Residents at Risk

Quality of Care Problems in Understaffed Nursing Homes and the Need for a New Federal Nursing Home Staffing Standard

UNITED STATES SENATE

Staff Report Prepared for Sen. Elizabeth Warren, Sen. Bernard Sanders, and Sen. Richard Blumenthal

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Executive Summary

On September 6, 2023, the Centers for Medicare and Medicaid Services (CMS) released a proposed rule to create new minimum staffing standards for nursing homes. These standards were long overdue: more than 20 years ago, a CMS report to Congress concluded that "staffing levels will need to be increased in a substantial portion of facilities to improve quality."

The American Health Care Association (AHCA), the primary lobbying group for the for-profit nursing home industry, opposes this rule, raising concerns about cost and the difficulty of finding workers. But this criticism ignores the key benefits of this proposal: that it will dramatically improve resident care and outcomes for millions of nursing home residents in thousands of nursing homes.

This report, the first congressional analysis of the benefits of this proposed rule, is based on a Congressional Research Service (CRS) review of publicly available staffing and patient outcome data from CMS. It reveals that, across a broad range of health outcomes, nursing homes with higher staffing levels that meet the requirements in the CMS proposed rule provide better quality of care than homes with lower staffing levels.

Specifically:

- Nursing homes with staffing levels below the proposed minimum staffing levels have significantly lower overall ratings in CMS's Five-Star Quality Rating System (2.7 out of 5) than the nursing homes that meet the proposed, higher standards, which have average ratings of 3.8 out of 5.
- Nursing homes with lower staffing levels are more likely than homes with higher staffing to be in or be a candidate for the CMS Special Focus Facility program, a program for nursing

homes that have "a history of serious quality issues."
- Nursing homes with lower staffing levels have 50 percent more serious deficiencies in care that cause harm to patients, on average, compared to nursing homes that meet the higher CMS proposed staffing standards.
- Nursing homes with lower staffing levels are more likely than facilities with higher staffing to have instances of noncompliance related to patient abuse.

Overall, the findings of this analysis reveal that CMS' proposed minimum staffing standards for nursing homes would have significant benefits for resident care. The data indicates that implementing such a standard would result in higher quality ratings and fewer serious quality issues, fewer deficiencies in care, and less patient abuse. CMS should finalize a strong version of this rule to protect nursing home residents nationwide.

I.   Background

On September 6, 2023, the Centers for Medicare and Medicaid Services (CMS) released a proposed rule to create new minimum staffing standards for nursing homes.[1] These standards were long overdue: more than 20 years ago, a CMS report to Congress concluded that "staffing levels will need to be increased in a substantial portion of facilities to improve quality,"[2] and new evidence continued to accumulate showing that "most nursing homes do not provide sufficient staffing to ensure basic quality" and that "higher [Registered Nurse] staffing levels are associated with better resident care quality in terms of fewer pressure ulcers; lower restraint use; decreased infections; lower pain; improved activities of daily living (ADLs) independence; less weight loss, dehydration, and insufficient morning care; less improper and overuse of antipsychotics; and lower mortality rates."[3]

In February 2022, President Biden announced a set of reforms to improve the safety and quality of nursing home care ,[4] and on September 6, 2023, CMS released its proposed nursing home staffing rule.[5] These staffing standards consist of two components: the first would require that nursing homes meet a minimum staffing ratio of 0.55 hours of registered nurse (RN) care per patient per day and 2.45 hours of nurse aide (NA) care per patient per day, for a total of 3.0 hours of nurse care per patient per day.[6] The second component of the standards would require that all nursing homes have at least one registered nurse on site 24 hours per day, 7 days a week.[7]

The American Health Care Association (AHCA), the primary lobbying group for the for-profit nursing home industry, opposes this rule, raising concerns about cost and the difficulty of finding workers, calling it "deeply flawed."[8] But this opposition appears to ignore the key benefits of the rule: that it will improve quality of care and result in

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[1] Centers for Medicare & Medicaid Services, Federal Register Notice, "Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting," September 6, 2023, https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid.

[2] Health Care Financing Administration, "Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes," Report to Congress, July 20, 2000, https://www.phinational.org/wp-content/uploads/2017/07/Phase_I_VOL_I-1.pdf.

