



February 24, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

VIA US MAIL AND EMAIL: HealthandSafetyInquiries@cms.hhs.gov

RE: **Unfunded Minimum Staffing Requirement for Skilled Nursing Facilities**

Dear Administrator Brooks-LaSure,

I am writing on behalf of the more than 390 skilled nursing facilities which are members of the North Carolina Health Care Facilities Association (which is more than 90% of all the SNFs in North Carolina) to ask CMS not to impose a minimum staffing mandate during this extraordinarily difficult time following several years of the COVID pandemic and the extraordinary labor market disruptions and inflationary environment in which we find ourselves.

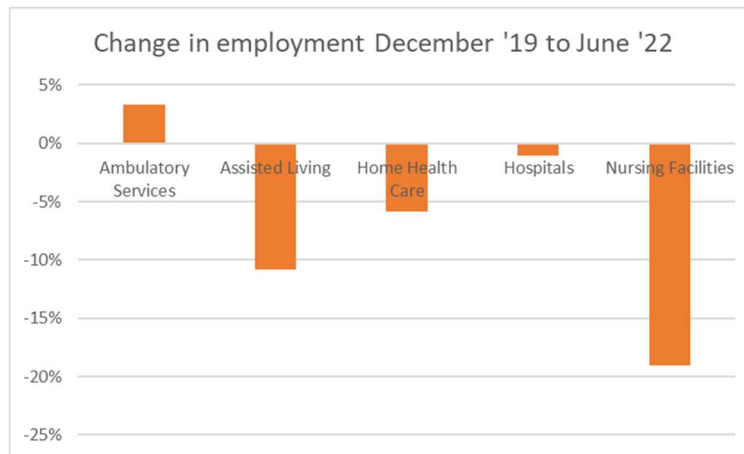
However well intentioned, such a mandate is both unnecessary and will do nothing but limit access to skilled nursing care in North Carolina, both for individuals in hospitals who need to be discharged to a SNF and for individuals currently with their families at home but who can no longer safely remain there. Here's why.

North Carolina's nursing homes are struggling with historically unprecedented workforce shortages, as well as wage and other inflation, that unequivocally have placed us in a crisis state for the past several years. Please consider the following snapshot of our current state:

- 82% of North Carolina nursing homes are facing moderate to high levels of staffing shortages (which means they have, on more than one occasion in the recent past, been unable to fill all their shifts without either the use of staffing agencies or asking their employees to work overtime/extra shifts);
- 40% of North Carolina nursing homes say their overall workforce situation has gotten worse since mid-2022, and another 28% say their workforce situation is the same as it was six months ago; and

- 93% of North Carolina nursing homes are having trouble hiring staff, with the two biggest issues being a lack of qualified candidates applying for these jobs and insufficient financial resources to hire more, both of which are inextricably intertwined.

As a setting in healthcare, we have been uniquely affected by workforce shortages over the past several years, losing a net 19%¹ of our employees while suffering annual turnover rates above 57%.



The impact on access to nursing home care in our state is evident—48% of our nursing homes are limiting new admissions to their facilities. This is not because they do not have open beds; they do—nearly 10,000 of them. But it is because we do not have the workforce to care for more people.

As you know, nursing home workforce challenges impact not only families whose loved ones need long term care in a nursing home, but also it affects our entire healthcare system as nursing homes are a key discharge destination for hospital patients who are no longer appropriate for acute care but who are not yet ready to go back to their home with intermittent, scheduled home care. Hospitals struggling to discharge patients inevitably also have difficulty admitting new patients due to capacity constraints, which can affect emergency services and eventually ambulatory settings.

I fear North Carolina's already existent access-to-care problem could get worse. In a December survey of our members, more than 50% of our state's nursing homes said they are concerned that if these current workforce conditions continue, they may have to close their facilities. Since that time, the Biden Administration has announced it will end the federal PHE. That means NC nursing homes and those in our care are on track **to suffer a 16% cut in Medicaid reimbursement rates at the end of the PHE, which will be catastrophic. I cannot even begin to imagine how much worse it will be if a national staffing mandate is issued.**

