

**Testimony on Contract Nursing Study**  
**Healthcare Committee**  
**August 30, 2023**

Good afternoon, Chairman Davison and members of the Healthcare Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 192 assisted living, basic care, and skilled nursing facilities in North Dakota. Thank you for the opportunity to testify regarding the impact on entities who receive Medicaid funding and utilize contract nursing agencies. Most of my comments will be regarding skilled nursing facilities, as basic care has far less reliance on contract nursing and assisted living is not a Medicaid provider.

First, I would like to start with the study and review we have done on contract nursing. We have been actively discussing the issue of contract nursing since 2011 when we started tracking the dollars nursing facilities were spending on contract nursing. In 2015 we asked Representative Dick Anderson to introduce legislation on contract nursing. In my testimony in 2015, I noted the use of contract nursing increased 155% from June 2011 to June 2014. That number of \$15.5 million alarmed us. Little did we know, just 8 years later, that annual number would be \$63.8 million, over an 300% increase from 2015.

The 2015 legislation proposed some oversight and standards for all contract nursing agencies operating in North Dakota. It was found North Dakota did not have any regulations, standards, or oversight of contract nursing. It was felt some uniformity, and providing some core standards

would help to address some quality issues that were being expressed. We also considered seeking price controls, like what Minnesota does. In the end that feature was not proposed, as it was felt legislators would not support it. Eventually the legislation was amended into a study, with the legislative council not selecting it for the study.

So today you are the first interim committee to study contract nursing. We are excited about the study and potential solutions for controlling costs and assuring quality.

Today we have 77 licensed skilled nursing facilities and 91% or 70 use contract nursing. Please look at the first chart on contract nursing, labeled "A". This chart shows \$28.8 million was spent on contract nursing in 2021 and that escalated to a spend in 2022 of \$63.8 million.

Why would we turn to contract nursing if it is so costly? Skilled nursing facilities use contract nursing agencies when they don't have sufficient staff to provide daily resident care. When they have open shifts, they first encourage their own staff to pick up more shifts, often providing overtime and incentive pay. Sometimes it is not possible due to staff flu outbreaks, maternity leave, childcare shortages, or other unexpected issues. Most recently, it was the pandemic that caused significant staff shortages.

According to the Bureau of Labor Statistics, today North Dakota lost -14.6 of their nursing facility staff during the pandemic, the lowest point being February 2022 when we stood at a loss of -15.8. See Attachment B for the percent change in staffing since February 2020. The data for 2023 was just released a few days ago.

We are making a very slow recovery. Many facilities simply do not have the staff to assure residents get the care they need so they turn to agencies to help fill the gap. What used to be a temporary solution to having staff has now turned into a deep dependence for many facilities. If we didn't have contract agencies, many would need to downsize or close. In good conscience you can't stay open if you can't meet the staffing needs of residents. They depend upon us for their daily care.

During the pandemic, we had 5 skilled nursing facilities and 2 basic care facilities close, (see Attachment C for the list of closures). Never in such a short time have we ever had this number of closures. High inflation, the cost of contract nursing, expansion of regulations, (vaccine and mask mandates, new reporting regulations and never before lockdowns), crippled many facilities.

At one time during the pandemic, many nursing facilities were operating with large losses. Look at Attachment D – A survey our Association conducted during the Pandemic.

Vivian Health, a national healthcare hiring marketplace recently reported on the RN average/salary for all 50 states and travel nurses pay.

ND RN Average Wage May 2021 (BLS)

Hourly: \$34.23 (US average \$39.78)

ND RN Travel Wages

Hourly in Dec 2022: \$83.45

Hourly in Jan 2023: \$80.67

Besides the higher travel wage per hour, contract staff also received lodging/travel/meal stipends.

Minnesota is one of the states that controls the maximum charge an agency can charge. See their limits below:

## MN Department of Human Services



### SNSA Maximum Charges 2023 for Licensed Nursing Homes in Minnesota

The charges below apply to providers licensed under [MN Statute 144A \(https://www.revisor.mn.gov/statutes/cite/144A\)](https://www.revisor.mn.gov/statutes/cite/144A).

