



AFL-CIO

AMERICA'S UNIONS

**American Federation
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March 13, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9911-P, P.O. Box 8016
Baltimore, MD 21244

Re: Regulations to establish mandatory minimum staffing levels in skilled nursing facilities

Dear Administrator Brooks-LaSure:

We write today to thank the Centers for Medicare and Medicaid Services (CMS) for your attention to the serious staffing crisis in the nation's nursing homes and to urge you to bring that work to completion by issuing a robust national staffing standard in the near future.

Together, our unions represent hundreds of thousands of nursing home workers, including registered nurses, licensed practical nurses and certified nursing assistants (CNAs), as well as other support workers who enable nursing homes to function. As you know, the connection between staffing levels and the safety and quality of care has been well established, with studies showing a correlation between inadequate staffing and lower quality of care; more recently studies have demonstrated that higher nurse staffing ratios mitigated the effect of COVID-19 outbreaks in nursing homes and resulted in fewer deaths.¹ Our members can attest to this connection—and to the problems that result from inadequate staffing levels—based on their day-to-day experience. We regularly hear stories of CNAs

¹ A full review of the extensive literature is beyond the scope of this letter; see for instance 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), as well as the discussions in the 2022 National Academies of Science report, *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*, p. 70ff.

who are responsible for as many as 20 residents on a shift and who must make impossible choices about how to prioritize services.

In addition to negatively impacting care quality and resident safety, it is clear that chronic understaffing contributes to high rates of stress, injury, and burnout among nursing assistants and, ultimately, to high rates of turnover.² Thus, while it is also crucial to improve wages and benefits, we believe that creating a robust staffing standard will go a long way toward improving the quality of nursing home jobs, which in turn will actually help attract more workers and resolve current workforce crisis in this industry.

We were excited to see President Biden propose adoption of a minimum staffing standard last year, and we believe that adopting a robust national standard will help improve nursing home care and save lives. We know that developing a meaningful minimum staffing requirement involves complex and nuanced issues, such as variations in acuity levels and case mix. Thus we appreciate the process CMS has undertaken to develop a national staffing standard, and the various opportunities provide input. As CMS reported when summarizing the response to last spring's Request for Information, the agency received more than 3,000 comments from a variety of sources, and "[O]verall, commenters were generally supportive of establishing a minimum staffing requirement," with many commenters providing stark examples of the impact of inadequate staffing.³ Given this broad support, we urge you to move quickly to initial release of a strong proposed minimum staffing requirement, or set of requirements, which can then be further discussed during the public comment period.

Finally, we note that recent studies suggest that most for-profit nursing home companies remained profitable throughout the pandemic, including homes with high rates of COVID-19 infections.⁴ Moreover, despite the fact that nursing homes received billions of dollars in payments from the Provider Relief Fund established during the pandemic, real wages for nursing assistants—a workforce largely made up of women of color—actually declined from 2020 to 2021, in contrast to wages for home care workers and workers in other residential care facilities.⁵ In order to ensure that minimum staffing standards can be implemented, we urge CMS to require full transparency concerning use of Medicare and Medicaid payments by nursing homes. If there is evidence that current payment rates are insufficient to support safe staffing levels, CMS should take further steps to ensure that nursing facilities have the financial resources to comply with, if not exceed, minimum standards. We believe that the separate rulemaking to strengthen

² PHI, *Direct Care Workers in the United States: Key Facts* (2022), p. 19.

³ CMS, Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023, 87 FR 47600.

⁴ Kingsley, DE and Harrington, C. COVID-19 had little financial impact on public traded nursing home companies, *JAm Geriatr Soc* 69(8), August, 2021, p. 2099-2102; Kingsley DE, Harrington C. Financial and quality metrics of a large, publicly traded U.S. nursing home chain in the Age of Covid-19. *International J. Health Serv.*, 2022. As the recent HHS OIG report cited above noted (p. 7), for-profit nursing homes "made up a disproportionate percentage of nursing homes with extremely high infection rates" during both major pandemic surges.

⁵ PHI, *Direct Care Workers in the United States: Key Facts* (2022), pp. 19, 24.

enforcement of the Medicaid “equal access” provision (Section 1902(a)(30)(A) of the Social Security Act) currently underway at CMS offers an important opportunity to move toward this goal.

Thank you for your attention to this letter. We look forward to working with you to ensure that all nursing homes have adequate staff, which will both protect workers and ensure that nursing home residents receive the safe and high-quality care they deserve. If you have any questions, please contact Lee Goldberg with the AFL-CIO at lgoldberg@aficio.org or (202) 637-5344.

Sincerely,

AFL-CIO

American Federation of State, County & Municipal Employees (AFSCME)

American Federation of Teachers (AFT)

International Association of Machinists and Aerospace Workers (IAM)

National Nurses United (NNU)

Service Employees International Union (SEIU)

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

The United Food and Commercial Workers International Union (UFCW)

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