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NURSING HOMES
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HOME HEALTH
HOSPICE

CMS Staffing Mandate Final Rule

Effective November 14, 2024

Summary of Requirements

- Facility Assessment August 8, 2024 (All facilities)
- 3.48 HPRD May 10, 2026 (Urban) May 10, 2027 (Rural)
- 24/7 RN May 10, 2026 (Urban) May 10, 2027 (Rural)
- .55 RN HPRD May 10, 2027 (Urban) May 10, 2029 (Rural)
- 2.45 CNA HPRD May 10, 2027 (Urban) May 10, 2029 (Rural)
- .48 HPRD Combination May 20, 2027 (Urban) May 10, 2029 (Rural)
- **CMS estimates the total cost of the final rule at \$43 billion over 10 years or about \$4.3 billion per year**
- **There are other estimates that show the cost to be closer to \$5.5 to \$6 billion per year**

“Urban” MSAs: Aberdeen, Brookings, Huron, Mitchell, Pierre, Rapid City, Sioux Falls, Spearfish, Vermillion, Watertown, Yankton. **OMB revisions would include Canton, Canistota & other surrounding areas*

Annual Cost and estimated FTE's needed

Requirement	Estimated Annual Cost (\$ in millions)	Estimated Full Time Equivalent
Nurse Aide Hours per Resident Day of 2.45	\$3,526	77,366
RN 24/7 & RN Hours per Resident Day of 0.55	\$2,169	23,395
Total Hours per Resident Day of 3.48	\$61	783
Total	\$5,756	101,544

Clifton Larson Allen 2024

Declining Workforce

FIGURE E

Nursing home workers and residents, 2019–2022

	2019	2020	2021	2022
Nursing home workers				
All occupations	1,603,800	1,534,120	1,407,480	1,343,240
RNs	151,300	143,250	131,320	124,690
LPN	209,440	199,760	177,960	171,030
NAs	566,240	527,480	471,160	447,940
Nursing home residents				
	1,330,591	1,316,950	1,098,305	1,157,714

Sources: BLS OEWS 2019–2022a and KFF 2023a.

Economic Policy Institute

South Dakota Impact

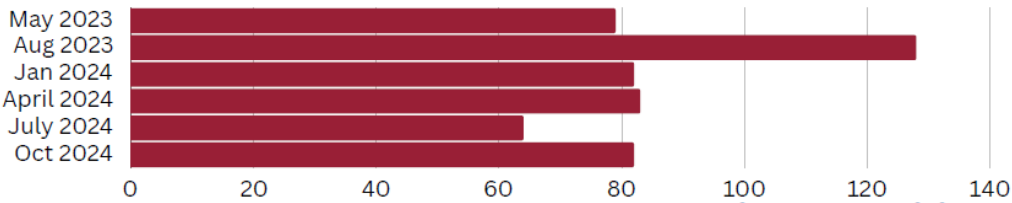
- Payroll Based Journal (PBJ) is the tool CMS uses to collect staffing data from SNF's.
- Based on the latest data available from PBJ:
- Less than 5% (4 of 94**) of our nursing homes are currently meeting the .55 RN minimum requirement.
- Only 6% (6 of 94) meet the CNA 2.45 HPRD mandate
- Less than 5% (4 of 94) of facilities are meeting total nursing hours (3.48) minimum requirement
- Cost per facility to meet 24/RN--\$55,000 per facility
- 53% (50 of 94) of nursing homes are currently utilizing some contract RN's
- 57% (54 of 94) of nursing homes are currently utilizing some contract C.N.A. staff
- 44% (41 of 94) of nursing home are currently utilizing some contract L.P.N. staff
- **The estimated additional yearly cost to meet the proposed staffing regulation in South Dakota is \$19,684,772, roughly \$205,049/nursing home**
- **This number will be significantly higher if contract/travel staff are utilized to meet the mandate.**