#### Statewide Maximum Allowed Charges Effective January 1, 2023 - December 31, 2023

RN	\$67.02
LPN	\$54.87
CNA	\$37.43
TMA	\$39.86

#### Statewide Maximum Allowed Holiday Charges Effective January 1, 2023 - December 31, 2023

RN	\$115.28
LPN	\$96.57
CNA	\$65.12
TMA	\$72.14

#### Statewide Maximum Allowed Charges Effective January 1, 2022 - December 31, 2022

RN	\$62.36
LPN	\$50.75
CNA	\$34.10
TMA	\$36.57

#### Statewide Maximum Allowed Holiday Charges Effective January 1, 2022 - December 31, 2022

RN	\$107.25
LPN	\$89.31
CNA	\$59.33
TMA	\$66.20

Attachment E in my testimony is a list of states and their status on contract nursing legislation in their state, as well as links to their legislation.

Today we are awaiting additional federal regulations on staffing. President Biden through an executive order has mandated minimum staffing requirements for skilled nursing facilities. Today each state determines if they want to regulate the number of staff each facility must employ. The current federal regulation states you must have sufficient staff to allow each resident to function at their highest practical level. Without a staffing mandate North Dakota nursing facilities have always been one of the top three states in our staffing.

CMS tracks the hours worked by all nursing staff, (RN, LPN, CNA, Medication Aides), in all nursing facilities, (PBJ reporting). The hours reported in the Payroll Based Journal are used to calculate the ratio of staffing hours per resident per day. Hours per resident day indicate the average amount of time nurse staff are available to spend with each resident each day.

4.66 ND nurse hours per resident day

3.77 US nurse hours per resident day

See Attachment F that shows our nurse hours per resident day and the resident satisfaction results in North Dakota compared to the United States.

We are looking forward to working with you on this important issue. I would be happy to answer any questions you may have.

