



April 3, 2023

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

Dear Administrator Brooks-LaSure,

The American Hospital Association (AHA) and the American Health Care Association (AHCA) write to you today on behalf of the nation's hospitals and health systems as well as its nursing homes and long term care (LTC) facilities regarding CMS' intent to issue staffing mandates for nursing homes. Our organizations appreciate your agency's emphasis on taking steps intended to protect the safety and ensure high quality care for Medicare and Medicaid beneficiaries. However, AHA and AHCA have serious concerns issuing such a rule in this current environment will have the opposite effect and will exacerbate already growing access issues for patients in need of post-acute care.

As you are aware, the health care workforce continues to experience significant shortages while the demand for services has increased. In fact, nursing homes have experienced the worst job loss of any health care sector during the pandemic, with 210,000 jobs lost from February 2020 to December 2022. At the current pace of modest job growth, nursing homes would not return to pre-pandemic staffing levels until 2027.<sup>1</sup>

This labor crisis in long term and post-acute care is having a ripple effect on the entire health care system, including general acute care hospitals, inpatient rehabilitation facilities and other health care facilities. Never was this more profound than during this past fall and winter, as the "triple-demic" led to a surge of patients. Hospitals across the country became overwhelmed with patients being unable to be discharged due to many nursing homes having to deny new admissions because of staffing shortages. For example, data shows that from 2019-2022, the average length of stay for hospital patients being discharged to SNFs increased more than 20 percent.<sup>2</sup> This has a detrimental impact on patients who must wait days, weeks, or even months in hospital beds awaiting discharge to post-acute care; the capacity of care providers to serve our communities; and the costs to the entire health care system.

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<sup>1</sup>American Health Care Association (AHCA). (2023). State of the Nursing Home Sector.

<sup>2</sup> American Hospital Association. Issue Brief: Patients and Providers Faced with Increasing Delays in Timely Discharges (December 2022). <https://www.aha.org/issue-brief/2022-12-05-patients-and-providers-faced-increasing-delays-timely-discharges>.

Federal staffing mandates for nursing homes in the middle of a labor crisis would exacerbate the current access to care crisis. We anticipate many nursing homes will be forced to further reduce their capacity and even close their doors if they are unable to meet these staffing mandates. This would accelerate the domino effect across the entire continuum of care and leave vulnerable seniors with fewer care options.

Furthermore, mandating staffing levels is a simplistic, one-size-fits-all approach to the needs of complex and unique nursing home residents and patients. Specifically, staffing ratios are usually informed by older care models and do not consider advanced capabilities in technology or the interprofessional team-care model. In short, specific staffing levels should be a clinical decision customized to the resident population and facility characteristics rather than a policy decision made with lack of regard to real-life situations.

Instead, we urge CMS and policy makers to focus on efforts that will bolster our workforce – but will also take time to accomplish. Below are just some of ideas we collectively have that would make a tremendous impact on helping to address the workforce crisis.

- AHA and AHCA/NCAL support augmenting a depleted workforce with qualified personnel from abroad. Currently, 1 in 4 direct care workers are from abroad<sup>3</sup> and more are badly needed. We are advocating for Congressional action to create a temporary visa option specifically for registered nurses. Ideally, the visa option would include some other much-needed health care occupations such as certified nurse assistants, respiratory therapists, and others. We also strongly support the expedited processing of visas for foreign-trained nurses.
- Supporting apprenticeship programs for nursing assistants and other critical support staff positions. Registered Apprenticeship Program benefits include building a pipeline of skilled workers, gaining workers with customized skills, and enhancing employee retention and employer reputation.
- The COVID-19 public health emergency (PHE) has offered skilled nursing facilities (SNFs) key flexibilities, particularly regarding workforce and personnel, to ensure they could continue providing high quality care to patients. One of these waivers allows nurse aides in these facilities to stay in their roles beyond the required four months and for those additional hours to count towards 75-hour state-approved training-and-competency evaluation programs. The bipartisan Building America's Health Care Workforce Act (H.R. 468) would extend these policies for an additional two years following the end of the COVID-19 PHE. This extension would allow SNFs to retain their workforce, while also providing nurse aides with job experience needed to become Certified Nursing Assistants.

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<sup>3</sup> Sources: <http://phinational.org/resource/direct-care-worker-disparities-key-trends-and-challenges/>, PHI. "Workforce Data Center." Last modified September 2, 2021. <https://phinational.org/policy-research/workforce-data-center/>.

- Adopting policies to substantially expand loan repayment and other incentive-based programs to retain existing talent and attract new talent.
- Directing the Government Accountability Office to study the business practices of travel nurse staffing agencies during the pandemic, including exorbitant prices/excessive profits, increased margins that agencies retain for themselves, impact of increased reliance on travel nurses in rural areas, and how these practices contribute to workforce shortages across the country.

AHA and AHCA member providers want to be able to continue to provide quality care to patients in both rural and urban America who rely so heavily upon them. It is the interest of all health care providers and patients to help rebuild and strengthen the long term care workforce. Addressing this labor crisis requires meaningful investments and recruitment programs to attract more individuals to the long term care field, not unfunded staffing mandates. We hope to work with the Administration and lawmakers to develop these solutions and protect access to care throughout our nation's health care systems.

Sincerely,

/s/

Stacey Hughes  
Executive Vice President  
American Hospital Association

/s/

Clifton J. Porter II  
Senior Vice President  
American Health Care Association/  
National Center for Assisted Living