

# United States Senate

WASHINGTON, DC 20510

September 29, 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:

We write to express concerns regarding the Centers for Medicare and Medicaid Services' (CMS) recent proposed rule establishing staffing mandates for nursing homes. In many parts of the country, America's long-term care facilities are facing severe workforce shortage issues that are harming access to critical care for our nation's seniors. With this in mind, we are deeply concerned that now is the worst possible time for the United States to establish the nation's first federal staffing mandate for long-term care facilities. We believe the rule as proposed is overly burdensome and will result in additional closures and decreased access to care. We urge you to rescind CMS' proposed rule and instead commit to working with Congress on the large number of alternate approaches to ensure the quality and safety of care in skilled nursing facilities.

We understand the importance of ensuring beneficiaries of federal health care programs have access to safe and high-quality nursing care. In fact, we share your intended goal of improving the quality of care for seniors and ensuring resident safety. However, a one-size-fits-all staffing mandate significantly undermines access to care for patients, particularly in rural communities. Instead, CMS should work with Congress and stakeholders on policy alternatives that address the severe workforce challenges in our states' underserved areas.

CMS' own "Nursing Home Staffing Study Comprehensive Report" released in June of this year highlights the disparities between different facilities in different parts of the country as well as the difficulty to implement burdensome national requirements, further emphasizing our concerns over CMS' proposed federal mandate.<sup>1</sup> This report also notes that current literature "does not provide a clear evidence basis for setting a minimum staffing level." While the proposed rule does attempt to address some of these disparities, we believe it falls short. For example, we are concerned by the requirement to have a Registered Nurse (RN) on site at all times being omitted from the hardship exemption and Licensed Practical Nurses (LPNs) being omitted from inclusion with RNs in the staffing ratio formula.

More broadly, the federal staffing standards established in the rule do not provide the flexibility necessary to nursing homes in light of well-known and long-standing direct care workforce challenges, especially in rural and underserved areas.<sup>2</sup> This issue is exacerbated by the

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<sup>1</sup> <https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>

<sup>2</sup> [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/05/BPC-Medicare-Rural-EmerHsp\\_R02.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/05/BPC-Medicare-Rural-EmerHsp_R02.pdf)

fact that the health care sector is projected to have a shortage of nurses, 10 to 20 percent based on a spring 2022 estimate, in the coming years.<sup>3</sup> If large, urban, multistate hospital corporations are having trouble hiring nurses, there is no doubt that this struggle will only be amplified for small rural nursing home providers. Many of these facilities are already expending significant effort and resources to recruit and retain clinical staff, including those facilities in the 38 states and the District of Columbia that have their own localized staff ratio requirements.

We recognize CMS as a crucial partner in identifying, mitigating, and preventing future health and safety problems in nursing homes. We stand ready to work with your agency on proposals to improve long-term care for patients. The best way to accomplish this goal is working with Congress and stakeholders to ensure any future actions do not further exacerbate the serious challenges already facing facilities across the country.

Sincerely,



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Jon Tester  
United States Senator



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James Lankford  
United States Senator



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Joe Manchin III  
United States Senator



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Susan M. Collins  
United States Senator



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Kyrsten Sinema  
United States Senator



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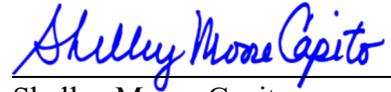
Roger W. Marshall  
Roger Marshall, M.D.  
United States Senator

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<sup>3</sup> <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce>



Margaret Wood Hassan  
United States Senator



Shelley Moore Capito  
United States Senator



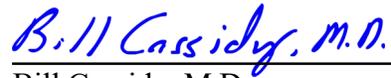
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United States Senator



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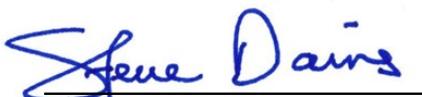
John Thune  
United States Senator



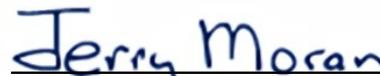
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United States Senator



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United States Senator



Michael S. Lee  
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M. Michael Rounds  
United States Senator



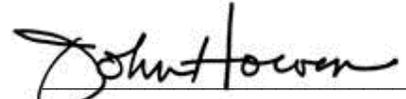
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United States Senator



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Marsha Blackburn  
United States Senator



John Hoeven  
United States Senator