

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA**

[PLAINTIFFS], *et al.*

Plaintiffs,

v.

[DEFENDANTS], *et al.*,

Defendants.

Civil Action No. _____

DECLARATION OF SUSAN WALLACE FOR LEADINGAGE OHIO

I, Susan Wallace, declare as follows:

1. I am Susan Wallace. I am over the age of 18 and a U.S. citizen. I have personal knowledge of the facts contained in this declaration unless otherwise stated. I could competently testify as to the contents of this Declaration if called upon to do so.
2. I currently serve as President & CEO of LeadingAge Ohio. LeadingAge Ohio is an Association that represents 112 non-profit, mission-driven skilled nursing communities in Ohio. These communities include Shepherd of the Valley communities in Poland, Boardman, Girard and Howland; Community First Solutions, which operates three facilities in Hamilton, Ohio; Heritage Manor of the Jewish Federation of Youngstown; and Fairlawn Retirement Community in Archbold.
3. I am familiar with and have reviewed the Center for Medicare & Medicaid Services's ("CMS") regulation titled "Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting," 89 Fed. Reg. 40,876 (the "Final Rule" or the "rule"). I have communicated with many of LeadingAge Ohio's members pertaining to the Final Rule and the burdens that it will impose on them.
4. The Final Rule will significantly increase Ohio nursing homes' costs of doing business, increase staffing difficulties and reduce provider flexibility in staffing choices. In some cases, the staffing rule will compromise the care provided by LeadingAge Ohio's members. Ohio nursing homes will be expected to absorb \$419.72 million in additional labor costs in order to implement this mandate, or an average of \$451,307 per facility, which will drive closures and service reductions across the state.
5. Not-for-profit (NFP) operators do staff at higher levels than their for-profit counterparts, with an estimated 20 percent of NFP staffing below the all-nursing threshold compared to 50 percent of their for-profit counterparts.

Reported Total Nurse Staffing Hours per Resident per Day

	Statewide	Non-Profit	For-Profit
10%	3.016	3.228	2.955
20%	3.141	3.476	3.086
30%	3.250	3.669	3.193
40%	3.356	3.905	3.286
50%	3.483	4.135	3.397
60%	3.599	4.323	3.509
70%	3.768	4.533	3.618
80%	3.997	4.841	3.783
90%	4.507	5.146	4.092

6. Despite this, most if not all LeadingAge Ohio members will still experience increased costs, diminished flexibility to meet staffing needs, and some will be forced to close and / or reduce the amount of service they provide to aging Ohioans. For example:

- a) Shepherd of the Valley community in Poland, Ohio was recently recognized as one of only six (6) nursing homes across the state to have five-star rating for quality, health inspection and staffing. Their all-nursing level (4.48 HPRD) far exceeds the threshold outlined in the rule (3.45 HPRD) as does their RN staffing level (.98 HPRD compared to .55 HPRD required by the rule). However, their nurse aide staffing is at just 2.26 HPRD, falling below the 2.45 HPRD required by the rule.
- b) Jamestowne is a community operated by Community First Solutions in Hamilton, Ohio; its population is entirely those in need of high-acuity short-term medical or rehabilitation services. Jamestowne uses few nurse aides, instead opting for most personal care being delivered by

licensed practical nurses. Their total nurse staffing hours are 4.756 HPRD. Compliance with the rule for Jamestowne would require them to hire less-skilled nurse aides instead of licensed practical nurses, effectively downgrading care for individuals with high-acuity care needs.

- c) Heritage Manor is a mission of the Jewish Federation of Youngstown and operates a nursing-rich program focused on restorative care. They are a five-star community for health inspection, long and short-stay quality measures and have a four-star rating for staffing. Their acuity is lower than others (0.97. Nursing case-mix ratio). They budget first for registered nurses and LPNs, with the remainder of their budget for nurse aides. Despite being nursing-rich, their weekend nursing is below the CMS threshold because the needs of their residents do not necessitate additional hours. Were the mandate to take effect, they would be forced to move LPN hours to nurse aides and shuffle the schedule of nurses to meet a 24/7 RN requirement. Neither of these changes are necessary for the quality of care delivered to their resident population.

7. The CMS rule, should it take effect, will also have an impact on Ohio residents. The cost of the rule's implementation in Ohio alone is estimated to be over \$420 million per year, with no funding allocated from the federal government aside from \$75 million across all states for nursing program tuition reimbursement and scholarships.