[3] National Library of Medicine, "Appropriate nurse staffing levels for US nursing homes," Charlene Harrington, Mary Ellen Dellefield, Elizabeth Halifax, Mary Louise Fleming and Debra Bakerjian, June 29, 2020,, https://pubmed.ncbi.nlm.nih.gov/32655278/.

[4] The White House, "FACT SHEET: Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes," press release, February 28, 2022, https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-

with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/.

[5] Centers for Medicare & Medicaid Services, Federal Register Notice, "Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting," September 6, 2023, https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid.

[6] Centers for Medicare & Medicaid Services, HHS Proposes Minimum Staffing Standards to Enhance Safety and Quality in Nursing Homes, Sep. 1, 2023, https://www.cms.gov/newsroom/press-releases/hhs-proposes-minimum-staffing-standards-enhance-safety-and-quality-nursing-homes.

[7] *Id.*

[8] American Health Care Association, "New Analysis Finds Federal Staffing Mandate Would Require 100,000 Additional Nurses and Nurses' Aides, Cost $6.8 Billion Per Year," press release, September 26, 2023, https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/New-Analysis-Finds-Federal-Staffing-Mandate-Would-Require-100,000-Additional-Nurses-and-Nurses%E2%80%99-Aides,-Cost-$6-8-Billion-Pe.aspx

better outcomes for millions of nursing home residents.

II. Methodology

This analysis, prepared for Sen. Elizabeth Warren (D-MA), Sen. Bernard Sanders (D-VT), and Sen Richard Blumenthal (D-CT), is the first congressional analysis to examine the impact of improved nursing home staffing on patient outcomes. Using data analysis conducted by the Congressional Research Service, it compares quality of care indicators at two sets of nursing homes: those that currently meet the proposed CMS minimum standards for RN and NA staffing ratios, and those that do not.[9] The analysis was conducted by CRS using CMS's publicly available data from the Nursing Home Compare website, which contains data on 14,511 nursing homes serving 1.18 million residents.[10]

The analysis then compared a number of indicators for these two sets of homes: CMS Five-Star Star Quality Ratings, Special Focus Facility status, Fines Imposed, the average number of deficiencies that cause harm to residents, and the percentage of homes with indicators of resident abuse.

The remainder of this report contains the findings from this analysis.

III. Findings

The findings of this investigation reveal that – across a wide range of indicators – nursing homes with higher staffing ratios have higher quality of care. Specifically, in all six measures reviewed – CMS Five-Star Quality Ratings, Special Focus Facility status, Fines Imposed, the average number of deficiencies that cause harm to residents, and the percentage of homes with indicators of resident abuse – nursing homes with more staff per patient perform better.

A. Nursing Homes with Lower Staffing Have Lower CMS Star Ratings

CMS's Five-Star Quality Rating System has been developed by the agency to give a broad indicator of quality to consumers.[11] According to CRS: [12]

> CMS has a quality rating system for nursing homes that features an overall rating of one to five stars based on facility performance. A facility's performance is measured by three components … The first component is how a facility performs on inspections performed by state agencies (SAs), which monitor for compliance with the federal conditions of participation (CoPs). The second component is for staffing … The final component is based on quality measures.
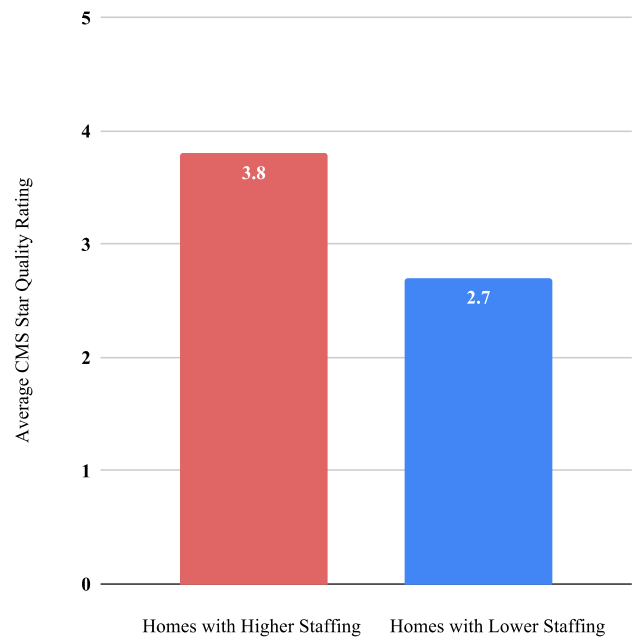
The CMS quality rating system runs from 1 to 5 stars, with nursing homes that provide

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[9] This analysis does not include an analysis of the second component of the proposed nursing home standards, the requirement for 24/7 RN coverage, because data on whether nursing homes currently meet this standard is not readily available on Nursing Home Compare.