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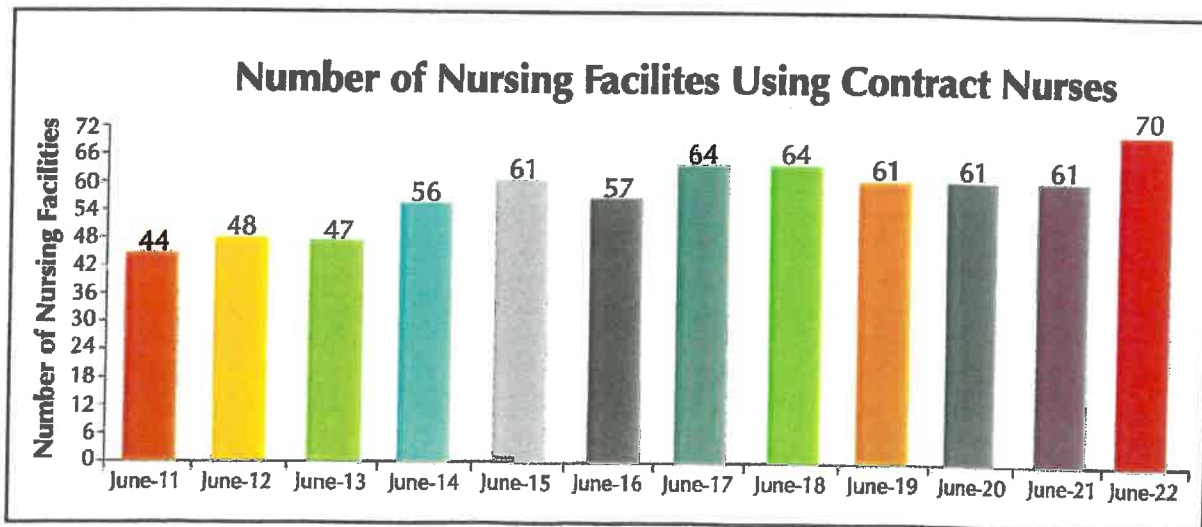
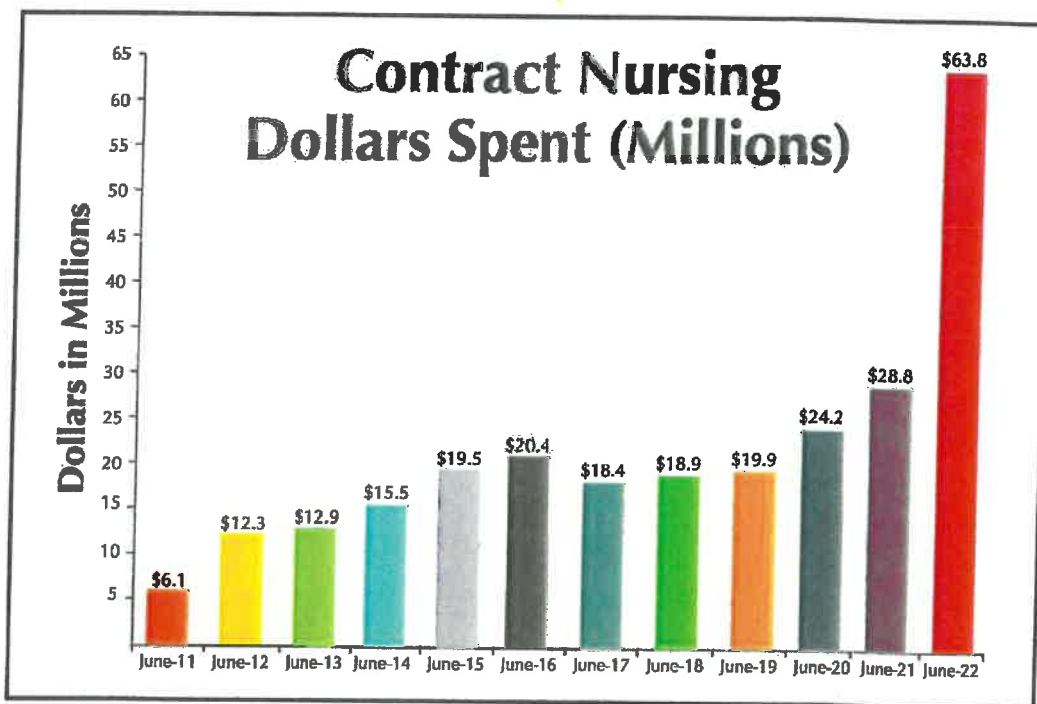


2011-2022

# Nursing Facilities

## Contract Nursing In Nursing Facilites

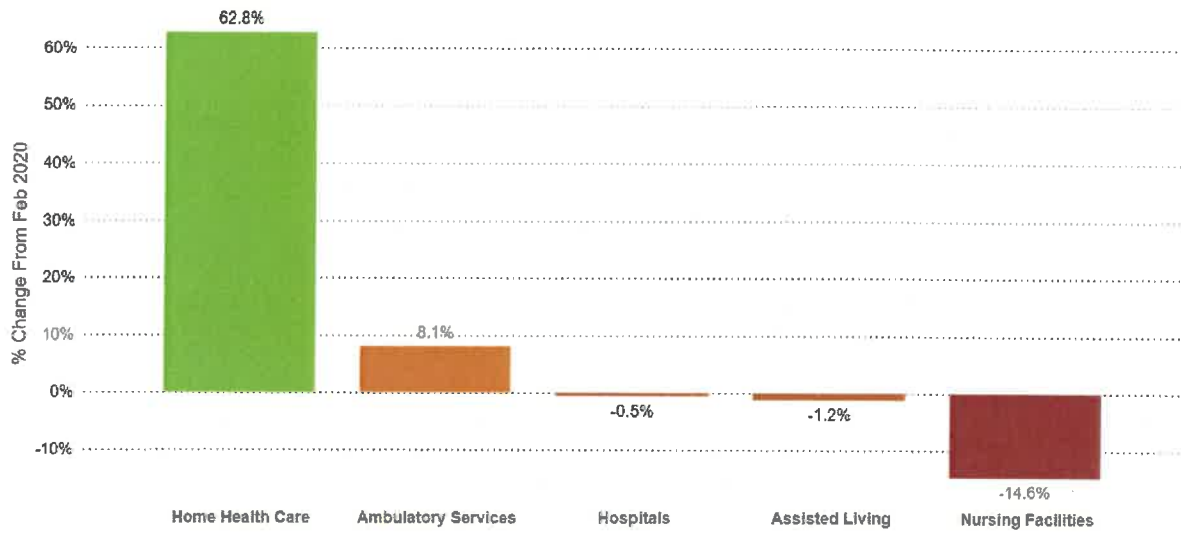
When facilities face staffing shortages, one option is to use contract staff to provide daily resident care. In the past year, contract nursing costs has more than doubled from the previous 12 months.