- a) 930 nursing homes participate in the Ohio Medicaid program, which in 2023 funded over 60 percent of nursing home care in Ohio.
- b) Currently, Ohio Medicaid funding fails to compensate \$70.14 of costs per resident day or \$1.23 million per year for an average 100-bed nursing home, or \$1.58 billion per year for the entire state of Ohio. Adding the staffing costs necessitated by the rule would bring the deficit to \$2 billion per year.
- c) In order to address this deficit, Ohio's Medicaid budget would need to increase by between 1-2 percent just to pay for the additional nursing home staffing costs. Ohio Medicaid already accounts for 43 percent of the state's spending (all funds).

8. Our members will be unable to obtain the workforce necessary to meet the standards in the rule. There is an insufficient nursing workforce pipeline to achieve the standards outlined in the Final Rule.
 - a) According to data analysis by our national affiliate, Ohio needs an additional 1,336 RNs and 5,519 nurse aides to meet the minimum staffing ratio provision.
 - b) That's in addition to the current 7,993 RN job openings and 7,768 nurse aide job openings in Ohio in August 2024, according to the Ohio Means Jobs database.
 - c) In December 2022, the US Health Resources and Services Administration (HRSA) updated their healthcare workforce supply and demand projections. The model predicts a national shortage of 78,610 full-time equivalent (FTE) registered nurses (RNs) by 2025 and a shortage of 63,720 FTE RNs by 2030.
 - d) According to HRSA projections, Ohio is projected to have the sixth-largest demand for long-term care staff, particularly RNs, across US states.
 - e) According to the 2023 Ohio Board of Nursing RN Ohio Workforce Data Report, only 5.5% of RNs work in nursing homes or other extended care facilities compared to 56% of RNs who work in hospital settings. Our nursing home members and other providers in the state are already at a disadvantage in this labor market and this rule will have a cascading effect on the whole health care system including state agencies and state hospitals.
 - f) Ohio is reliant on licensed practical nurses (LPNs), with 49 percent of Ohio LPNs working in nursing homes/long-term care according to the 2022 Ohio Board of Nursing Ohio LPN Workforce Report. This is the result of over a decade of slow-to-catch-up Medicaid reimbursement which forced Ohio operators to identify staffing efficiencies. LPNs have no required staffing threshold in the Final Rule, though presumably the .48 HPRD added to the final rule may be made up of LPNs.

9. While the Final Rule includes processes for waivers and exemptions, these are unpredictable for our Ohio nursing home members and cannot be relied upon.
 - a) To be exempted from aspects of the staffing rule, noncompliance needs to first be demonstrated at the time of survey and a provider must meet four narrow prongs for the exemption to be granted. That is,

there is no opportunity for a nursing home to raise their hand to alert surveyors at the time of the workforce shortage; they must first fail to meet the standards before they can be considered for temporary leniency.

Furthermore, this burdens an already-taxed state survey system. The Ohio Department of Health is already unable to comply with its current workload: over half (54.9 percent / 510 total) of Ohio nursing homes are overdue for their annual survey with no end in sight to these delays, as workforce shortages impact providers also impact state agencies.

- b) In order to receive an exemption, the provider would have to demonstrate they've offered prevailing wages in their geographic region – comparative to other facilities such as private hospitals, whose scale and financing often enable them to offer higher wages than long-term care settings. This will lead to rapid inflation in local wages, as hospitals and long-term care compete for the same, finite pool of workers. While much of Ohio considers itself rural, because of the distribution of cities across the state, these “rural” areas compete with major health systems in nearby cities for workforce.

For example, Fairlawn Retirement Community is a stand-alone, faith-based life plan community in rural Archbold, Ohio that houses roughly 10 percent of the small community's population and draws significantly from its local employment pool, with a quarter of staff residing in Archbold proper. However, there are 7 hospitals within a 30-minute drive of Archbold and an additional 8 hospitals (15 total) within 60 minutes which draw employees out of this already limited employment pool.

10. This Final Rule will lead to more closures and result in reducing access to care for Ohioans. Since the beginning of the pandemic, over 400 nursing homes have closed nationwide and between 40 and 50 have closed in Ohio, with 17 closing in calendar year 2023 alone. Among these are significant numbers of not-for-profit or historic programs, including nursing homes that supported specific populations / cultures, county homes, and programs with over-100 years of service to their communities.

11. Furthermore, Ohio has seen reductions in the number of beds as communities, including many of our members, opt to limit their exposure to rapidly inflating labor costs, including staffing agency utilization, by shrinking their nursing facility's footprint. Over the COVID-19 pandemic, Ohio saw a 12 percent reduction in beds from 88,793 in 2019 to 78,386 in 2023.

12. This contraction in nursing home care is coming at a time when need is growing: Ohio currently has the 6th largest older adult population in the United States. While Ohio's population is projected to decline by nearly 6% over the next 30 years, its population composition will shift along the way. By 2030, one in four Ohioans will be age 60 or older.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Columbus, Ohio, this ____ day of September 2024.

Susan Wallace, CEO