

States set minimum staffing levels for nursing homes: Residents suffer when rules are ignored or waived

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For hours, John Pernorio repeatedly mashed the call button at his bedside in the Heritage Hills nursing home in Rhode Island. A retired

truck driver, he had injured his spine in a fall on the job decades earlier and could no longer walk. The antibiotics he was taking made him need to go to the bathroom frequently. But he could get there only if someone helped him into his wheelchair.

By the time an aide finally responded, he'd been lying in soiled briefs for hours, he said. It happened time and again.

"It was degrading," said Pernorio, 79. "I spent 21 hours a day in bed."

Payroll records show that during his stay at Heritage Hills, daily aide staffing levels were 25% below the minimums under state law. The nursing home said it provided high-quality care to all residents. Regardless, it wasn't in trouble with the state, because Rhode Island does not enforce its staffing rule.

An acute shortage of nurses and aides in the nation's nearly 15,000 [nursing homes](#) is at the root of many of the most disturbing shortfalls in care for the 1.2 million Americans who live in them, including many of the nation's frailest old people.

They get festering bedsores because they aren't turned. They lie in feces because no one comes to attend to them. They have devastating falls because no one helps them get around. They are subjected to chemical and physical restraints to sedate and pacify them.

California, Florida, Massachusetts, New York, and Rhode Island have sought to improve nursing home quality by mandating the highest minimum hours of care per resident among states. But an examination of records in those states revealed that putting a law on the books was no guarantee of better staffing. Instead, many nursing homes operated with fewer workers than required, often with the permission of regulators or with no consequences at all.

"Just setting a number doesn't mean anything if you're not going to enforce it," said Mark Miller, former president of the national organization of long-term care ombudsmen, advocates in each state who help residents resolve problems in their nursing homes. "What's the point?"

Now the Biden administration is trying to guarantee adequate staffing the same way states have, unsuccessfully, for years: with tougher standards. Federal rules issued in April are expected to require four out of five homes to boost staffing.

The administration's plan also has some of the same weaknesses that have hampered states. It relies on underfunded health inspectors for enforcement, lacks explicit penalties for violations, and offers broad exemptions for nursing homes in areas with labor shortages. And the administration isn't providing more money for homes that can't afford additional employees.

Serious health violations have become more widespread since COVID-19 swept through nursing homes, killing more than 170,000 residents and driving employees out the door.

Pay remains so low—nursing assistants earn \$19 an hour on average—that homes frequently lose workers to retail stores and fast-food restaurants that pay as well or better and offer jobs that are far less grueling. Average turnover in nursing homes is extraordinarily high: Federal records show half of employees leave their jobs each year.

Even the most passionate nurses and aides are burning out in short-staffed homes because they are stretched too thin to provide the quality care they believe residents deserve. "It was impossible," said Shirley Lomba, a medication aide from Providence, Rhode Island. She left her job at a nursing home that paid \$18.50 an hour for one at an assisted

living facility that paid \$4 more per hour and involved residents with fewer needs.

The mostly for-profit nursing home industry argues that staffing problems stem from low rates of reimbursement by Medicaid, the program funded by states and the federal government that covers most people in nursing homes. Yet a growing body of research and court evidence shows that owners and investors often extract hefty profits that could be used for care.

Nursing home trade groups have complained about the tougher state standards and have sued to block the new federal standards, which they say are unworkable given how much trouble nursing homes already have filling jobs. "It's a really tough business right now," said Mark Parkinson, president and chief executive of one trade group, the American Health Care Association.

And federal enforcement of those rules is still years off. Nursing homes have as long as five years to comply with the new regulations; for some, that means enforcement would fully kick in only at the tail end of a second Biden administration, if the president wins reelection. Former President Donald Trump's campaign declined to comment on what Trump would do if elected.

Persistent shortages

Nursing home payroll records submitted to the federal government for the most recent quarter available, October to December 2023, and state regulatory records show that homes in states with tougher standards frequently did not meet them.

