



The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jan Schakowsky
United States House of Representatives
2408 Rayburn House Office Building
Washington, D.C. 20515

July 8, 2024

Senator Warren and Representative Schakowsky,

We are writing today in response to your letter regarding our efforts to protect seniors' access to care by opposing the Centers for Medicare and Medicaid Services' (CMS) federal staffing mandate. While we agree that strengthening the long term care workforce and enhancing quality of care are of the utmost importance, we are disappointed that you continue to support misguided policies that include a one-size-fits-all staffing regulation.

America's long term care providers and the American Health Care Association and National Center for Assisted Living (AHCA/NCAL) have an unwavering commitment to our seniors and individuals with disabilities. AHCA/NCAL's mission is to improve lives by delivering solutions for quality care. Our bipartisan advocacy efforts are focused on informing lawmakers and policymakers about the realities of providing care every day and working together to address challenges.

One of the persistent challenges for long term care providers is workforce—an issue we were sounding the alarm about even prior to the pandemic. However, these calls for help have largely gone unanswered. The COVID-19 pandemic only exacerbated these challenges into a full-blown crisis. The pandemic also exposed many other systemic shortcomings, including chronic underfunding of long term care and a lack prioritization for residents and staff. There are many lessons to be learned from the pandemic, which is why AHCA and LeadingAge developed a package of reform solutions rooted in evidence known as [the Care For Our Seniors Act](#). No specific policy, especially an unrealistic nationwide staffing mandate, will transform America's nursing homes—a sentiment shared by [academic experts](#) throughout the field.

You asked our organization if we agree that improving nursing home staffing would result in improved quality of care. There was [evidence](#) during the pandemic that more registered nurse (RN) hours would help reduce the spread of COVID and help save lives, which is why we supported a federally funded [24/7 RN requirement](#) in the Care For Our Seniors Act, among many other fully funded, policy solutions that would help boost recruitment and retention efforts. AHCA/NCAL has always acknowledged and supported the intention of the Administration to increase the nursing home workforce; we simply believe there is a better way to achieve this mutual goal.

To truly build a strong workforce, we need meaningful federal partnership starting with investments that will help nursing homes attract and develop caregivers. We must also take into consideration the many factors that are contributing to our ongoing labor shortages. However, we do not agree that dictating nursing homes meet an arbitrary staffing quota will improve quality of care. In fact, a study commissioned by CMS found that [no specific level](#) of staffing guarantees quality care, as there is “no obvious plateau at which quality and safety are maximized or ‘cliff’ below which quality and safety steeply decline.”

While we do not believe that a one-size-fits-all staffing mandate is the solution, most nursing homes wish for and actively seek to hire more staff. More than one year after the pandemic ended, the profession is still facing a historic labor shortage. This is an undisputable fact. While other health care sectors have fully rebounded to pre-pandemic workforce levels, nursing homes are still down 7.6 percent, or more than 120,000 workers.

Nursing homes across the country have made unprecedented efforts to hire more workers, including raising wages, offering hiring and retention bonuses, and enhancing benefits. Yet, many nursing homes report that a lack of interested or qualified applicants is their biggest obstacle, and more than [80 percent](#) say that it often takes months to fill their nursing and nurse aide positions.

Nursing homes would have to hire an additional [102,000](#) nurses and nurse aides to comply with the federal staffing mandate. The fact remains that the number of caregivers needed to comply with this mandate simply do not exist within the current labor market.

Additionally, this policy is not sustainable given our nation’s growing caregiver shortage and changing demographics. Throughout the health care system, nurses and other caregivers are retiring or leaving the profession altogether at alarming rates, and the U.S. may experience a [shortage of RNs](#) between 200,000 and 450,000 by 2025. Meanwhile, a [shortage of faculty](#) is forcing nursing schools to turn away potential students, meaning we do not have an adequate pipeline of new caregivers. At the same time, our nation’s elderly population is growing dramatically, and the younger population is not keeping pace, which means there will be a dramatic decline in the ratio of caregivers to older adults in the coming decades.

In order for seniors to have continued access to care, a robust workforce is essential. However, we do not believe that implementing a blanket mandate on every nursing home in the country will solve our workforce challenges or improve quality of care – especially when the current and future labor force does not have the necessary pool of qualified or interested caregivers we need.