[10] Congressional Research Service, Requested Analysis of Nursing Home Compare Data with the Proposed Nursing Home Staffing Standards, prepared for Sen. Elizabeth Warren, October 19, 2023.

[11] Center for Medicare & Medicaid Services, "Five-Star Quality Rating System," https://www.cms.gov/medicare/health-safety-standards/certification-compliance/five-star-quality-rating-system#:~:text=CMS%20created%20the%20Five%2DStar,may%20want%20to%20ask%20questions..

[12] Congressional Research Service, Requested Analysis of Nursing Home Compare Data with the Proposed Nursing Home Staffing Standards, prepared for Sen. Elizabeth Warren, October 19, 2023.

the highest quality of care receiving 5 stars, and those that provide the lowest quality of care receiving 1 star. Overall, the average star rating for all 14,511 nursing homes is 2.9.[13] The CRS analysis reveals that the nursing homes that currently meet the proposed minimum staffing standards have an overall average quality rating of 3.8; the nursing homes that do not meet the proposed standards have an overall average quality rating of 2.7.[14] This indicates that nursing homes that meet the proposed standard score significantly higher in this broad rating of quality of care compared to those nursing homes that do not meet the standards.

Figure 1: Nursing Homes that Meet CMS Proposed Staffing Standards Have Higher Overall Quality Ratings

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[13] *Id.*
[14] *Id.*
[15] Centers for Medicare & Medicaid Services, "Special Focus Facility (SFF) Program," September 27. 2023, https://www.cms.gov/medicare/provider-enrollment-and-certification/certificationandcomplianc/downloads/sfflist.pdf; SSA §1819(f)(8) and §1919(f)(8).
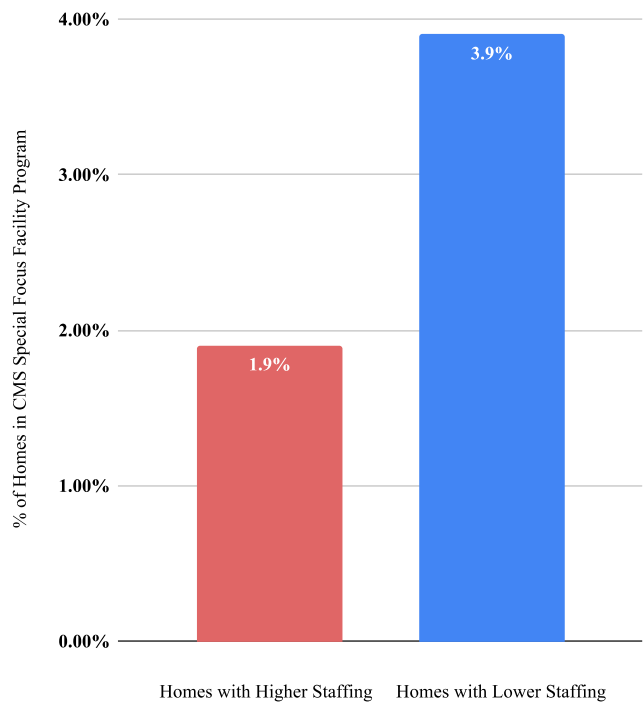
B. Nursing Homes with Lower Staffing Are More Likely to be "Special Focus Facilities" Because of Problems Providing High Quality Care

Another indicator of nursing home quality used by the Department of Health and Human Services is whether a nursing home is a "Special Focus Facility" or a candidate to be in the Special Focus Facility (SFF) program.[15]

If a nursing home is in the SFF program, it means that they have "a history of serious quality issues," including "More problems than other nursing homes… More serious problems than most other nursing homes (including harm or injury experienced by residents), and [a] pattern of serious problems that have persisted over a long period of time."[16]

The analysis by CRS reveals that nursing homes that do not meet the proposed minimum staffing standard are much more likely to have these serious problems, and to be in the SFF program. Overall, 3.5 percent of the 14,511 nursing homes in the analysis are either in the SFF program or candidates to be in the program.[17] But of the nursing homes that already have adequate staffing to meet the CMS proposal, only 1.9 percent are SFF facilities or SFF candidates.[18] In contrast, over 3.9 percent of homes that do not meet the proposed CMS standard are SFF facilities or SFF candidates.[19] In other words, nursing homes without adequate staffing are more likely to have this indicator of poor quality care compared to nursing homes that meet the proposed staffing levels.

