are Continuing to Decline.**

In 2019, one study found only 25% of SNFs met the CMS recommended minimum 4.1 total nursing hprd and only 31% met the RN hprd.<sup>22</sup> NHs had wide variations in staffing levels especially on weekends and holidays and high nursing turnover rates.<sup>23</sup>

RN staffing levels dropped 12% in 2021 and RN and total nurse staffing was lower in May 2022 than prior to the pandemic (0.68 RN hprd and 3.76 total nursing hprd).<sup>24 25</sup>

For-profit NHs have substantially lower staffing than non-profit and government homes.<sup>26</sup> For-profit NHs have an incentive to keep staffing low to maximize profits.

### **RNs Are Needed 24-hours per Day to Protect the Health & Safety of Residents.**

Federal regulations only require RNs to be on the day shift in NHs. RNs are trained in infection control, resident assessment, care planning, emergency care,<sup>27</sup> and supervision of other nursing personnel.<sup>28</sup>

### **Nursing Staffing Levels and Skill Levels Need to Increase as Resident Acuity (Care Needs) Increases**

Federal regulations require nursing homes to adjust staffing for resident acuity but this has not been enforced by CMS.

The Medicare prospective payment system (PPS) pays higher rates for residents with higher acuity,<sup>29</sup> but Medicare does not require NHs to spend these payments on higher staffing. This allows NHs to keep staffing expenses low in order to maximize profits.

## **The American Health Care Association Has Mounted National Campaign Against Raising Federal Staffing Standards.**

### **First, AHCA Argues NHs Are Unable to Hire Because of Staff Shortages**

The fact is that NH staff shortages are actually caused by **wage shortages** – For-profit NHs generally keep wages and benefits low to increase profits.

- RN wages were only \$34.74 per hour in 2021.<sup>30</sup>
- NA wages were \$15.43 per hour or \$32,090 per year in 2021<sup>31</sup>
- Wages are 15% below hospital wages
- Wages are not competitive with other entry level jobs
- NA wages are below poverty levels and NAs qualify for Medicaid<sup>32</sup>
- NA often have to work in multiple facilities

### **Minimum NH Wages Need to be Increased By at Least 15 Percent to Reduce Shortages and Turnover<sup>33</sup>**

**Heavy Workloads Increase Shortages and Turnover Rates.**<sup>34</sup> For example, CNAs should only have 5-7 residents on the day and evening shifts but often have 10-15 residents – so the work often does not get completed and quality is poor.

**Inadequate Sick Leave and Health Insurance Increases Shortages and Turnover.**<sup>35</sup> Sick leave and health insurance stabilize the workforce, prevent workers from coming to work sick, and reduce the need to work multiple jobs.

**Inadequate Staff Training Leads to Shortages and Turnover.**<sup>36</sup> The federal training requirement for nursing assistants is too low (only 75 hours) and were reduced during the pandemic.

**Low Wages & Benefits and Poor Working Conditions Increase Social Disparities.** The majority of nursing home nursing assistants are women and 57 percent are from racial and ethnic minority groups.<sup>37</sup>

**Cost Estimates for Attaining Recommended Minimum Staffing Levels Are Not High.** The cost to attain the recommended minimum staffing was \$7.25 billion or **4.2%** of NH expenditures (or lower) in 2019.<sup>38 39</sup>

### **Second, AHCA Argues NHs Cannot Afford More Staff But There Is No Evidence For This**

#### **Many Nursing Home Companies Were Profitable During the Pandemic.**

- Most major publicly traded NH companies were highly profitable even during the pandemic.<sup>40</sup>

- A large publicly-traded US nursing home chain, made high profits by keeping staffing levels low and had high rates of COVID-19 resident infections and deaths.<sup>41</sup>

### **Medicare and Medicaid Programs Increased NH Reimbursement Rates During The Pandemic.**

- Medicare rates steadily increases each year & increased rates by 10% in 2020.<sup>42</sup>
- Many state Medicaid programs also increased rates, and some increased by 10 percent and other funds.<sup>43</sup>
- Congress gave extensive new money to NHs during the pandemic.
- For example, California 2020 NH Medicaid rates were 91% of Medicare rates.<sup>44</sup>
- Adjusting for significant over payments in 2021-22, Medicare rates will remain roughly the same for 2023

### **Nursing Homes Are Diverting Money Away from Staffing Into Profits & Administrative Costs.**

California NHs:<sup>45</sup>

- Only spent 38% of revenues on nursing and 64.4% on direct care services in 2020.
- Spent 36.5% on administration and fees, property, and profits.
- If direct care expenses were 85%, an additional 21% of revenues would be shifted into direct care (about \$2.67 billion dollars).

New York NHs Are Highly Profitable

- NY direct care spending requirements and limits on profits would free up \$824 million in just 284 NHs in 2019.<sup>46</sup> This excess income could pay for: <sup>47</sup>
  - 5,600 additional RNs
  - 26 million additional NA hours

### **NHs have Hidden Profits that Can be Used for Staffing.**

NHs can hide profits and administrative costs by siphoning money into related party organizations.

- Nearly 75% of NHs have billions in related party business transactions.<sup>48</sup>
- California NHs spent 29% of revenues on related parties in 2020.<sup>49</sup>

### **Conclusion**

**CMS needs to adopt a minimum staffing standard. The minimum should be at least set at the levels recommended in the CMS 2001 report (.75 RN hprd, .55 LVN hprd, 2.8 NA hprd, and 4.1 total nursing hprd). RNs should be required to be on duty 24 hours per day. In addition, staffing levels must be increased to meet the needs of residents with higher acuity. We strongly support the President's new NH reform proposals and the recommendations of the 2022 NASEM report.**<sup>50</sup>

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