



November 3, 2023

Chiquita Brooks-LaSure, Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-3442-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

*Submitted electronically at <http://www.regulations.gov>*

**RE:** Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting [CMS-3442-P]

Dear Administrator Brooks-LaSure:

The National Association of Rehabilitation Providers and Agencies (NARA) represents over 80,000 physical therapy, occupational therapy and speech language pathology practitioners through our member organizations who provide therapy across the United States to Medicare beneficiaries. They provide therapy in all settings across the continuum such as outpatient clinics, skilled nursing facilities, assisted living facilities, hospital outpatient, hospital inpatient, in the beneficiary's home, and in retirement communities. As a member-driven organization, NARA promotes the growth and business success of physical therapy, occupational therapy, and speech-language pathology providers through education, support, and advocacy. NARA's membership demographics give us a unique insight into the continuum of care for Medicare beneficiaries.

We appreciate the opportunity to provide our perspective regarding the Centers for Medicare and Medicaid Services' (CMS) intent to issue staffing mandates for nursing homes. There has been some discussion about including therapist hours in direct care calculations. We ask you to review the following items prior to decision making on this issue.

- Therapists and therapy assistants are highly skilled direct care clinicians and are an integral part of the skilled nursing facility direct care team. It is important to note that any discussion of inclusion of therapists in staffing models would require complex further consideration of patient mix and the needs of the patient population.
- Different skilled nursing facilities have different therapy staffing profiles that are directly related to the patient case mix. For example, more therapy staffing hours are provided in skilled nursing facilities where there is a greater need for these services. There is a significant difference in hours in skilled nursing facilities with a high volume of short-term

rehabilitation admissions with an intent to return home where daily skilled therapy is required as opposed to facilities with a predominantly long-term residential population may only require periodic therapy services. Physical therapy publicly reported PBJ numbers on Care Compare are an example of how this case mix can skew the publicly reported data. Specifically, the PT hours posted on Care Compare is limited in the data it presents, because it only represents physical therapist (PT) hours, rather than PT and physical therapist assistant hours. Additionally, there is no explanation for why the other rehab therapy disciplines (i.e. occupational therapy (OT) and speech therapy (ST)) are not included, Therefore, we do not believe it is meaningful to those using Care Compare to identify a quality nursing facility.

- For example: In a facility with 100 certified beds where 97 patients are long term and 3 are short stay, it may require 4 PT, OT, and ST combined FTEs to complete all needed and ordered skilled care and there would be less therapy hours reported. Alternatively, a facility with 100 certified beds where 50 are long term patients and 50 are short stay may require 15 PT, OT, and ST FTE's daily to meet the skilled needs of the residents.
- The services that rehabilitation professionals provide are regulated by state practice act, and discipline specific education. Rehabilitation interventions are driven by physicians' orders and active plans of care and are not directly tied to a census number.

A one-size staffing mandate that does not consider the aforementioned points:

- May significantly impact a SNFs ability to admit and/or safely address the needs of short-term rehabilitation patients,
- Could further limit beneficiary access to such care due to facility closures or limiting care because they do not meet the CMS requirements,
- Could exacerbate hospital discharge backlogs, and ultimately,
- Could lead to further therapy workforce challenges as therapist and therapy assistant work hours or positions could be reduced or eliminated due to the reduced short-term SNF rehabilitation admissions.

Nealy 70% of NARA's members provide services in the SNF setting; thus, we would like to advance conversations on therapy practitioners as part of the skilled nursing facility minimum staffing levels. NARA can be a resource to help assess impacts of any policy that may include rehabilitation professionals in staffing models.