Figure 2: Nursing Homes that Do Not Meet CMS Proposed Staffing Standards are More Likely to Have a History of Quality Problems

C. Nursing Homes with Lower Staffing Levels are More Likely to Have Serious Care Deficiencies

All nursing homes are subject to annual inspection by state regulators to determine if they are meeting basic federal health and safety standards.[20] For example, inspectors review nursing homes to determine if they have adequately addressed trip and fall hazards, meet requirements to treat patients effectively to prevent bedsores, dispense medications in a safe and effective manner, have adequate fire safety protocols, prevent abuse, and numerous other measures. Nursing homes that are deficient in any of these categories may be subject to fines or other enforcement actions.[21]

When inspectors identify a deficiency in health or safety standards, they assign it a "Level of Severity"[22] The least severe deficiencies are those that cause "no actual harm, with a potential for minimal harm."[23] Two severity categories are the most serious: those that cause "actual harm" to residents, but do not place them in "immediate jeopardy," and those that cause actual harm that poses "immediate jeopardy to resident health or safety."[24]

The analysis by CRS reveals that nursing homes that do not meet the proposed minimum staffing standard are much more likely to have serious deficiencies that cause harm to residents. Whereas the nursing homes that already have adequate staffing to meet the CMS proposal had an average of 1.0 deficiencies that caused harm over three different inspection cycles,[25] the nursing homes that do not meet the proposed CMS standard had an average of 1.5 serious deficiencies during this same inspection period.[26] Put simply, nursing homes with lower standards have 50 percent more serious deficiencies in care that cause harm to patients.

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[20] Kaiser Family Foundation, "Key Questions About Nursing Home Regulation and Oversight in the Wake of COVID-19," MaryBeth Musumeci and Priya Chidambaram, August 3, 2023, https://www.kff.org/coronavirus-covid-19/issue-brief/key-questions-about-nursing-home-regulation-and-oversight-in-the-wake-of-covid-19/; National Library of Medicine, "Improving the Quality of Care in Nursing Homes," https://www.ncbi.nlm.nih.gov/books/NBK217555/.

[21] *Id.*

[22] Congressional Research Service, Requested Analysis of Nursing Home Compare Data with the Proposed Nursing Home Staffing Standards, prepared for Sen. Elizabeth Warren, October 19, 2023.

[23] U.S. Department of Health & Human Services, "Revisions to State Operations Manual (SOM), Appendix PP," Centers for Medicare & Medicaid Services, February 3, 2023, Revisions to State Operations Manual (SOM), Appendix PP | Guidance Portal (hhs.gov).
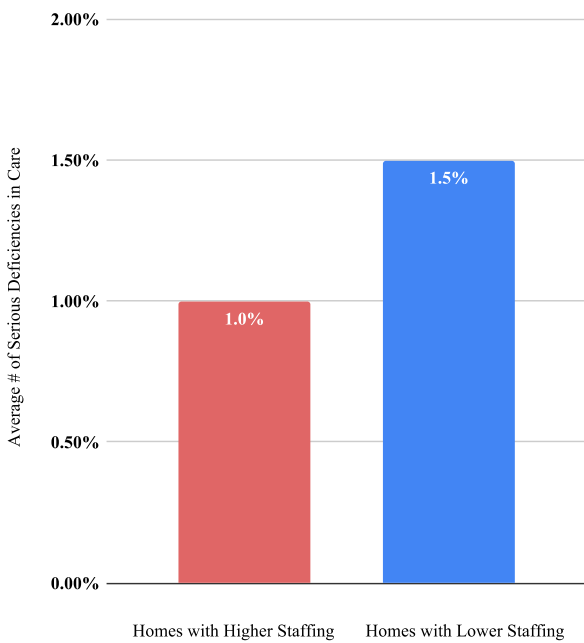
[24] *Id.*

[25] Congressional Research Service, Requested Analysis of Nursing Home Compare Data with the Proposed Nursing Home Staffing Standards, prepared for Sen. Elizabeth Warren, October 19, 2023.

