

Testimony on Contract Nursing Study
Healthcare Committee
May 30, 2024

Good afternoon, Chairman Davison and members of the Healthcare Committee. My name is Nikki Wegner, President of the North Dakota Long Term Care Association. We represent 192 assisted living, basic care, and skilled nursing facilities (SNFs) in North Dakota (ND). Thank you for the opportunity to provide an update related to the presentation I provided in January regarding the Contract Nursing Study.

As a reminder, one of our association's committees started with a review of the proposed bill regarding contract nursing from 2015 and studied its relevancy for today. They suggested some edits and conceded that licensing and standards of contract nursing agencies may be a beneficial direction to improve resident safety.

This committee requested that we continue our study and expand the committee to other interested parties. We put out an invite to those we knew were using contract nursing agencies. Ultimately those that joined the NDLTCA's committee were the ND Hospital Association, Interim Healthcare, DTN Staffing, the ND Nurses Association, and the Anne Carlson Center. The group discussed an observation of a significant increase in the number of contract agencies operating in the state, growing from 8 to over 60. While some organizations reported positive experiences with contract staff, others highlighted challenges impacting resident safety. Contract agencies acknowledged the difficulty in evaluating staff and encouraged organizations to report issues and conduct their own assessments and orientations as well.

The expanded committee discussed the need for minimum standards for contract agencies to ensure quality and safety, with a consensus that these standards would encourage best practices. Concerns were raised about the efficiency of investigations into serious incidents involving contract staff. There was agreement on the importance of thorough background checks and the potential benefits of licensing these agencies.

The members of the expanded committee are continuing to gather feedback from their members and consumers.

In January, I mentioned that there was a Center of Medicare and Medicaid Service's (CMS) minimum staffing rule looming. The federal minimum staffing mandate is now final.

The staffing mandate requires a specific total nurse staffing, nurse aide, and RN hours per resident day (HPRD). However, we are most concerned about the fourth component of the rule that requires nursing homes to have an RN on-site 24 hours a day, 7 days a week. Currently, RNs are required to work 8 continuous hours per day. And Licensed Practical Nurses (LPNs) fill in the remaining 16 hours of care.

Traditionally, North Dakota nursing homes have exceeded these minimum total nursing staffing levels due to the higher acuity and care needs of our residents. However, the new requirement for nursing homes to have an RN on site 24 hours per day presents a significant challenge, especially nights and weekends. Nursing homes are already facing a historic labor crisis brought on by the pandemic. The current shortage of RNs makes it nearly impossible for nursing homes in our state to meet this aspect of the rule. Unfortunately, there are simply not enough nursing staff within our state to meet the demand for these positions to

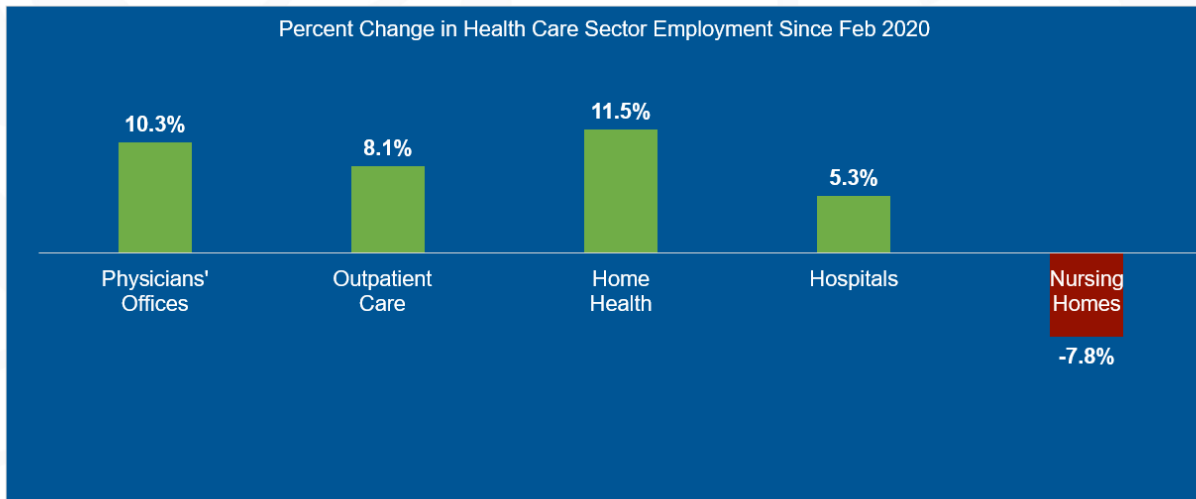
be on site 24/7. Currently, the facilities generally have 24/7 access to an RN, physician's assistant, nurse practitioner, or physician via phone or telehealth.

