Congress of the United States
Washington, DC 20515

October 10, 2023

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

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Becerra and Administrator Brooks-LaSure:

We are adamantly opposed to the Centers for Medicare & Medicaid Services' (CMS) proposed rule to implement minimum staffing mandates for long-term care (LTC) facilities. While we recognize the need to ensure patients receive high quality health care services, this rule, as currently proposed, would exacerbate existing widespread workforce shortages, profoundly and negatively affect the finances of providers, increase burdensome reporting requirements, and drive patients toward higher-cost, more distant facilities.

The proposed rule requires nursing homes to provide "[registered nurse] RN coverage onsite 24 hours per day, 7 days per week" and "a minimum of 0.55 [registered nurse] RN and 2.45 [nurse aide] NA hours per resident day,"[1] As CMS notes in the proposed rule, "the proposed NA and RN HPRD requirements exceed those of nearly all states," and "…if finalized, these new required floors would increase staffing in more than 75 percent of nursing facilities nationwide...," which indicates that three-quarters of nursing homes would not be compliant, were the proposal in effect today.[2]

By imposing arbitrary requirements on LTC facilities, CMS ignores the workforce constraints and financial pressures facing long-term care facilities across the country. To comply with the hours per resident day (HPRD) requirement in the proposed rule, urban LTC facilities would collectively be required to hire an additional 10,495 RNs (9.7 percent increase) and 61,348 NAs (17.2 percent increase), while LTC facilities in rural areas would be required to hire an additional 2,144 RNs (8 percent increase) 15,028 NAs (15.7 percent increase). Likewise, to comply with the proposed 24/7 RN requirement, an additional 1,909 RNs (1.8 percent increase) would be needed in urban areas, and an additional 1,358 RNs (5.1 percent increase) in rural areas. Collectively, nationwide compliance costs for nursing homes are estimated to be $40.6 billion over 10 years.

Additionally, the rule requires states to collect and report on compensation for workers as a percentage of Medicaid payments for those working in nursing homes and intermediate care facilities. For providers alone, these implementation costs would amount to $9,140,000 per year for four years, or $36,560,002 over four years, and, once the rule goes into effect in year five, an

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[1] Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting, 88 Fed. Reg. 61352 (Sept. 6, 2023) (42 CFR Parts 438, 442, and 483)

[2] Ibid.

additional $17,912,717 per year for six years, or $144,036,304 total over 10 years. Such requirements would also cost states and the federal government each $1.6 million over 10 years. However, as CMS notes, such costs "do not account for higher costs associated with medical care; the costs calculated here are related exclusively to reporting and website posting costs" thus actual expenditures associated with this requirement are much larger than projected. [3]

The proposed rule does not reflect the current realities of LTC facilities across the country and fails to adequately comprehend the secondary and tertiary effects of this rule on the entire health care industry. Even if your agencies believe there exist enough RNs and NAs in the United States for both urban and rural facilities to adhere to the proposed staffing requirements, this does not suggest that those individuals are adequately distributed nationwide. As such, LTC facilities cannot comply with regulations that require workers to upend their entire lives and migrate to rural communities or those needing additional staffing.

In addition to the staffing mandate, nursing homes in rural communities do not have the financial capital or resources available to hire thousands of new workers and those in both rural and urban settings would be required to compete against other health care facilities and employers in their communities which have much greater access to capital than LTC facilities. These mandates would result in a race to the bottom. The financial pressures would require nursing homes to close, force them to sell out to private equity, or lead to consolidation within the market, which leads to increases in costs and poor outcomes for patients.

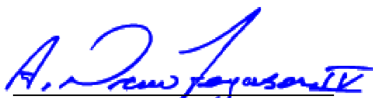
As health care professionals in Congress, we are committed to ensuring patients receive the highest level of care and recognize the correlation between staffing levels and quality of care provided. However, the proposed rule fails to account for both the financial and existing workforce constraints within the system and would ultimately limit seniors' access to nursing facilities. We encourage you to withdraw this rule as proposed and instead work with Congress to ensure patients' needs are adequately met.

Sincerely,

Gregory F. Murphy, M.D.
Member of Congress

Michael C. Burgess, M.D.
Member of Congress

Brad R. Wenstrup, DPM
Member of Congress



Drew A. Ferguson, D.M.D.
Member of Congress

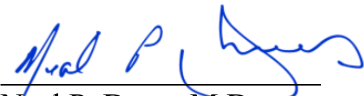
Earl L. "Buddy" Carter
Member of Congress

John Joyce, M.D.
Member of Congress

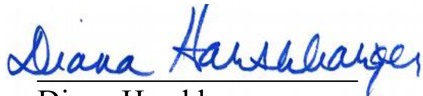
[3] Ibid.

Larry Bucshon, M.D.
Member of Congress

Rich McCormick, MD, MBA
Member of Congress

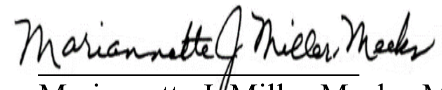


Neal P. Dunn, M.D.
Member of Congress

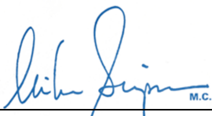


Diana Harshbarger
Member of Congress

Andy Harris, M.D.
Member of Congress



Mariannette J. Miller-Meeks, M.D.
Member of Congress



Mike Simpson
Member of Congress