The Administration’s staffing mandate will put more than 290,000 residents at risk of displacement. If nursing homes cannot find and hire the workers they need to comply, they will be forced to reduce their census, downsize, shut down units or wings, or permanently close their doors. These are not hypothetical outcomes; they’re already happening in nursing homes across the country. In New England for example, 150 nursing homes have closed since 2010—a 15 percent decrease—despite the region having the greatest share of older adults, according to the [Boston Federal Reserve](#). Reduced access to care will be especially devastating for rural and underserved communities where long term care services and available caregivers are already severely limited.

The mandate will cause ripple effects across the entire health care system. When facilities are forced to turn away prospective residents, including patients who are ready to be discharged from a hospital and continue their recovery in a nursing home, backlogs will grow longer and staffing issues will be compounded, including placing an even greater burden on the current workforce. This is already happening in states like [Massachusetts](#) where “1,200 people a day on average are lying in hospital beds instead of recovering at skilled nursing facilities due to closures and staffing shortages”. This is why organizations such as the [American Hospital Association](#) and the [National Rural Health Association](#) have raised serious concerns regarding this rule.

Providers are not the only stakeholders raising these concerns about the federal staffing mandate. A bipartisan group of your colleagues have also contacted the Administration on multiple occasions. Yet, the Administration ignored these concerns and proceeded. This is why we have seen legislation and resolutions introduced by members of Congress on both sides of the aisle seeking to block the regulation from being implemented. It is also why we were compelled to file a lawsuit against the U.S. Department of Health and Human Services and CMS. It is regrettable that the Administration appears determined to waste an enormous amount of time, energy, and resources to defend this dangerous policy when the evidence is clear that they lack the authority to issue this regulation and that it would significantly damage our nation’s health care continuum.

Along with LeadingAge, we are grateful that our Texas affiliate and long term care providers in the state of Texas wished to stand with us as plaintiffs in this lawsuit. Texas is one of five states with the most nursing homes and is disproportionately impacted by this mandate. The State notoriously underfunds Medicaid, a key factor in whether a nursing home can comply with this mandate. More than two-thirds of the Lone Star state’s facilities do not currently meet any of the new requirements. Meanwhile, Texas is anticipating a [growing shortage of nurses](#). Texas providers are legitimately concerned the mandate will only force more nursing homes to close, displacing vulnerable residents in a large, rural state where alternative care facilities may be hours away.

Whether through the courts or Congress, we will continue to vigorously defend our members, those they serve, and those they employ. Federal agencies cannot exceed their statutory authority, and we cannot stand idly by when unfunded mandates threaten to negatively impact our residents. However, we also remain willing and eager to discuss more meaningful solutions with the Administration, Congress, and other stakeholders, as we have done in the past.

Our track record demonstrates our commitment to a high quality of care, dating back decades. In 2012, we worked with the Obama Administration in creating the Quality Initiative, a national, multi-year effort to further improve quality of care in America’s long term and post-acute care centers by setting measurable goals. These collaborative efforts with federal officials spurred [a decade of demonstrable improvement](#) in nursing home care, including fewer hospitalizations, a 40 percent decrease in the use of antipsychotic medications, and an improvement in 19 out of 22 quality outcomes measured by CMS.

Additionally, nearly 30 years ago, we established the [National Quality Award Program](#), which is based on the core values and criteria of the Baldrige Performance Excellence Program and consists of a rigorous three-level process that evaluates an organization’s capabilities against

nationally recognized standards of excellence. Now, after the COVID-19 pandemic – which showcased our members’ resilience and dedication to care for our seniors – we’re seeing record participation in the Quality Awards Program. In this year alone, we received nearly 1,400 applications.

We have and always will be committed to improving quality of care and protecting our seniors, and it is offensive to suggest otherwise. That is exactly why we have strongly opposed the federal staffing mandate for nursing homes from the beginning. It is the wrong policy and will only worsen access to care while doing nothing to actually help our nursing homes boost their workforce levels.

We believe we share a common goal: to ensure every senior in America has access to the quality care they need and deserve. Reasonable people should be able to discuss policy differences without questioning the motives of one another. We are eager to learn how we can work side-by-side with elected leaders to make this possible in a way that does not jeopardize care for those who need it most.

Sincerely,

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Mark Parkinson
President and CEO, AHCA/NCAL