



Congress of the United States House of Representatives

November 14, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 1244

Dear Administrator Brooks-LaSure,

I write in response to the Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting proposed rule that Centers for Medicare & Medicaid Services (CMS) issued on September 1st, 2023.¹

I am grateful that CMS is actively working to enhance resident safety and the delivery of quality care and support the dedicated direct care workers and support staff. The proposed rules include important requirements such as providing LTC residents with a minimum number of hours of individual care per day and around-the-clock access to a Registered Nurse (RN).

As you finalize this rule to improve care, I urge you to fully consider possible adverse consequences for residents of LTC facilities that are not able to meet the higher standards set in your proposal within the proscribed period. I am especially concerned about the implications of a violation of the new standards resulting in the closure of facility on residents who are unable to relocate and find the care they may need. Even the prospect of having to relocate can be especially burdensome for this population.

Under your proposal, LTC facilities that fail to meet the new standards or qualify for an exemption to ensure the best care for patients face a variety of penalties including possible termination of a facility's provider agreement, denial of payment for all Medicare and/or Medicaid individuals by CMS, and/or civil money penalties. The imposition of these penalties, especially closure, will have impacts on patients through no fault of their own. As you finalize this rule, I urge CMS to consider the impacts that imposing these penalties will have on access to care for patients and to consider steps CMS can take to ensure that adequate resources are available and measures are put in place to help affected facilities ensure patient and worker safety, including to facilitate the safe and timely transfer of patients if needed.

Furthermore, the proposed rule includes an exemption from the individual minimum standards in limited circumstances. One of the criteria for satisfying the exemption is a location-based requirement that is based on a finding that workforce is unavailable in the immediate area, or the facility is at least 20 miles from another long-term care facility, as determined by CMS. Your proposal requested comments specifically on this criterion. While I understand that CMS weighed various distances at which to set this

¹ <https://public-inspection.federalregister.gov/2023-18781.pdf>

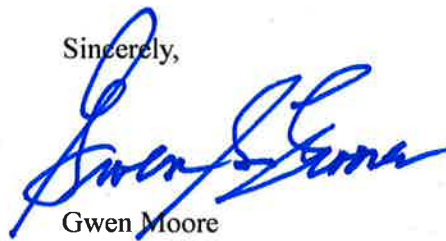
criterion there are plenty of reasons why being closer many not in fact mean patients have an appropriate alternative.

I hope that in finalizing this criterion, the Administration will take other factors into consideration rather than choosing an arbitrary number. For example, I urge CMS to not only consider the distance to another high quality facility, but also take into account whether the nearest facility can actually accommodate additional patients or provide an appropriate level of care...i.e. the nearest geographic facility may not in fact be an appropriate placement and therefore not available to the resident, yet could still count against the facility seeking to fulfill the hardship exemptions location criteria. I also wonder if the 20 mile requirement as proposed is simply the distance to another facility or is it to another facility that meets the rule's staffing requirements? That is an important distinction if the intent of the rule is to ensure that more patients receive care in adequately staffed facilities. In further refining this criterion, it is possible that a facility within the 20 mile criteria may not in fact be an appropriate placement and therefore not available to the resident, yet would still count against another facility seeking to fulfill the hardship exemptions location criteria. It may be better to focus on the quality of care and space for new patients at the closest facility rather than an arbitrary distance in miles. My district is a dense urban area that has multiple LTC facilities. I am concerned that this proposal may make it harder for facilities in areas like my district that try in good faith to qualify for this exemption. And without the ability to get that exemption, it may lead to a facility closure that for many families in my district, would be an extreme hardship to try to locate a new facility that meets the needs of their family member.

Furthermore, workforce availability is, in large part, a factor of adequate pay. Meeting additional minimum staffing needs requires more resources and, on this point, CMS has not announced additional resources it may make available in this regard, even if just for the transition period. I appreciate that CMS announced \$75 million in financial incentives such as scholarships and tuition reimbursement for individuals to enter careers in nursing homes. But, I urge CMS to evaluate whether additional reimbursement amounts are warranted, too, particularly facilities catering to underserved communities.

I am encouraged that CMS is moving to improve quality of care for my constituents who need or choose care in an LTC. Proper staffing is a critical part of ensuring access to high quality care. However, it is important that we get it right as you consider and fully weigh the numerous comments, including mine, that you have received on this critical proposal.

Sincerely,



Gwen Moore