State

North Dakota

### Percent Change in Health Care Sector Employment since February 2020 by State



Source: Bureau of Labor Statistics, Quarterly Census of Employment and Wages, NAICS Industries 621, 6216, 622 6231, 623312.

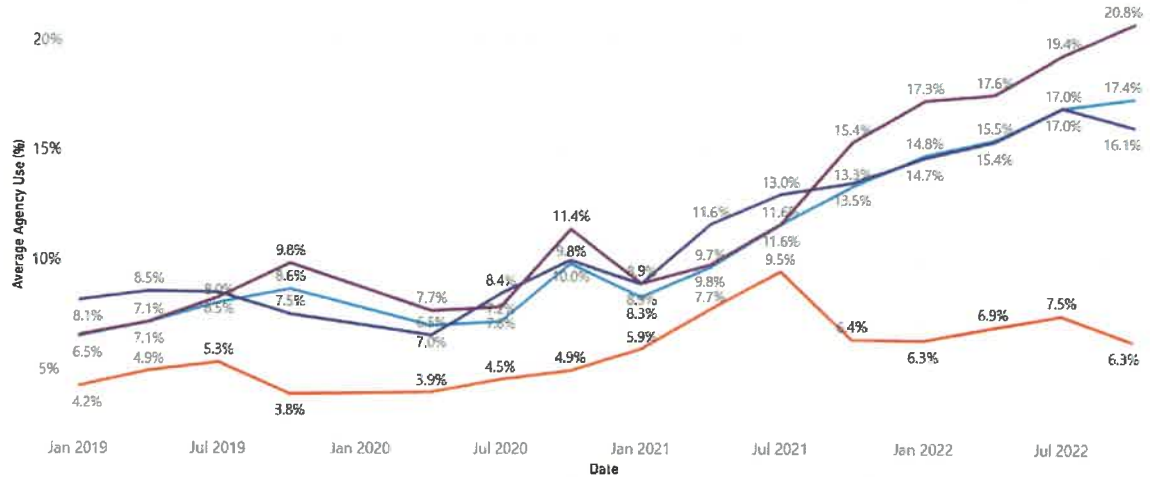
### Percent of Nurse Agency Use (Average)

State: ND  
 Congressional District: All

82

Nursing Homes

● Total Nursing ● LPN/LVN ● RN ● CNA/Aide



Source: CMS Payroll Based Journal (PBJ)

### Percent Change in Nursing Facilities since February 2020





Long Term Care Facility Closures  
Updated January 2023

City	Facility	NF Beds	BC Beds	Close Date
Bismarck	CHI St. Alexius Health - TCU	19		July 2022
Bowman	Southwest Healthcare Services	34		December 2021
Bowman	Southwest Healthcare Services		16	December 2022
Crosby	St. Luke's Sunrise Care Center	35		September 2021
Devils Lake	Eventide Devils Lake (closed 1 of 2 NF)	48		January 2021
Mott	GSS - Mott	42		June 2022
Northwood	Northwood Deaconess health Center	32		2024 OR 2025
Rugby	Heart of America	33		2024 OR 2025
Wilton	Redwood Village		16	July 2022
		<b>243</b>	<b>32</b>	

Newly opened nursing facility:

Elim Care Center, Fargo - closed January 2020 due to fire. Reopened October 2022

## NDLTCA Member Survey on Workforce Shortage Crisis & The Impact of COVID-19 In Long Term Care Facilities

North Dakota's long term care facilities have been in the epicenter of the COVID-19 pandemic, which exacerbated an already serious workforce shortage. The North Dakota Long Term Care Association recently surveyed its members and received concerning responses showing just how seriously workforce shortages are crippling the ability of long term care facilities to meet the needs of residents.