Nationwide labor shortages, coupled with inflation and chronic government underfunding, have forced nursing homes to limit admissions, downsize or even close entirely – leaving tens of thousands of vulnerable residents displaced, and countless prospective residents and families in desperate search of care. [AHCA Access to Care Report](#) provides grave statistics for the state of nursing homes post-pandemic and the impact on access to vital seniors seeking high-quality nursing home care when they need it. The report reveals that during the pandemic, an overall

decline in the number of nursing homes accelerated by nearly four times. Specifically, from 2020 to present:

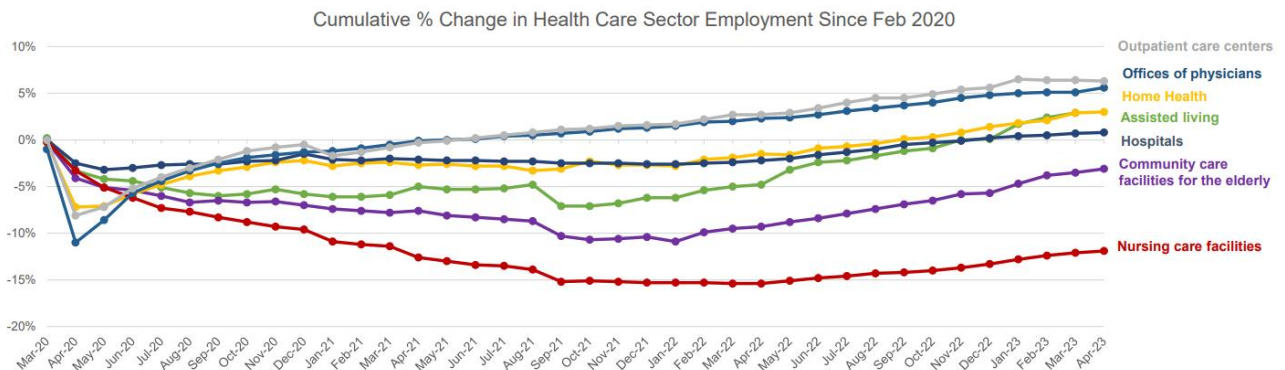
- 579 nursing homes closed
- More than 21,000 residents have been displaced by closures
- 30 more U.S. counties became nursing home deserts
- Two out of five closures had four- or five-star ratings
- Only three new nursing homes have opened in 2023, compared to an average of 64 each year between 2020 and 2022

As skilled nursing facilities continue to struggle with the labor shortages and stay afloat in this economy, the Biden Administration is expecting a federal staffing mandate but without corresponding funding or workforce development programs. This is simply unsustainable and creates a significant issue in access to care.

NARA understands and agrees with CMS' that generally there is a correlation to some between care delivered when a SNF is fully staffed. While the demand for services has rebounded since COVID, the long-term care setting continues to suffer from severe staffing shortages as seen in the graphic below created by AHCA/NCAL. Additionally, the graph below shows other healthcare settings have rebounded much quicker than the long-term care setting.



**LONG TERM CARE: WORST IMPACTED INDUSTRY OF HEALTH CARE SECTOR**



\*Source: Bureau of Labor Statistics (BLS) February 2020- April 2023 (Assisted Living data through March 2023)

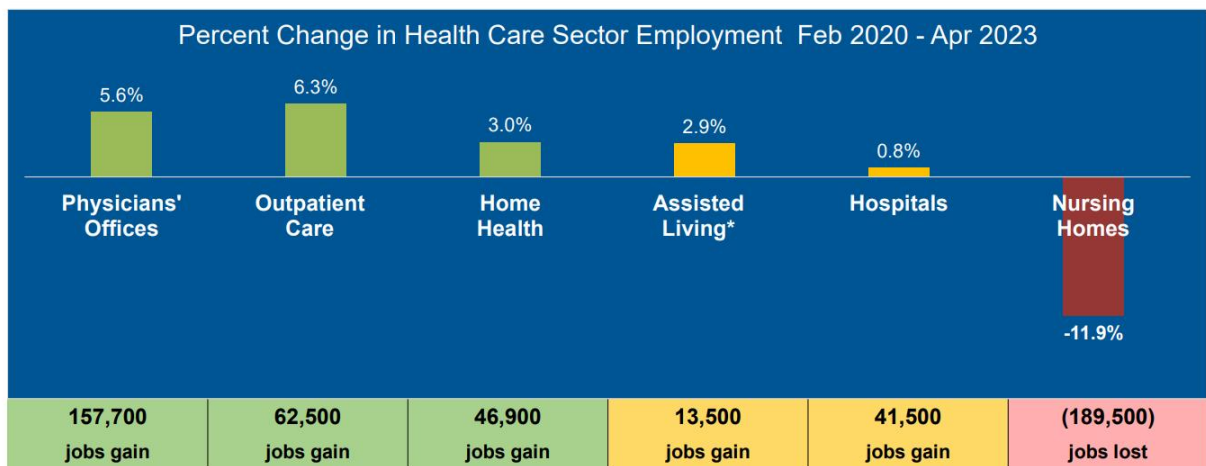
In fact, as seen below, nursing homes have experienced the worst job loss of any healthcare sector during the pandemic, with 210,000 jobs lost from February 2020 to December 2022 according to the Bureau of Labor Statistics. At the current pace of modest job growth, nursing

