

# Congress of the United States

Washington, DC 20510

November 6, 2023

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

Administrator Brooks-LaSure:

We write to express our serious concerns regarding the Centers for Medicare and Medicaid Services' (CMS) unprecedented nursing home staffing mandate proposal. Throughout the pandemic, our nation, along with this administration, applauded the incredible work done by health care providers in long-term care (LTC) facilities. We must continue to support their efforts to provide seniors with high quality care. However, this administration's proposed rule will result in nationwide closures and leave many individuals without care. It will be devastating to struggling facilities and communities in Wyoming. For these reasons, we urge you to rescind this proposed rule and instead commit to working with Congress and states on alternative solutions.

In Wyoming, there are 36 LTC facilities that care for nearly 2,000 residents.<sup>1, 2</sup> As our state confronts challenges in meeting the needs of our aging population, we are determined to find solutions that are community driven and patient focused.<sup>3</sup> We support initiatives that provide the flexibility needed for nursing homes, especially in rural and underserved areas. We are concerned the proposed rule is not tailored to meet the unique needs of our state. Subjecting rural states to a one-size-fits-all regulation is unwarranted.

Across the country, LTC facilities face dire workforce shortages. The United States is projected to have a 10 to 20 percent shortage of nurses in the coming years.<sup>4</sup> Wyoming's LTC facilities have tried to mitigate the current shortage by actively recruiting from our state's nursing schools and offering competitive financial benefits. However, there are not enough nursing graduates to meet the demand from our state and others facing similar shortages. If the proposed rule is implemented, many LTC facilities will be forced to hire additional Registered Nurses (RNs). Additional RNs will cost facilities in Wyoming at least \$500,000 in annual salaries or more should they be forced to hire travel nurses to supplement their permanent workforce.

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<sup>1</sup> <https://www.kff.org/other/state-indicator/number-of-nursing-facilities/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Number%20of%20Nursing%20Facilities%22,%22sort%22:%22asc%22%7D>

<sup>2</sup> <https://www.kff.org/other/state-indicator/number-of-nursing-facility-residents/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Number%20of%20Nursing%20Facility%20Residents%22,%22sort%22:%22desc%22%7D>

<sup>3</sup> [http://eadiv.state.wy.us/pop/POP\\_NEWSRLSE\\_AS21.pdf](http://eadiv.state.wy.us/pop/POP_NEWSRLSE_AS21.pdf)

<sup>4</sup> <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/assessing-the-lingering-impact-of-covid-19-on-the-nursing-workforce>


As Wyoming's LTC facilities struggle to meet current staffing requirements, several facilities have been unable to fill an RN position for over a year. These facilities have supplemented their workforce by hiring Licensed Practical Nurses (LPNs). Under the proposed rule, LPNs are excluded from the RN staffing ratio formula. If LPNs are not included in the staffing ratio formula, facilities will be forced to hire additional RNs to comply with the rule.

CMS estimated the proposed rule would cost \$40.6 billion over ten years.<sup>5</sup> It stated, “LTC facilities would be expected to bear the burden of these costs, unless payers increase rates.”<sup>5</sup> Many LTC facilities will be unable to take on these staggering new costs. We are concerned that facilities may decide it is no longer economically viable to accept government insurance, resulting in our nation's most financially and physically vulnerable individuals being turned away from care. It is irresponsible for the administration to impose mandates resulting in nationwide closures and then expect hardworking taxpayers to foot the bill. With a national debt of over \$33 trillion and the current state of the Medicare and Medicaid Trust Funds, the federal government should not be adding regulatory burdens that increase these kinds of costs.<sup>6</sup>

While this proposed rule offers a “hardship exemption,” the requirements to qualify are burdensome. Our facilities have struggled to meet the existing reporting requirements imposed since 2020.<sup>7</sup> The proposed requirements to report “good faith efforts to hire and retain staff” are poorly defined and create unnecessary administrative burdens. Additionally, many facilities in Wyoming expressed concerns that they would need to hire additional administrative staff to fulfill these reporting requirements.

We recognize and value the role CMS plays in preventing health and safety problems, protecting seniors, and providing solutions to mitigate harm. We are willing to work with your agency on proposals to improve LTC for patients and providers. The best way to accomplish this goal is by working with Congress, key stakeholders, and states to ensure federal mandates do not exacerbate the serious challenges already facing facilities across the county.

Sincerely,



John Barrasso, M.D.  
United States Senator



Cynthia Lummis  
United States Senator

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<sup>5</sup> <https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid>

<sup>6</sup> <https://www.usdebtclock.org/>

<sup>7</sup> <https://oig.hhs.gov/oas/reports/region9/92002005.pdf>