In more than two-thirds of nursing homes in New York and more than half of those in Massachusetts, staffing was below the state's required

minimums. Even California, which passed the nation's first minimum staffing law two decades ago, has not achieved universal compliance with its requirements: at least 3½ hours of care for the average resident each day, including two hours and 24 minutes of care from nursing assistants, who help residents eat and get to the bathroom.

During inspections since 2021, state regulators cited a third of California homes—more than 400 of them—for inadequate staffing. Regulators also granted waivers to 236 homes that said workforce shortages prevented them from recruiting enough nurse aides to meet the state minimum, exempting them from fines as high as \$50,000.

In New York, Gov. Kathy Hochul declared an acute labor shortage, which allows homes to petition for reduced or waived fines. The state health department said it had cited more than 400 of the state's 600-odd homes for understaffing but declined to say how many of them had appealed for leniency.

In Florida, Gov. Ron DeSantis signed legislation in 2022 to loosen the staffing rules for all homes. The law allows homes to count almost any employee who engages with residents, instead of just nurses and aides, toward their overall staffing. Florida also reduced the daily minimum of nurse aide time for each resident by 30 minutes, to two hours.

Now only one in 20 Florida nursing homes are staffed below the minimum—but if the former, more rigorous rules were still in place, four in five homes would not meet them, an analysis of payroll records shows.

"Staffing is the most important part of providing high-quality nursing home care," said David Stevenson, chair of the health policy department at Vanderbilt University School of Medicine. "It comes down to political will to enforce staffing."

The human toll

There is a yawning gap between law and practice in Rhode Island. In the last three months of 2023, only 12 of 74 homes met the state's minimum of three hours and 49 minutes of care per resident, including at least two hours and 36 minutes of care from certified nursing assistants, payroll records show. One of the homes below the minimum was Heritage Hills Rehabilitation & Healthcare Center in Smithfield, where Pernorio, president of the Rhode Island Alliance for Retired Americans, went last October after a stint in a hospital.

"From the minute the ambulance took me in there, it was downhill," he said in an interview.

Sometimes, after waiting an hour, he would telephone the home's main office for help. A nurse would come, turn off his call light, and walk right back out, and he would push the button again, Pernorio reported in his weekly e-newsletter.

While he praised some workers' dedication, he said others frequently did not show up for their shifts. He said staff members told him they could earn more flipping hamburgers at McDonald's than they could cleaning soiled patients in a nursing home.

In a written statement, Heritage Hills did not dispute that its staffing, while higher than that of many homes, was below the minimum under state law.

Heritage Hills said that after Pernorio complained, state inspectors visited the home and did not cite it for violations. "We take every resident concern seriously," it said in the statement. Pernorio said inspectors never interviewed him after he called in his complaint.

In interviews, residents of other nursing homes in the state and their relatives reported neglect by overwhelmed nurses and aides.

Jason Travers said his 87-year-old father, George, fell on the way to the bathroom because no one answered his call button.

"I think the lunch crew finally came in and saw him on the floor and put him in the bed," Travers said. His father died in April 2023, four months after he entered the home.

Relatives of Mary DiBiasio, 92, who had a hip fracture, said they once found her sitting on the toilet unattended, hanging on to the grab bar with both hands. "I don't need to be a medical professional to know you don't leave somebody hanging off the toilet with a hip fracture," said her granddaughter Keri Rossi-D'entremont.

When DiBiasio died in January 2022, Rhode Island was preparing to enact a law with nurse and aide staffing requirements higher than anywhere else in the country except Washington, D.C. But Gov. Daniel McKee suspended enforcement, saying the industry was in poor financial shape and nursing homes couldn't even fill existing jobs. The governor's executive order noted that several homes had closed because of problems finding workers.

Yet Rhode Island inspectors continue to find serious problems with care. Since January 2023, regulators have found deficiencies of the highest severity, known as immediate jeopardy, at 23 of the state's 74 nursing homes.

Homes have been cited for failing to get a dialysis patient to treatment and for giving one resident a roommate's methadone, causing an overdose. They have also been cited for violent behavior by unsupervised residents, including one who shoved pillow stuffing into a

resident's mouth and another who turned a roommate's oxygen off because it was too noisy. Both the resident who was attacked and the one who lost oxygen died.

