

Congress of the United States

Washington, DC 20515

September 9, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Dear Administrator Brooks-LaSure:

Like you, we are deeply concerned by the long-term care nursing workforce shortage that the country is currently facing. As you know, this shortage existed before 2020 but was exacerbated by the COVID-19 pandemic and the strain that inflation has put on the economy. We appreciate the recent actions taken to provide an offramp for skilled nursing facilities to leverage once the unwinding of the pandemic Blanket Waivers goes into effect. However, more must be done to address these issues on a long-term basis and we are therefore requesting your support for legislation that could help to further bolster the workforce in the coming years.

According to the nonpartisan Bureau of Labor Statistics, the nation has lost nearly 240,000 nursing home jobs since the beginning of the COVID-19 pandemic.¹ This shortage has been a persistent problem – even before the pandemic – with more than 1,000 skilled nursing facilities closing nationwide since 2015 – 327 of which occurred during the pandemic.² Projections also show that the United States could see 400 more skilled nursing facility closures in 2022 alone.

To address many of these lingering issues – and help blunt the health care workforce challenges posed by the then-emerging threat of COVID-19 – the Trump Administration granted blanket Section 1135 Waivers in March 2020 to offer health care facilities flexibility in how they were treating patients. In particular, one policy, which was continued by the Biden Administration, permitted Medicaid and Medicare Certified Nursing Facilities to temporarily hire staff for longer than four months if they could demonstrate competency³ (which otherwise was prohibited by current law⁴). These temporary nurse aides, or TNAs, are able to provide more time for certified nurse aides (CNAs) and other nursing home staff to address more hands-on clinical care needs,

¹ <https://www.ahcancal.org/News-and-Communications/Fact-Sheets/FactSheets/BLS-JAN2022-JOBS-REPORT.pdf>

² <https://skillednursingnews.com/2022/04/medicare-cuts-sunsetting-phe-dollars-could-put-one-third-of-snfs-at-financial-risk/>

³ <https://www.cms.gov/files/document/long-term-care-facilities-cms-flexibilities-fight-covid-19.pdf>

⁴ <https://www.law.cornell.edu/cfr/text/42/483.35>

such as wound treatment, diabetic care, nursing assessments. Further, in the height of the pandemic, TNAs provided companionship to residents whose family members could not visit the facilities as frequently as they typically would, or at all.

Throughout the past two and a half years, 44 states have taken actions to allow for more TNAs to care for patients at their bedsides because of these granted flexibilities, leading to the hiring of thousands of TNAs nationwide. Despite the early promise that this waiver showed in helping to address longstanding workforce challenges faced by SNFs, CMS announced that, starting in June, it would discontinue the policy – with no offramp for states to prepare and transition for TNAs to become CNAs.⁵

In the agency’s announcement, you stated, “Patient and resident health and safety are top priorities for CMS, and today’s actions are focused on ensuring every nursing home resident is cared for in a safe, high-quality environment.”⁶ However, despite citing patient safety concerns, the announcement failed to acknowledge the reality that states are facing backlogs in certifying TNAs and that states are unlikely to clear these backlogs by October when the four month rule for TNAs will resume, meaning that many TNAs will be forced to leave the workforce. This will only compound the workforce challenges for our long-term care system and further jeopardize patient safety and quality.

Thankfully, CMS recently announced modifications to this announcement, which will help address challenges in communities facing significant workforce shortages.⁷ The recent announcement will specifically permit states and nursing facilities to apply for a short-term waiver until a local backlog of Certified Nurse Assistant applications is addressed or if there are general barriers to training or testing. However, the announcement further states that these waivers will only be in effect for as short as possible and expire immediately once the COVID-19 Public Health Emergency Declaration expires, meaning patients’ access to this critical bedside care could be threatened if these localized certification and testing issues are not resolved before the PHE expires.

To this end, we would strongly encourage you to work with Congress in addressing these historical workforce challenges that the pandemic highlighted. Specifically, we ask that you support states and TNAs as our long-term care system continues to navigate these unprecedented challenges by supporting passage of H.R. 7744, the Building America’s Healthcare Workforce Act, which would specifically extend the 1135 waiver flexibilities that your agency supported until recently, for a period of 24-months post-Public Health Emergency.

All questions related to this bill can be directed to Brian Fahey in the office of Congressman Brett Guthrie at brian.fahey@mail.house.gov. We would also request a written response with technical assistance for H.R. 7744 by Friday, September 23, 2022.

⁵ <https://www.cms.gov/files/document/qso-22-15-nh-nltc-lsc.pdf>

⁶ <https://www.cms.gov/newsroom/press-releases/cms-returning-certain-pre-covid-19-policies-long-term-care-and-other-facilities>

⁷ <https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfpolicy-and-memos-states-and/update-covid-19-emergency-declaration-blanket-waivers-specific-providers-revised>

We deeply appreciate your commitment to improving nursing home quality and we look forward to working with you on bolstering our workforce to achieve this important objective.

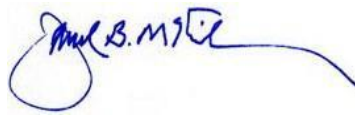
Sincerely,



Brett Guthrie
Member of Congress



Madeleine Dean
Member of Congress



David B. McKinley, P.E.
Member of Congress



Tom O'Halleran
Member of Congress



Fred Keller
Member of Congress



Greg Pence
Member of Congress



Adrian Smith
Member of Congress



Elise Stefanik
Member of Congress



Tracey Mann
Member of Congress



Annie Kuster
Member of Congress

A handwritten signature in black ink that reads "Victoria Spartz". The letters are fluid and connected, with a long, sweeping tail on the final letter.

Victoria Spartz
Member of Congress

A handwritten signature in black ink that reads "James R. Baird". The signature is written in a cursive style with distinct letter shapes.

James R. Baird
Member of Congress

A handwritten signature in black ink that reads "G.K. Butterfield". The signature is highly stylized and cursive, with many loops and flourishes.

G.K. Butterfield
Member of Congress

A handwritten signature in black ink that reads "Peter Welch". The signature is written in a cursive style with a prominent initial "P".

Peter Welch
Member of Congress