homes would not return to pre-pandemic staffing levels until 2027. NARA advocates for common-sense solutions such as those laid out in AHCA’s [Care for Our Seniors Act](#). Among them are proper Medicare and Medicaid funding, as well as numerous programs that will attract and retain caregivers and build a strong workforce.

Nursing facilities also employ therapy personnel who work to restore quality-of-life benefits to beneficiaries. The American Physical Therapy Association recently published a report on *The Economic Value of Physical Therapy in the United States*<sup>1</sup>, which describes 4 major areas that beneficiaries often encounter including falls prevention, cancer rehabilitation, stress urinary incontinence and osteoarthritis of the knee. This report provides the results of an economic analysis and the cost savings that are provided through physical therapy. When beneficiaries are receiving consistent and timely treatment there is a reduction in the risk of falls, recurrence, and further injury. The cost savings when compared to patient’s time, pain and missed life events ranges from \$2,000 to \$14,000. Physical therapy, occupational therapy and speech-language pathology are key components to a beneficiary’s recovery at a skilled nursing facility; however, these three professions have also experienced a significant loss in staffing that is slow to return to the levels prior to COVID.



**LONG TERM CARE: WORST IMPACTED THAN ANY OTHER HEALTH CARE SECTOR**



\*Source: Bureau of Labor Statistics (BLS) February 2020- April 2023 (Assisted Living data through March 2023)

The COVID-19 public health emergency (PHE) has offered skilled nursing facilities (SNFs) key flexibilities 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

<sup>1</sup> [https://www.valueofpt.com/globalassets/value-of-pt/economic\\_value\\_pt\\_u.s.\\_report\\_from\\_apt-report.pdf](https://www.valueofpt.com/globalassets/value-of-pt/economic_value_pt_u.s._report_from_apt-report.pdf)

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.

The labor crisis in long term and post-acute care has a ripple effect on other sectors of the health care system, including general acute care hospitals and inpatient rehabilitation facilities. This past fall and winter there was a surge of patients and hospitals across the country became overwhelmed with patients. Due to the staffing shortages in long term care, nursing homes were denying or delaying new admissions leaving hospitals overwhelmed with patients they were unable to discharge to this appropriate care setting. Consequently, data from 2019-2022 shows the average length of stay for hospital patients being discharged to SNFs increased more than 20 percent.<sup>2</sup> The increased length of stay has a detrimental impact on: patients who must spend additional unnecessary days 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.

NARA supports the following initiatives and encourages government agencies and Congress to work together to decrease workforce shortage for the long-term care sector while reducing administrative burden on providers:

- Augment a diminished 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. We also strongly support the expedition of visas for foreign-trained nurses, physical therapists, occupational therapists, and speech language pathologists.
- Creation of 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.
- Extend the flexibility from the PHE, to allow 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

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<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>.

<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/>.

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.

- 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.

NARA members support skilled nursing facility providers in their efforts to continue to provide quality care to patients in both rural and urban areas. It is in the best interest of all health care providers including our members and the patients we serve 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.

We thank you for the opportunity to provide comments related to this proposed rule. Should you have any questions concerning these comments, please contact Christie Sheets, NARA Executive Director at [christie.sheets@naranet.org](mailto:christie.sheets@naranet.org).

Respectfully submitted,



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President

National Association of Rehabilitation Providers and Agencies