Bottom lines

Even some of the nonprofit nursing homes, which don't have to pay investors, are having trouble meeting the state minimums—or simply staying open.

Rick Gamache, chief executive of the nonprofit Aldersbridge Communities, which owns Linn Health & Rehabilitation in East Providence, said Rhode Island's Medicaid program paid too little for the home to keep operating—about \$292 per bed, when the daily cost was \$411. Aldersbridge closed Linn this summer and converted it into an assisted living facility.

"We're seeing the collapse of post-acute care in America," Gamache said.

Many nursing homes are owned by for-profit chains, and some researchers, lawyers, and state authorities argue that they could reinvest more of the money they make into their facilities.

Bannister Center, a Providence nursing home that payroll records show is staffed 10% below the state minimum, is part of Centers Health Care, a New York-based private chain that owns or operates 31 skilled nursing homes, according to Medicare records. Bannister lost \$430,524 in 2021, according to a financial statement it filed with Rhode Island regulators.

Last year, the New York attorney general sued the chain's owners and investors and their relatives, accusing them of improperly siphoning \$83 million in Medicaid funds out of their New York nursing homes by

paying salaries for "no-show" jobs, profits above what [state law](#) allowed, and inflated rents and fees to other companies they owned.

For instance, one of those companies, which purported to provide staff to the homes, paid \$5 million to the wife of Kenny Rozenberg, the chain's [chief executive](#), from 2019 to 2021, the lawsuit said.

The defendants argued in court papers that the payments to investors and owners were legal and that the state could not prove they were Medicaid funds. They have asked for much of the lawsuit to be dismissed.

Jeff Jacomowitz, a Centers Health Care spokesperson, declined to answer questions about Bannister, Centers' operations, or the chain's owners.

Miller, the District of Columbia's long-term care ombudsman, said many nursing home owners could pay better wages if they didn't demand such high profits. In D.C., 7 in 10 nursing homes meet minimum standards, payroll records show.

"There's no staffing shortage—there's a shortage of good-paying jobs," he said. "I've been doing this since 1984 and they've been going broke all the time. If it really is that bad of an investment, there wouldn't be any nursing homes left."

The new federal rules call for a minimum of three hours and 29 minutes of care each day per resident, including two hours and 27 minutes from nurse aides and 33 minutes from registered nurses, and an RN on-site at all times.

Homes in areas with worker shortages can apply to be exempted from the rules. Dora Hughes, acting chief medical officer for the U.S. Centers for Medicare & Medicaid Services, said in a statement that those waivers

would be "time-limited" and that having a clear national staffing minimum "will facilitate strengthened oversight and enforcement."

David Grabowski, a health policy professor at Harvard Medical School, said federal health authorities have a "terrible" track record of policing nursing homes. "If they don't enforce this," he said, "I don't imagine it's going to really move the needle a lot."

Methodology for analysis of nursing home staffing

The KFF Health News data analysis focused on five states with the most rigorous staffing requirements: California, Florida, Massachusetts, New York, and Rhode Island.

To determine staffing levels, the analysis used the daily payroll journals that each nursing home is required to submit to the federal government.

These publicly available records include the number of hours each category of nursing home employee, including registered nurses and certified nursing assistants, worked each day and the number of residents in each home. We used the most recent data, which included a combined 1.3 million records covering the final three months of 2023.

We calculated staffing levels by following each state's rules, which specify which occupations are counted and what minimums homes must meet. The analysis differed for each state. Massachusetts, for instance, has a separate requirement for the minimum number of hours of care registered nurses must provide each day.

In California, we used state enforcement action records to identify homes that had been fined for not meeting its law. We also tallied how many California homes had been granted waivers from the law because they couldn't find enough workers to hire.

For each state and Washington, D.C., we calculated what proportion of homes complied with state or district law. We shared our conclusions with each state's nursing home regulatory agency and gave them an opportunity to respond.

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