**Eighty-Nine percent** of facilities are reporting a **shortage** of staff members to fill a shift. Virtually all facilities, (96%), are asking staff to work overtime or take extra shifts.

The **costs to fight the pandemic** have left the majority of **long term care facilities struggling**, with **57% operating at a loss today**.

**THE SURVEY RESULTS** **74%** of long term care facilities say their **workforce situation has gotten worse** since 2020.

How North Dakota Long Term Care Association members are trying to address these workforce challenges

**79%** working to hire new staff  
**70%** increasing pay to staff  
**56%** offering bonuses to staff who work overtime/double shifts  
**54%** hiring contract staff



### In the Past 60 Days

**96%** have asked staff to work overtime or take extra shifts

**89%** do not have sufficient staff to fill shifts

**57%** have turned to agency staff to fill shifts



When asked about their current staffing situation, North Dakota Long Term Care Members responded:

**79%** ranked it concerning to crisis

**\*34%** concerning, beginning to have numerous open shifts

**\*24%** disconcerting, few applicants and we need more staff

**\*21%** crisis, numerous open shifts and few qualified applicants or no applicants

**Members indicated the following positions that are vacant or are recruiting to fill:**

- 88%** CNA or direct caregiver
- 70%** Dietary Staff
- 52%** RN
- 51%** LPN
- 49%** Housekeeping
- 24%** Activities
- 24%** Other support staff (e.g., maintenance, office)
- 10%** Director of Nursing
- 6%** Rehab Staff
- 6%** Social Workers
- 4%** Infection Preventionist
- 2%** Administrators

**In 2020, what was the primary reason staff members left their job?**

- #1** Quit
- #2** Burn out/Stress of job
- #3** Retirement

**78%** felt directly or indirectly the reason related to staff losses was due to **COVID-19**



When asked to rank steps that would **help them improve** their ability to **recruit and retain staff**, over three quarters of members cited higher **reimbursement** as the **BEST** way to retain staff.

They ranked measures as follows:

- #1** Higher reimbursement to offer better pay and benefits
- #2** Less regulations and/or paperwork
- #3** Improved perception of working in the profession
- #4** Improving the workplace culture/environment
- #5** Reinstatement of the temporary nurse aid program
- #6** More training programs at local schools and higher institutions
- #7** Career ladder programs



We need your help! Get vaccinated and apply for a job in a long term care facility – You will make a difference!



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## **PROPOSED STATE LEGISLATION:**

### **Colorado**

HB 23-1030 will prohibit staffing agencies from charging “separation fees” to providers when we hire temporary staff to become fulltime team members. There would be a 30-day window during which they would still be allowed to charge the fees, but after 30 days, they would be disallowed from charging. It has passed both Houses but picked up an amendment in the second House. It should be passed again and sent to the Governor in the next couple of weeks.

- A link is here: [https://leg.colorado.gov/sites/default/files/documents/2023A/bills/2023a\\_1030\\_re.pdf](https://leg.colorado.gov/sites/default/files/documents/2023A/bills/2023a_1030_re.pdf)

### **Kansas**

Did not advance due to state level politics.

### **Kentucky**

House Bill 282: Create new sections of KRS Chapter 216 to define and establish registration of health care services agencies.

