

# Congress of the United States

Washington, DC 20515

[[DATE]]

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Becerra:

We write with significant concerns regarding the U.S. Department of Health and Human Services' proposed rule, issued on September 1, 2023, at the direction of the White House, establishing minimum staffing requirements and standards for nursing homes.<sup>1</sup> Finalizing this proposal would result in limited access to care for seniors, mandatory increases in state Medicaid budgets, and could most consequentially lead to widespread nursing home closures.

As you know, nursing homes are continuing to experience significant workforce shortages and financial hardship. Highlighted in the proposed rule is the fact that according to the Bureau of Labor Statistics, "there are roughly 235,900 fewer health care staff working in nursing homes and other long-term care facilities compared to March of 2020."<sup>2</sup> Instead of moving forward with a regulatory mandate that would exacerbate staffing shortages, the Centers for Medicare and Medicaid Services (CMS) should collaborate and work alongside nursing homes across the country to find innovative solutions to improve the provision of care for seniors and other vulnerable populations. This includes creating apprenticeship programs, like the temporary nurse aide waiver, as well as workforce programs to develop licensed nurses specifically for long term care, to fill gaps in this workforce and provide continued access to care for nursing home residents.

In August of 2022, CMS announced its strategy to determine minimum staffing levels would build on a decades-old 2001 CMS study titled, "*Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes.*"<sup>3</sup> CMS' proposed regulatory mandate requiring nursing homes to comply with .55 hours per resident day (HRPD) for registered nurses and 2.45 HRPD for nurse aides aligns with the recommendations outlined in the 2001 report. Under these proposed staffing minimums, nursing homes around the country would need to hire nearly 13,000 registered nurses and 76,000 nursing assistants. The workforce needs are much greater than the projections suggest as they do not account for the future need

---

<sup>1</sup> Centers for Medicare & Medicaid Services: *Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting* ([Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting \(CMS 3442-P\) | CMS](#))

<sup>2</sup> Federal Register: *Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting* ([Federal Register :: Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting](#))

<sup>3</sup> Centers for Medicare & Medicaid Services: *Centers for Medicare & Medicaid Services Staffing Study to Inform Minimum Staffing Requirements for Nursing Homes* (<https://www.cms.gov/blog/centers-medicare-medicaid-services-staffing-study-inform-minimum-staffing-requirements-nursing-homes>)

of skilled nursing services as more Baby Boomers retire and age. This calculation assumes retention of all registered nurses and nurse aides, which we know is not realistic with expected retirements and other employment changes. The staffing mandate for nursing homes would also put added pressure on all other health care settings – acute and post-acute – that need nursing care, exacerbating shortages and recruitment challenges those industries are facing.

In addition to the HPRD requirements, the proposed rule requires registered nurses to be on site 24 hours per day, seven days per week. This disregards existing Medicare and Medicaid statutes. These statutes state that skilled nursing facilities and nursing facilities must provide 24-hour licensed nursing services, counting licensed practical nurses or registered nurses, and they also provide an explicit floor for onsite registered nurse staffing: eight hours per day, seven days per week. In fact, the CMS proposed rule completely disregards licensed practical nurses entirely, which is concerning as these licensed professionals are critical to high quality service delivery in nursing homes and should be counted within the nursing requirements of the rule.

To inform CMS about the implementation and impact of a minimum nurse staffing requirement, the agency commissioned a report that was finalized in June of 2023.<sup>4</sup> This report found that quality and safety thresholds could increase a modest one percentage point while costing between \$1.5 to \$6.8 billion to fully implement. Notably, Massachusetts introduced a similar minimum staffing requirements in 2020 that subsequently led to statistically insignificant effects on quality and safety of care, offering a case study should this proposal be implemented nationally.

The proposed rule offers a “hardship exemption” for the HPRD requirement only under very limited circumstances. To qualify for a one-time waiver from the mandate, long-term care facilities would need to first be cited for noncompliance, then would need to demonstrate to state surveyors a good faith effort to hire and a “financial commitment” to hiring. The information needed to demonstrate hardship may be complex and difficult to compile for facilities that are already facing significant staffing shortages. The waiver process should not be punitive, but rather rehabilitative in supporting facilities to reach appropriate staffing levels and quality outcomes for residents.

Noncompliance with CMS’ proposed minimum staffing requirements would lead to citations for noncompliance with Medicare Conditions of Participation, potentially resulting in a variety of enforcement actions, including imposition of Civil Monetary Penalties, denial of payments for new admissions, and even termination from the Medicare program. Given these punitive measures, it is likely we will see facilities across the country be forced to deny access to seniors in need of nursing home level of care to stay in compliance with the rule, especially in rural communities with health care access challenges. CMS’ one-size-fits-all regulatory requirement for nursing homes would result in numerous unintended consequences and negatively impact their capacity to recruit and retain qualified nursing professionals at a time in which the health care industry, specifically the long-term care sector, is facing workforce shortages at unprecedented levels.

We urge you to reconsider your proposal to impose new federal staffing requirements on nursing home facilities, which would adversely hurt their ability to serve existing and prospective residents. Thank you for your consideration, and we look forward to your response.

---

<sup>4</sup> Abt Associates: *Nursing Home Staffing Study* ([The Nursing Home Staffing Study Comprehensive Report \(kffhealthnews.org\)](https://www.kffhealthnews.org))

Sincerely,

[[SIGNATURES]]