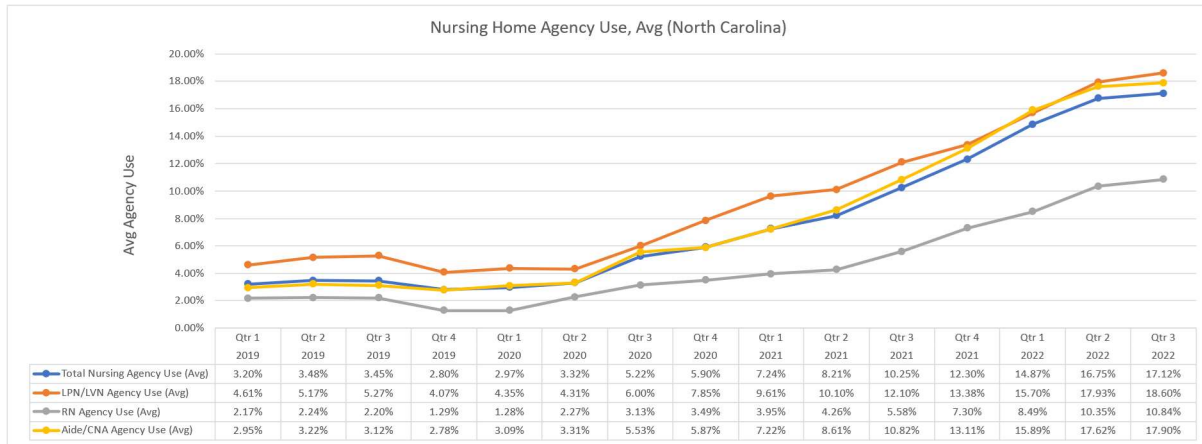
¹ Nursing homes must ensure caregivers are present and caring for those who need it 24 hours per day, 7 days per week—and this work must be done in-person. It appears the only sector in healthcare whose employment has grown is the ambulatory services setting, which largely has a more 8-5 schedule.

This is not about COVID. In fact, most of our nursing homes say that they are better able to manage COVID and that we are entering or have already entered a new normal. Instead, this is about the reality that North Carolina, like most of the rest of the country, has experienced the last few years inflation and workforce shortages unlike anything experienced in at least the last 4 decades. Since January of 2021, inflation nationally, measured through the consumer price index, has increased 13%--and it is still climbing at an annualized figure of 6.4% as of its latest reading. (*Note: Nursing home cost report information shows that our cost inflation has increased a materially greater amount*). According to the NC Department of Commerce, North Carolina currently has an unemployment rate of 3.9%, and currently there are nearly 1.75 available jobs for every 1 unemployed worker in this state. Further, it appears that all those individuals who may have left the workforce during the COVID-19 pandemic for whatever reason are back—North Carolina currently appears to have more than 235,000 more people employed right now than before the pandemic began. But nursing homes in our state are one of the only settings that has not been able to capture any of this job growth.² And while inflation may have peaked and the inflation rate may be coming down, it's only the *rate of growth* that is slower—prices and wages are much higher than they were 3 years ago and *still increasing*, albeit perhaps at a slower pace.

Unlike most private employers, we cannot simply raise our prices. Nearly 80-90% of our revenue is from government payers, who set their own price. Our largest payer, by far, by volume, is NC Medicaid. At our current funding levels from NC Medicaid, everything outlined above is happening--our members are struggling to find workers, struggling to retain workers, and struggling to continue providing the care their patients and residents need. The pending 16% cut set for the expiration of the PHE will make everything said so far exponentially worse.

Up until now, to continue providing care to as many individuals who need it as possible, our state's nursing homes are taking extraordinary steps. Nearly 90% of our state's nursing homes are asking their current staff members to work overtime/extra shifts, and 2 of every 3 nursing homes are using temporary agency staff. At this point, more than 17% of all nursing care provided in our state's nursing homes is being provided by temporary agency staff.

² Dan Barkin, *NC's jobless rate doesn't show whole employment picture*, Business North Carolina, August 22, 2022 (citing Federal Reserve Bank of Richmond economist Dr. Laura Ullrich and noting that while many sectors have added jobs since before COVID started some sectors are struggling: "School districts are experiencing teacher shortages, and there are also problems filling child care and nursing home positions") available at <https://businessnc.com/ncs-jobless-rate-doesnt-paint-full-employment-picture/> (last visited January 19, 2023). Dr. Ullrich repeated very similar comments the NC Chamber and NC Bankers Association forum in January 2023.



To be crystal clear, our state’s nursing homes are doing everything they can to hire more workers. Nearly all have further increased wages and offered bonuses—even further than the 27% the historically tight labor market has caused wages to increase over the course of 2020 and 2021 in this sector in NC. Nursing homes are also offering additional benefits, paying for staff education and training, promoting staff, and strengthening their own workplace cultures. The financial cost of these actions has resulted in 30% of our state’s nursing homes operating at a loss, with another 60%+ operating on razor thin margins (0-3%). There is not more that we can do.

As you would expect from such a noble, caregiving profession, our state’s nursing homes, and their caregivers, continue to provide the best possible service and care to the frail and elderly North Carolinians in their care that they can. This is what they have always done and always will strive to do.