In a comprehensive analysis using data from the American Health Care Association and National Center for Assisted Living (AHCA/NCAL), if we had to comply with the rule today, only 17% of facilities meet the requirement. We would need to downsize facilities, putting more than 74 residents at risk of being displaced and many more if facilities begin closing.

Skilled nursing facilities in **rural** areas (as defined by the Office of Management and Budget OMB) have until May 10, 2027 to comply with 24/7 RN. And facilities in **non-rural** areas have until May 10, 2026. The definition of rural vs. non-rural has been changed in this rule. Many of the communities that used to be considered rural such as Jamestown, Valley City, Williston, Dickinson, and Devil's Lake will now be considered non-rural meaning that they will have the shorter time frame to comply.

Our industry lost a large part of our workforce during the pandemic, and we have not recovered. Since February 2020, other healthcare sectors have had a positive change in employment. Whereas nursing homes continue to experience challenges.

NURSING HOMES: WORST IMPACTED THAN ANY OTHER HEALTH CARE SECTOR



Source: Bureau of Labor Statistics (BLS) February 2020 – March 2024

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Our members are utilizing various resources to address the labor shortages. We are actively participating in the legal immigration process; however, it can be years before a facility will successfully obtain an RN. We have relationships with the high schools' CTE programs, the apprenticeship programs are growing, we are raising wages to be competitive and providing sign on bonuses, and we are working with colleges to develop efficient pathways to upskill our current workforce. We have a great partnership with the ND Department of Health and Human Services allowing us opportunities to provide nurse scholarships to those interested in working in long term care and we recently created a hybrid pathway for CNA training that will increase access to people in rural areas. As a last resort, due to the cost, we are also utilizing contract nursing agencies.

There were a couple federal initiatives, one of which was introduced by our own Senator, Senator Cramer.

2022 Cramer Introduces Bill to Increase Transparency of Travel
Nursing Agencies-

<https://www.cramer.senate.gov/news/press-releases/sen-cramer-introduces-bill-to-increase-transparency-of-travel-nursing-agencies>

2022 Murphy, Miller-Meeks Introduce Bill to Study Impact of Travel
Nursing Agencies on Health Industry in America-

<https://murphy.house.gov/media/press-releases/murphy-miller-meeks-introduce-bill-study-impact-travel-nursing-agencies-health>

When we take on the care of the communities' loved ones, we must ensure that we have the staff to care for them and sometimes that means we must temporarily fill that in with contract nursing staff. We would never have survived the pandemic without them, and we rely on them now with the labor shortage. So far, the federal initiatives have not come to fruition, therefore, the list of states who require these agencies to become licensed within their states is continuing to grow and includes Colorado, Connecticut, DC, Indiana, Iowa, Florida, Rhode Island, Maine, Pennsylvania, Louisiana, New Hampshire, Kentucky, Massachusetts, Nevada, Oregon, Minnesota, and Missouri. We'd like to add North Dakota to the list.

We look forward to continuing to work with you on this important issue. I would be happy to answer any questions you may have.

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