**2 facilities missing data

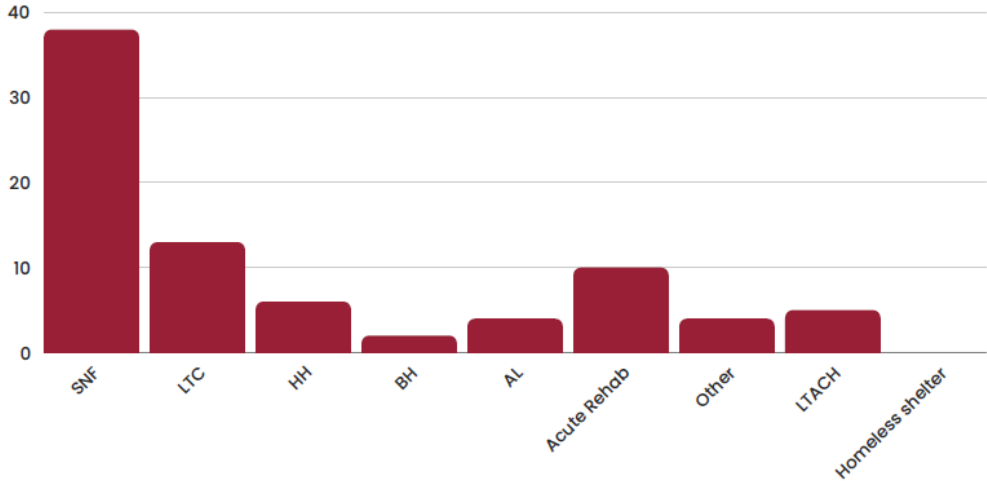
Lack of Post-Acute Beds

In addition to the patients awaiting discharge for 7 days or longer, at the time of the survey SD hospitals reported 4 patients in the Emergency Department awaiting an inpatient bed and 87 patients awaiting bed acceptance to a tertiary care center.

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 \$1.70M.

October 2024

American Hospital Association Letters of Support

- Letters to House and Senate from AHA
- If CMS Mandate moves forward, hospitals have concerns:
 - Nursing homes could reduce capacity or close
 - There could be delays in urgent medical care in emergency departments
 - Increase in patients awaiting discharge
 - Creates backlog for hospitals that are already struggling with available beds
 - Final rule would intensify the already serious shortage of healthcare workers

South Dakota Nursing Home Closures

2020-2024

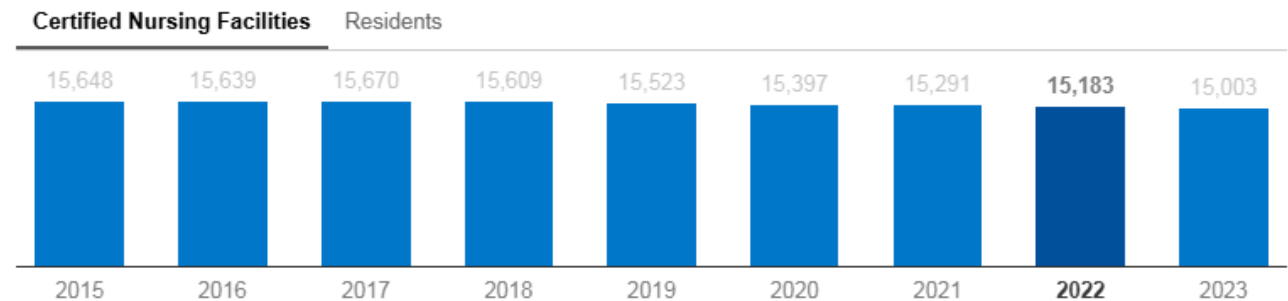
- Ipswich
- Lennox
- Clear Lake
- Salem
- Armor
- Elk Point
- Arlington
- Martin
- Custer

2015-2019

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

Figure 2

The Number of Certified Nursing Facilities and Residents Is Lower Than in 2015

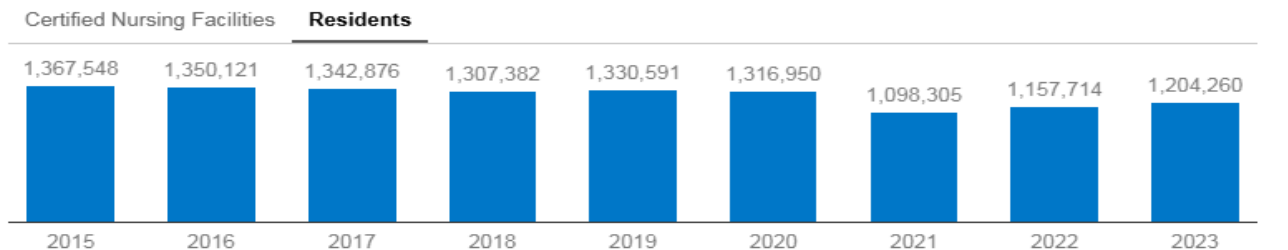


SOURCE: KFF State Health Facts, Total Number of Certified Nursing Facilities and Total Number of Certified Nursing Facility Residents, 2015-2023 • PNG

KFF

Figure 2

The Number of Certified Nursing Facilities and Residents Is Lower Than in 2015



SOURCE: KFF State Health Facts, Total Number of Certified Nursing Facilities and Total Number of Certified Nursing Facility Residents, 2015-2023 • PNG