On average our state’s SNFs provide 3.66 hours of nursing care per patient day, **which is nearly 10% greater than the 3.24 hours of nursing care per patient day the CMS STRIVE study indicates would be expected to be provided to ensure appropriate care to the residents in our facilities.** And *any* facility that provides insufficient staffing is being cited by North Carolina’s State Survey Agency on behalf of CMS. Fewer than 10% of NC SNFs were cited for insufficient nursing staff in FFY2022; meaning more than 90% of NC’s SNFs are continuously providing sufficient nursing care to meet the needs of their patients and residents at current staffing levels AND the state as a whole is exceeding CMS’s own study’s expectations by nearly 10%. Suffice to say, the current system is already working to make sure patients and residents are receiving care in sufficiently staffed SNFs.

A specific HPPD (especially at 4.1 HPPD) minimum staffing requirement will do nothing but further limit access to care in NC. Based on all the data set out in this letter, as well as based on my regular conversations with SNFs across NC, I believe that NC SNFs ***are doing everything they can to hire everyone they can to care for their residents.*** A federal minimum staffing mandate will have ****zero**** impact on making it easier to hire additional workers.³ It stands to reason that a minimum staffing

³ A simple search for “Certified Nursing Assistant” in “North Carolina” on Indeed.com shows that there are currently 7,272 such jobs listed on that one internet jobs board. See <https://www.indeed.com/jobs?q=certified+nursing+assistant&l=North+Carolina&from=searchOnHP&vjk=b05a5c06d1afe145> (last visited February 12, 2023).

mandate, therefore, will produce no additional workers; instead, to comply, NC SNFs are left with only one available option—reducing the number of individuals in their care so that our current workforce can achieve a higher HPPD mandate. Setting aside the fact that such an outcome will further reduce the revenues of NC SNFs who are paid based on the number of days of care provided, which means less funding for staffing in an industry already on the financial brink—**this outcome means that thousands of North Carolinians who are happy with their current skilled nursing facility environment will be forced to discharge either to a hospital, which is likely already suffering from a filled ED, or to the home of a loved one who may not be capable of providing the round-the-clock care that the individual needs.** This is a terrible outcome. And what’s worse, it’s all in the name of an unnecessary, one-size-fits-all mandate from Washington that completely disregards the reality on the ground in North Carolina.

To be clear, I am asking CMS not to issue a national minimum staffing mandate. If CMS feels it nonetheless must, however, I ask the following in the name of mitigating however slightly the horrific consequences that surely will follow for those individuals who need SNF care but who must be discharged as a result of this policy or who will be forced to suffer in an environment no longer safe because they cannot access a SNF in their area: 1) if CMS must do this, phase it in ONLY once the workforce is sufficiently sized so CMS does not negatively impact access to care; 2) this mandate MUST be paid for, in full, by Medicare and Medicaid—and CMS must enforce any requirements on state Medicaid agencies by making sure those agencies are paying the actual costs of care, and not through some vague network adequacy standard; 3) there must be reasonable waiver provisions that CMS must FORCE states to allow that account for regional and seasonal variations in workforce availability to avoid penalizing SNFs that are doing everything they can to comply; and 4) it should be tailored to the acuity in the specific facility—after all, a one-size-fits-all model that requires a facility with a .9000 case-mix to provide the same number of nursing hours per patient day as a facility with a 1.5000 case mix is not sound policy either for the facilities who must try to find the staff or the patients who are receiving the care.

Please do not hesitate to contact me with any questions.

Sincerely,

A search for “Registered Nurse” in “North Carolina” on Indeed.com shows that there are currently 16,865 such jobs listed on that one internet jobs board. See <https://www.indeed.com/jobs?q=registered+nurse&l=North+Carolina&vjk=dcdc39fa8d6ad470> (last visited February 12, 2023).

A search for “Licensed Practical Nurse” in “North Carolina” on Indeed.com shows there are currently 4,501 such jobs listed on that one internet jobs board. See <https://www.indeed.com/jobs?q=licensed+practical+nurse&l=North+Carolina&vjk=f7f519ac5db2cada> (last visited February 12, 2023).

A federal staffing mandate will not create any new workers to fill the existing jobs employers are trying to hire for, much less the additional jobs such a mandate would require but not be able to help fill.

Adam Sholar
President and CEO

Cc: NCHCFA Board Chair Ted Goins (VIA EMAIL: tgoins@lscarolinas.net)
US Senator Thom Tillis (VIA EMAIL: [Garrett Daniel@tillis.senate.gov](mailto:Garrett_Daniel@tillis.senate.gov))
US Senator Ted Budd (VIA EMAIL: Jack_ganter@budd.senate.gov)
NC Secretary of Health and Human Services Kody Kinsley (VIA EMAIL: Kody.Kinsley@dhhs.nc.gov)
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