

United States Senate

WASHINGTON, DC 20510

November 7, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS 3442-P, P.O. Box 8016
Baltimore, MD 21244

Re: Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS 3442-P)

Dear Administrator Brooks-LaSure,

We write today to encourage the Centers for Medicare & Medicaid Services (CMS) to strengthen and finalize the Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting proposed rule. We appreciate the Biden-Harris Administration's commitment to addressing the serious staffing crisis in our Nation's nursing homes and commend the proposed rule as an important step to promote safety and quality care for residents in these facilities and to protect the safety of nursing home workers.

The connection between staffing levels in nursing homes and the safety and quality of care is well-established. For years, studies have shown that inadequate staffing levels result in lower quality of care for nursing home residents.¹ More recently, a report from the National Academies of Sciences, Engineering, and Medicine (NASEM) found that "higher nurse staffing ratios mitigated the effect of [a COVID-19] outbreak in nursing homes and resulted in fewer deaths once an outbreak occurred."² A recent Department of Health and Human Services (HHS) Office of Inspector General (OIG) report that examined the deadly impact of COVID-19 on nursing home residents recommended that CMS establish minimum staffing requirements.³ Finally, a joint investigation by the Senate Committee on Finance and the Senate Special Committee on Aging evaluated a series of HHS OIG nursing home audits finding that understaffing at nursing homes contributes to inadequate emergency preparedness, leaving older adults and people with

¹ Schnelle, J.F., Simmons, S.F., Harrington, C., Cadogan, M., Garcia, E., & Bates-Jensen, B., Relationship of nursing home staffing to quality of care? *Health Services Research*, 39 (2):225-250 (2004)
Harrington C, Dellefield ME, Halifax E, Fleming ML, Bakerjian D. Appropriate Nurse Staffing Levels for U.S. Nursing Homes. *Health Serv Insights*. 2020 Jun 29;13:1178632920934785. doi: 10.1177/1178632920934785. PMID: 32655278; PMCID: PMC7328494.

² National Academies of Sciences, Engineering, and Medicine. 2022. *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26526>.

³ U.S. Department of Health and Human Services, Office of Inspector General, [Data Brief](#), "More Than a Thousand Nursing Homes Reached Infection Rates of 75 Percent or More in the First Year of the COVID-19 Pandemic; Better Protections Are Needed for Future Emergencies," January, 2023.

disabilities vulnerable to extreme weather events.⁴ It is clear that a staffing standard will help improve care and save lives.

Our nation's 1.2 million nursing home residents deserve high quality care that prioritizes their safety. The proposed rule takes a vital step towards ensuring residents receive this high quality care by establishing commonsense staffing minimums and improving enforcement. Many states already have nursing home minimum staffing standards that meet or exceed those set forth in the proposed rule.

We understand that developing a meaningful minimum staffing requirement involves the careful evaluation of complex and nuanced variables, such as variations in acuity levels and case mix, as well as the special circumstances of rural and underserved communities and the staff and resources available to them. In the proposed rule, CMS has proposed minimum nurse staffing standards of 0.55 hours per resident day (HPRD) for Registered Nurses (RNs) and 2.45 HPRD for Nurse Aides (NAs). However, the proposed rule does not include an HPRD for Licensed Practical Nurses (LPN). LPNs provide essential bedside care to nursing home residents, and they are critical to the operation of America's nursing homes. We urge CMS to include LPNs in the final rule. Many states that already have minimum staffing standards in place for nursing homes have an LPN standard, and adoption of a federal LPN standard could allow nursing homes to more easily meet both federal and state standards.

The proposed rule also requires that an RN be onsite 24 hours a day, seven days a week. Current law requires nursing homes to have an RN onsite eight hours a day and a licensed nurse onsite 24 hours a day. The Nursing Home Staffing Study, commissioned by CMS, found in a literature review that all but one safe staffing study supported a 24/7 RN requirement. We support CMS's historic proposal to establish a 24/7 RN staffing requirement in nursing homes as a critical measure to protect resident safety.

We appreciate the recognition in the proposed rule that staffing minimums may be difficult to implement in some areas of the country, such as rural areas, given challenges in recruiting and retraining nursing staff. We encourage CMS to collect stakeholder input and incorporate flexibilities that reflect differences in workforce availability, facility size, and resident demographics as the agency finalizes the rule. Specifically, we know that some facilities will struggle to meet a 24/7 RN requirement, and we urge CMS to use the period before the rules go into effect to examine ways that may help address this concern, in a manner that is consistent with the clinical goals of this proposal.

We also appreciate that CMS is taking action to support the nursing home workforce by partnering with the Health Resources and Services Administration (HRSA) to invest over \$75 million to train and transition workers into nursing home careers. Building on existing workforce initiatives, we urge CMS to consider additional ways to increase and support the long-term care workforce, including partnering with states and exploring existing state or facility-run training and career ladder programs. We understand that while many factors affect job quality and

⁴ Majority Staffs of U.S. Senate Finance Committee and U.S. Senate Special Committee on Aging, [Investigation](#), "Left in the Dark: The impact of the 2021 Texas Blackout on Long-Term Care Residents and the Need to Improve Emergency Preparedness," February, 2023.


turnover, creating a strong staffing standard will ultimately improve the quality of nursing home jobs, which in turn will help attract more workers and begin to resolve the issues of workforce availability in the nursing home industry. We look forward to additional details regarding this investment and urge CMS and HRSA to continue to invest further in essential workforce initiatives in this space.

We are also supportive of the proposal to require state Medicaid agencies to report on the percent of payments for Medicaid-covered services in nursing homes that are spent on compensation for direct care workers and support staff. Evidence suggests that there is a connection between wages and high rates of turnover among workers in the institutional workforce. Greater transparency into the relationship between Medicaid payments and wages can help address the serious staffing crisis in our nation's nursing homes and in turn, improve the quality of services received by and the safety of Medicaid beneficiaries.

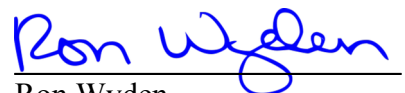
Lastly, the Administration has shared that oversight and enforcement of staffing standards would be incorporated into CMS' existing survey and certification activities, which have not received a meaningful funding increase since fiscal year 2015. State survey agencies are also severely understaffed, which limits their ability to complete annual recertification surveys on time.⁵ This delayed oversight results in a slower response to complaints and jeopardizes resident health and safety. We urge CMS to provide for strong enforcement of a final staffing standard while ensuring state survey agencies and their staffs are adequately resourced to conduct this important work.

We support the proposed rule and the Biden-Harris Administration's actions to protect nursing home residents across the country to ensure they receive timely, safe, and quality care and to support workers in America's nursing homes. As the final rule for minimum staffing standards is developed, we encourage CMS to continue engaging with stakeholders and to consider what additional support may be necessary to comply with a meaningful staffing standard. We look forward to continuing to work with you to protect residents and promote quality care in nursing homes.

Sincerely,

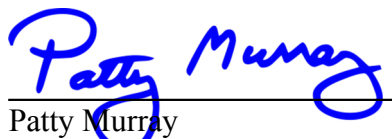


Robert P. Casey, Jr.
United States Senator



Ron Wyden
United States Senator

⁵ U.S. Senate Special Committee on Aging Majority Staff Report, Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk. May 2023.
<https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf>



Patty Murray
United States Senator



Bernard Sanders
United States Senator



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United States Senator



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United States Senator



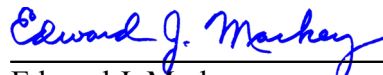
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