- Bill Page: <https://apps.legislature.ky.gov/record/22rs/hb282.html>
- Bill Text: [https://apps.legislature.ky.gov/recorddocuments/bill/22RS/hb282/orig\\_bill.pdf](https://apps.legislature.ky.gov/recorddocuments/bill/22RS/hb282/orig_bill.pdf)

### **Maine**

LD 451: An Act to Ensure Transparent and Accountable Temporary Nurse Agencies

- Bill Page: <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280085805>
- Bill Text: <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0205&item=1&snum=131>

## Summary of Staffing Agency Statutes, Regulations, and Legislation

- This bill requires temporary nurse agencies to renew registration annually and to update the registration if a temporary nurse agency changes ownership, operation or location. The bill increases the cost of registration for a temporary nurse agency from \$25 to \$1,000. The bill requires that temporary nurse agencies ensure that each employee it refers to a provider for a position meets the state and federal qualification requirements for that position, and maintains records to that effect. This bill prohibits agencies from requiring employees to recruit other employees. The bill requires temporary nurse agencies to submit an annual report to the Department of Health and Human Services, which is then required to submit a summary report to the Joint Standing Committee on Health and Human Services.

### **Michigan**

Bill introduced at the end of 2022 and ran out of time for legislative action. We will be re-introducing again in the next few weeks. We have the support of the hospital association and SEIU.

- <http://legislature.mi.gov/doc.aspx?2022-HB-6364>

### **Nebraska**

LB 335 introduced. Bill would require agencies to register annually with a registration fee. Bill very similar to Iowa's.

- [https://nebraskalegislature.gov/bills/view\\_bill.php?DocumentID=49999](https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=49999)

### **New Hampshire**

- SB 149 Bill Info - <https://supportsb149.com/>

### **Ohio**

The bill in its last form at the end of the previous session

- [https://search-prod.lis.state.oh.us/solarapi/v1/general/assembly\\_134/bills/hb466/RCH/02/hb466\\_02\\_RCH?format=pdf](https://search-prod.lis.state.oh.us/solarapi/v1/general/assembly_134/bills/hb466/RCH/02/hb466_02_RCH?format=pdf)



## Summary of Staffing Agency Statutes, Regulations, and Legislation

### Oregon

Oregon passed regulatory requirements in 2022 and is pursuing caps this session.

- The bill is House Bill 2665, <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2665/Introduced>

### Washington

The bill unanimously passed the Senate and was subject to the first hearing in the House recently.

**SB 5547, Concerning nursing pool transparency.** This legislation aims to ensure that nursing pools (staffing agencies) are registered with the Department of Health. The bill also establishes reporting requirements related to provided services. Here are key provisions for long term care providers:

- A nursing pool is required to document that each health care or long-term care personnel provided to health care facilities meets the applicable minimum credentialing requirements, which are specified to include licensure, certification, training, health requirements, and continuing education standards, for the health care or long-term care personnel's position in the health care facility
- A nursing pool is required to provide a nursing home, assisted living facility, enhanced services facility, or adult family home written notice of contract changes, including but not limited to, availability or charges for services, items, or activities, at least 90 days in advance.
- A nursing pool may not, in any contract with health care personnel or a nursing home, assisted living facility, enhanced services facility, or adult family home that lasts longer than 13 weeks, require the payment of liquidated damages, employment fees, or other compensation if health care or long-term care personnel are hired as permanent employees by the nursing home, assisted living facility, enhanced services facility, or adult family home.
- See the [Bill Report](#) for details.

### Wisconsin

- Draft Bill Text: <https://www.ahcancal.org/Workspaces/ashcae/Documents/WI%20draft.pdf>

## Summary of Staffing Agency Statutes, Regulations, and Legislation

### **NEWLY ENACTED LAWS AND REGULATIONS**

#### **Colorado**

- Governor Polis has signed Senate Bill 22-210: <https://leg.colorado.gov/bills/sb22-210>

#### **Connecticut**

Bill passed and signed into law:

- <https://www.cga.ct.gov/2022/ACT/PA/PDF/2022PA-00057-R00HB-05313-PA.PDF>

#### **Illinois**

Passed HB4666 and it has been signed into law. Final bill did not include caps rather removed conversion/placement fees, brought transparency to contracts with state and healthcare providers, guaranteed 100% of reported wages were given to the employee, removed the ability for non-competes clauses between agencies and nurses, updated liability requirements, included an attestation detailing number of contracted shifts vs. missed shifts, established a system to report complaints against an agency, prohibited recruiting potential employees on the premises of a health care facility, and created a page on the Department of Labor's website that providers can look at to see the average wage agencies are charging for Licensed Nurses and CNAs based on county.

