

5 STEPS NURSING HOMES CAN TAKE TO ADDRESS PANDEMIC FALLOUT AND NEW REGULATORY HURDLES

Insights
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Nursing homes care for one of the most vulnerable populations in the country, yet have borne the brunt of a harsh reality over the past two years and counting. Even while pandemic-related death rates decrease, staffing shortages continue in the midst of a national financial crisis – and the government is erecting new regulatory hurdles for you to navigate. But there is hope. This Insight discusses the current situation and identifies a five-step plan to help navigate your nursing home through the current crisis.

Nursing Homes Face One-Two Regulatory Punch

Before discussing solutions, it is important to understand the current situation. In January 2022, Center for Medicare Services (“CMS”) levied a new requirement requiring nursing homes to submit public data to allow consumers and families to compare information before selecting a nursing home for their loved one(s). The public release of this information exposed stark numbers, reflecting what research had already found – a large shortage in nurses, licensed practical nurses, and nurse aids, especially on the weekends. Relying on Medicare/Medicaid reimbursement to operate, nursing homes were forced into a corner, reporting numbers that reflect the physical toll, emotional trauma, and moral distress that many staff face, all of which exacerbates shortages in the hiring pool.

Further challenging regulatory requirements are forthcoming. As nursing homes cope with shortages by hiring temporary nursing aides – the most in-demand and hard to fill position – these aides must undergo new training

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requirements. The new rule will require temporary nursing aides who worked at a nursing home during the pandemic to complete a 75-hour mandatory training and pass a state certification test by October 7, 2022. Those hired after the rule's effective date, June 7, 2022, have only four months upon hire to complete the training.

While the height of the pandemic and waning resources only allowed for about eight hours of training, medical staffing experts are unclear as to the overall effects of this policy during a labor shortage, expressing concern that it may *influence* more aides to quit while *dissuading* other aides from applying. Details are yet to be hammered out. The American Health Care Association (AHCA) is working with CMS to clarify whether the training mandate can be waived for nursing homes that try but are unable to complete in four months. While, the industry also trains on the job, the mandate would not count those hours as part of the required 75 hours., Responding to the burdens associated with the mandate, there is a current bipartisan bill in Congress that would permit temporary nursing aides 24 months to complete the training. Nonetheless, it is extremely important to proceed with the trainings now such that you do not find yourself in another pickle if pending legislation is unsuccessful. Given the looming October 7 deadline, it is critical nursing homes keep apprised of the changing details to the requirement.

While the Government's assistance through Paycheck Protection Program loans and the Medicare Accelerated and Advance Payment (AAP) Program, contributed to some nursing homes' survival the past two years, the aid has markedly decreased. While the U.S. Congress considers multiple infrastructure packages, the industry's economic challenges continue to mount. The staffing shortage threatening the industry is compounded by the end of emergency aid, tight (or arguably insufficient) Medicare/Medicaid reimbursements; decline in patients (and revenue); and rising costs for personal protective equipment, insurance, labor, and other goods and services.

In June 2022, the American Health Care Association ("AHCA") recently surveyed long-term health professionals representing 14,000 nursing homes. The survey revealed the general predicament, finding that 60% of providers feel their workforce situation has worsened and 98% say they are facing ongoing difficulty in hiring, resulting in nearly all the participating providers requiring overtime. The AHCA has

had some success in lobbying bipartisan support for the Care for Our Seniors Act, which first prioritizes the nursing home staff shortage and then provides for modern infrastructure to improve quality care and oversight.

What Does the Future Hold?

Recent improvements in the nursing homes' self-reported numbers show a glimmer of hope.

There appears to be an ease in staffing shortages reflected in recent numbers. January's self-reported data showed that nearly one-third of nursing homes experienced a shortage in nursing aides, while that number decreased to one-quarter of nursing homes in May 2022. Further, staffing shortages for other nursing home providers (including nurses) decreased from 28% in January 2022 to 23.6% in May 2022. Over these few months, staffing shortages for both nurses and aides dropped from 26% to 21.9%. This decline, as well as the addition of 900 nursing home industry jobs between March and April 2022, reveals facilities have at least embarked on a gradual recovery.

Further, the effects of COVID-19 on nursing homes have quelled. We have seen markedly fewer hospitalizations nationwide by virtue of the virus's overall receptiveness to vaccination, milder symptoms, and developing therapeutics. The industry is experiencing slow but steady progress, evident in the declination of workers leaving the industry. While not out of the woods yet, the industry has begun the ascent to resolve the nursing home staffing shortage, with help on the horizon.

5 Steps to Address the Current Climate

Of course, it is not operationally or fiscally feasible to cross your fingers and simply rely on the industry's self-correction to get your organization on the right footing. You need to take active steps to aid your situation. Accordingly, the following five-step plan aims to aid navigating the crisis our industry currently faces:

- 1. Get Prepared.** Commence preparing now for the new regulation in a transparent and inclusive way. Announce and increase your organization's awareness as to new regulations, providing and requiring the 75-hour training course to new hires and aides with 4 months experience. Although CMS provides a remote 75-hour video program,

you can assign tenured aides allowing for an open line of communication and support during the process. (You may even consider casually “passing the proverbial buck” and blaming CMS for the training requirement, as new aides will likely have the same frustrations – a relatable reaction for newbies and executives alike.)

2. **Give Thanks.** Celebrate great work when you see it, particularly when an employee’s care is complimented by residents and their families. Perhaps integrate a process wherein residents and families are invited to submit “thank-you grams” for exceptional care.
3. **Put Out the Welcome Mat.** During the onboarding process, warmly welcome new employees, including introductions to all staff – possibly while treating everyone to ice cream or some other simple snack. Further, consider assigning new aides a mentor to assist in navigating their challenges. (If you are considering this step, be sure to take the pulse of your tenured aides for receptiveness and recognize and reward them.) You could also assign executives or even members of your Board of Directors (often retired, yet active individuals) to guide a new aide through their initial six months. They can serve as a source for a check-in and an ear to air concerns, perhaps off-campus at a coffee shop or restaurant. During your hiring process, be sure to emphasize these “perks” to entice applicants.
4. **Keep Your Ears Open.** Periodically solicit and reward ideas from staff about how to improve operations, communications, and the resources available to your employees. Include all staff in the solicitation.
5. **Bridge the Gap.** Find ways to integrate your residents and staff with the community – a vital resource in a changing, aging population who often feel detached from the outside world. This may include inviting a band or four-string quartet, a comic, or therapy dogs to uplift spirits of residents and staff alike. Many communities have volunteer groups showcasing such talents. Consider proactively forming a volunteer group (reaching out to schools and colleges), whether it be adult or chaperoned children who provide warm and welcomed company and conversation, possibly allowing a temporary ease in an aide’s indefinitely busy day.

At the end of the day, these recommendations can help with engaging your staff transparently and proactively in new ideas to improve retention such that their contributions, ideas, and concerns are heard and recognized.

Conclusion

We will monitor the situation and provide updates as developments occur, so make sure you are subscribed to [Fisher Phillips' Insight system](#) for the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Healthcare Industry Team](#).