

November 1, 2023

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Subject: Joint Governors' Response to Document ID 2023-18781- Proposed CMS Rule on Minimum Staffing Standards for Long-Term Care Facilities (CMS-3442-P)

Dear Mr. President,

As governors, we are committed to protecting the health and safety of all our citizens, including those in nursing homes in our states. On September 1, 2023, the Centers for Medicare and Medicaid Services (CMS) proposed new regulations for long-term care facilities that impose unnecessary, one-size-fits-all staff requirements. If adopted, CMS's proposed regulations will force many long-term care facilities in our communities to close, eroding access to healthcare for some of our most vulnerable citizens.

CMS's proposed regulations would require a minimum of 0.55 hours per resident per day (HRPD) provided by Registered Nurses (RNs) and 2.45 HRPD provided by Nurse Aides (NAs). Long-term care facilities would also be required to have an RN onsite 24 hours a day, seven days a week. These staffing mandates would be imposed nationwide on all Medicare and Medicaid-certified facilities, with no regard to the unique needs of facilities and the communities they serve.

America's long-term care industry is facing a full-fledged workforce crisis, hitting lows not seen since 1994. Between February 2020 and December 2022, facilities lost more than 200,000 workers, and industry observers view long-term care as among the hardest hit sectors in healthcare that has still not recovered from the COVID-19 pandemic. Such challenges are especially acute in rural areas. Despite this, the CMS requirements would force over 80% of facilities nationwide to hire more staff at a time when workers, particularly RNs, have never been scarcer.

CMS's own study on long-term care facility staffing, commissioned in 2022, does not support the proposed regulations. The study found that there is "no obvious plateau at which quality and safety are maximized or 'cliff' below which quality and safety steeply decline." The study also suggested that any "minimum staffing requirement should consider nurse staff pay as well as the local labor pool" for each facility. Despite these findings, however, CMS's proposed regulations impose a nationwide staffing requirement with no regard for unique geographic and economic considerations. 38 states already impose minimum staffing

requirements on nursing homes, which are tailored to the unique requirements of each state. CMS's blanket requirement completely usurps these existing requirements.

The staffing requirements also ignore the critical roles that Licensed Practical Nurses (LPNs) and other caregivers serve in long-term care facilities. These professionals meaningfully improve the quality of care residents receive, yet CMS's proposed regulations totally ignore these contributions. Indeed, CMS's own industry study found that there was no discernable difference in the quality or safety of LPN-provided care compared to RN-provided care.

The nursing workforce shortage is not a new issue and our states are making significant investments to address it. We are creating and expanding innovative programs to entice young students to pursue careers in healthcare, while working in partnership with industry on this issue. That includes the expansion of nursing school capacity, grants to hire more nurses, and pioneering new healthcare apprenticeship programs that start in high school.

The proposed regulations would also impose significant industry costs that will erode access to care. CMS estimates that complying with the rules will cost \$4 billion annually – much of which will likely be passed on to the public and private health plans and residents. Independent analysts estimate the cost will be far higher – more than \$6.8 billion annually.

In short, Republican governors are pulling multiple levers to ensure these facilities have the staff they need to care for their vulnerable residents. In contrast, your proposed rule treats this complex, deep-rooted problem as something to be solved with a simple wave of the bureaucratic wand. This is not only unrealistic, but it also threatens to unravel the work we have done, while harming the seniors, elderly, and disabled it's designed to help. We urge you to reconsider your commitment to unfunded mandates and instead enter into a genuine state-federal dialogue on how best to serve residents of long-term care facilities in our states.

Sincerely,



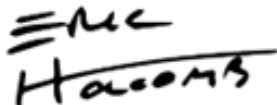
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State of Iowa



Governor Jim Pillen
State of Nebraska



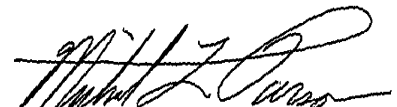
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