- Bill Number [HB4666](#) and now [PA 102-0946](#)

#### **Indiana**

We created a registry with our department of health, added a complaint process investigated by our state attorney general, and prohibited conversion fees.

- Bill Page: <https://iga.in.gov/legislative/2023/bills/house/1461#document-d02d96e5>

## Summary of Staffing Agency Statutes, Regulations, and Legislation

### Iowa

Bill passed and signed into law.

- House File 2521: <https://www.legis.iowa.gov/legislation/BillBook?ba=HF2521&ga=89>



## Summary of Staffing Agency Statutes, Regulations, and Legislation

### Louisiana

Bill passed and signed into law.

- <https://legis.la.gov/legis/ViewDocument.aspx?d=1289785>

### Missouri

- Missouri Governor signed staffing agency legislation that can be found on pages 65 to 72 here: <https://www.senate.mo.gov/22info/pdf-bill/tat/SB710.pdf>, and will go into effect in August of 2022.

### North Dakota

Passed HB 1476

- Bill calls for a study of contract nursing agencies.

### Oregon

- Senate Bill 1549: <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1549/Enrolled>
- Bill Summary: <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureAnalysisDocument/64137>

### Pennsylvania

[HB 2293](#) was signed by Governor on 11/13/2022

- The new law requires registration of and establishes operating requirements for health care staffing agencies.

### Rhode Island

Establishes a cap on the rates that nursing service agencies can charge; protects clients from having their staff recruited/hired by a nursing service agency while providing services to them; updates training, report and other administrative details.

- House Bill 5870 - <https://legiscan.com/RI/text/H5870/2023>

## Summary of Staffing Agency Statutes, Regulations, and Legislation

### **Tennessee**

- TN language that passed the General Assembly and awaits signature by the TN Governor:  
<http://www.capitol.tn.gov/Bills/113/Amend/SA0455.pdf>

### **EXISTING LAWS AND REGULATIONS:**

#### **Massachusetts**

[General Laws: Part I – Title XVI-Chapter 111 - Section 72Y: Nursing pool registrations](#)

[General Laws: Part I – Title XVII-Chapter 118E - Section 13D: Duties of ratemaking authority; criteria for establishing rates](#)

Regulations: 105 CMR: DEPARTMENT OF PUBLIC HEALTH

[105 CMR 157.000: The Registration and Operation of Temporary Nursing Service Agencies](#)

#### **Minnesota**

### **SUPPLEMENTAL NURSING SERVICES AGENCY**

[144A.70](#) Registration of Supplemental Nursing Services Agencies.

## Summary of Staffing Agency Statutes, Regulations, and Legislation

[144A.71](#) Supplemental Nursing Services Agency Registration.

[144A.72](#) Registration Requirements; Penalties.

[144A.73](#) Complaint System.

[144A.74](#) Maximum Charges.

Supplemental Nursing Services Agency Registration Page:  
<https://www.health.state.mn.us/facilities/regulation/snsa/index.html>

# Nursing Facilities

## North Dakota is ranking high Resident Satisfaction

Item	Rating Value	North Dakota	United States
Overall Satisfaction	4 & 5	<b>89%</b>	75%
Nursing Care	4 & 5	<b>92%</b>	82%
Cleanliness	4 & 5	<b>96%</b>	86%
Dignity & Respect	4 & 5	<b>96%</b>	89%
Recommend to Others	4 & 5	<b>93%</b>	80%
Safety & Security	4 & 5	<b>97%</b>	91%
Individual Needs	4 & 5	<b>92%</b>	80%



CMS tracks the hours worked by different types of staff in nursing facilities. These hours are used to calculate a ratio of staffing hours per resident per day. Hours per resident per day indicate the average amount of time staff are available to spend with each resident per day.

- ND Nurse hours per day **4.66**
- US Nurse hours per day **3.77**

## Contract Nursing IN NURSING FACILITIES

When facilities face staffing shortages, one option is to use contract staff to provide daily resident care. In the past 11 years, the amount spent on contract nursing has increased over 400%.