KFF

Lawsuits to challenge CMS Mandate

LeadingAge/AHCA Lawsuit

- Filed May 23rd
- Currently in a 5-step briefing schedule
- DOJ submitted 75,000 pages in September on data they used to arrive at final rule. 90% of submission was public comment
- Motion for summary judgment submitted in October from LA/AHCA argues that CMS does not have statutory authority because Congress has already laid out staffing standards and CMS should not enact a one size fits all rule or mandate RN coverage.
- American Hospital Association filed a friend-of-the-court brief in support of the lawsuit. In addition to affirming some of the same arguments, nursing facilities have been making, AHA is concerned about capacity across states.
- Next briefing is scheduled for November 15th
- Final briefing schedule is in January
- Ruling could take a few months
- Appeal will be likely from either side

Leading Age Affiliates/State Lawsuit

- Filed October 8th
- 17 LeadingAge affiliates representing 21 states joined the suit
- 20 states Attorneys General joined including South Dakota
- 2 individual facilities in Kansas
- Asking for Injunctive Relief for facilities because providers need to start now to comply with mandate even though a majority of the mandate is 2026 and beyond.
- SDAHO provided a Declaration of Harm including the costs to meet the mandate for 3 South Dakota facilities.
- Preliminary Injunction hearing is scheduled for December 5th.

Future of CMS mandate

1. **New Administration.** With the election of President Trump, the new administration could decide to suspend implementation and issue a final rule repealing it.
2. **Lawsuit AHCA/LeadingAge.** CMS does not have statutory authority.
3. **Lawsuit LeadingAge Affiliates.** Looking for Injunctive relief.
4. **Legislation.** Federal legislation to overturn mandate.
5. **Supreme Court Decision on Chevron doctrine**
 - Previously required courts to defer to regulatory agencies to interpret laws
 - Decision says that government agencies are overextending their authority with mandates

Key Points on Mandate

- **Unfunded mandate**
- **We are not opposed to ensuring adequate staffing but do oppose a one size fits all mandate that does not take into account each facilities unique characteristics**
- **There is a shortage of RN's nationwide and in South Dakota**
- **The requirement for a 24/7 RN will be very difficult for our members to comply with.**
- **Many facilities currently have very qualified and competent LPN's**
- **Average cost for each facility in SD to meet the total nursing standard is approximately \$205,000**
- **Total cost for South Dakota facilities is nearly \$20 million dollars**
- **This figure assumes facilities don't have to use contract or temporary staff.**
- **That number goes higher if forced to higher agency staff members to comply.**
- **If the mandate continues, this could cause further nursing facility closures in SD**
- **This would further limit access to residents—especially in our rural areas**

Key Take-Aways

- 1. Nursing homes continue to face challenges.**
 - Workforce—many facilities are struggling to find adequate staffing and are using temporary or traveler staff to fill the gaps.
 - Administrative—required reporting for infection rates through NHSN and a new required ownership reporting continue to burden already stretched staffing.
 - Survey—CMS introduced a new scoring element with six measures and is putting more pressure on state survey agencies to “identify appropriate deficiencies”. CMS insists they will not impose quotas or limits.
 - Financial—there are still concerns for facilities across the state from a financial perspective. Staffing and census both contribute to this challenge.
- 2. Invest for the future.** We must continue to invest in the healthcare continuum for seniors in South Dakota, ensuring integration of services across settings. From acute care in hospitals to nursing homes, assisted living centers, home health, hospice, and palliative care, every level of care plays a crucial role. As we expand Home and Community-Based Services (HCBS) and Long-Term Services and Supports (LTSS), it will be vital to prioritize these programs to take the pressure off our nursing homes and hospitals.
- 3. Opposing the mandate.** We are opposing this mandate with every tool we have, including joining with South Dakota’s Attorney General on the lawsuit asking for injunctive relief. This mandate is going to cost facilities in South Dakota nearly \$20 million dollars, and this will continue to put a strain on the budget of our state.
- 4. Demand for Healthcare.** Healthcare is a 24/7 business. To meet the growing demand of all South Dakotans, we need to continue to build the healthcare workforce pipeline by removing barriers and streamlining processes while making it easier for more individuals to enter and thrive in this essential and rewarding industry.
- 5. Challenges Persist.** Even if the CMS staffing mandate is lifted, nursing homes will still face significant challenges. The mandate has brought renewed attention to the nursing home industry, but the challenges it faces will persist, regardless of any changes to the mandate. Nursing homes will continue still face significant challenges in providing quality care, including workforce shortages, financial constraints, and regulatory burdens.