[26] *Id.*

Nursing homes that have serious health or safety problems, or that "fail[] to correct a citation for a long period of time" are subject to fines by the Medicare or Medicaid program.[27] These fines are rare and reserved only for serious offenses – and the CRS analysis reveals that nursing homes with lower staffing levels are more likely to receive larger fines. The nursing homes that already have adequate staffing to meet the CMS proposal had average fines of $23,179 over the survey period (which in this case was three survey cycles, or approximately three years)[28] But the nursing homes that do not meet the proposed CMS standard had average fines of $41,165 over the same survey period – over 75 percent higher.[29]

Figure 3: Nursing Homes that Do Not Meet CMS Proposed Staffing Standards Have More Serious Deficiencies in Care

D. Nursing Homes with Lower Staffing Levels are More Likely to Have Residents that Suffer from Abuse

Because patient abuse is such a serious matter, CMS carefully tracks nursing homes that have or might have a history of abuse. According to CRS:

> CMS added a binary variable on Nursing Home Compare to help identify instances of noncompliance in nursing homes related to abuse. Nursing homes with a documented instance of noncompliance related to abuse at the 'G' or greater seriousness level … in the past 12 months are given the abuse indicator. Additionally, nursing homes with a documented instance of noncompliance related to abuse at the 'D' or greater seriousness level in the previous two survey cycles are also given the abuse indicator.

The CRS analysis reveals that nursing homes with lower staffing levels are much more likely to have this abuse indicator. Specifically, 4.5 percent of the nursing homes that already have adequate staffing to meet the CMS proposal have the abuse indicator in Nursing Home Compare.[30] In contrast, 8.5 percent of homes that do not meet the proposed CMS standard have the abuse indicator in Nursing Home Compare.[31] In other words, nursing homes without adequate staffing are more likely to have instances of noncompliance related to abuse.

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[27] Centers for Medicare & Medicaid Services, Penalties for Nursing Homes, 2023, https://www.medicare.gov/care-compare/resources/nursing-home-penalties.

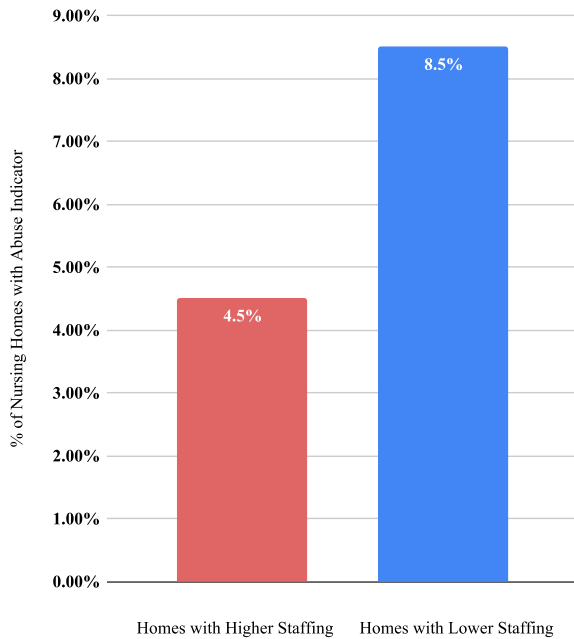[28] Congressional Research Service, Requested Analysis of Nursing Home Compare Data with the Proposed Nursing Home Staffing Standards, prepared for Sen. Elizabeth Warren, October 19, 2023.

[29] *Id.*

[30] *Id.*

[31] *Id.*

**Figure 4: Nursing Homes that Do Not Meet
CMS Proposed Staffing Standards are More
Likely to Have Residents that Suffer from**

IV.   Conclusion

CMS's minimum staffing rule for nursing homes has engendered intense opposition from nursing home lobbyists. But this analysis reveals that the rule will have significant benefits for nursing home residents. The analysis reveals that compared to nursing homes with higher staffing levels, nursing homes with low staffing levels have lower overall quality ratings, are more likely to have a history of serious quality issues, are more likely to have serious deficiencies in care, and are more likely to have residents that suffer from abuse. The analysis shows that, if CMS finalizes a strong new rule to impose higher minimum staffing ratios for nursing homes, it will have significant benefits by improving the quality of care for millions of residents in thousands of nursing homes across the country.