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5 SUPPORTING ACCESS TO LONG-TERM SERVICES AND SUPPORTS:

6 AN EXAMINATION OF THE IMPACTS OF PROPOSED REGULATIONS

7 ON WORKFORCE AND ACCESS TO CARE

8 WEDNESDAY, OCTOBER 25, 2023

9 House of Representatives,

10 Subcommittee on Health,

11 Committee on Energy and Commerce,

12 Washington, D.C.

13

14 The subcommittee met, pursuant to call, at 3:15 p.m. in

15 Room 2123 of the Rayburn House Office Building, Hon. Brett

16 Guthrie [chairman of the subcommittee] presiding.

17

18 Present: Representatives Guthrie, Burgess, Latta,

19 Griffith, Bilirakis, Johnson, Bucshon, Carter, Pence,

20 Crenshaw, Joyce, Harshbarger, Miller-Meeks, Obernolte,

21 Rodgers (ex officio); Eshoo, Sarbanes, Cardenas, Ruiz,

22 Kuster, Kelly, Barragan, Craig, Schrier, and Pallone (ex
23 officio).
24
25 Also present: Representatives Duncan; and Schakowsky.
26
27 Staff Present: Jolie Brochin, Clerk, Health; Sarah
28 Burke, Deputy Staff Director; Corey Ensslin, Senior Policy
29 Advisor, Health; Seth Gold, Professional Staff Member,
30 Health; Sydney Greene, Director of Operations; Nate Hodson,
31 Staff Director; Tara Hupman, Chief Counsel; Emily King,
32 Member Services Director; Lydia Abma, Minority Policy
33 Analyst; Tiffany Guarascio, Minority Staff Director; Una Lee,
34 Minority Chief Health Counsel; Katarina Morgan, Minority
35 Health Fellow; Avni Patel, Minority Health Fellow; Andrew
36 Souvall, Minority Director of Communications, Outreach, and
37 Member Services; and Rick Van Buren, Minority Senior Health
38 Counsel.
39

40 *Mr. Guthrie. The subcommittee will come to order. The
41 chair now recognizes himself for five minutes for an opening
42 statement.
43 Today we are here to critically examine two proposed
44 regulations from the Biden Administration that threaten to
45 disrupt care for millions of seniors and people with
46 disabilities throughout the country. The proposed Minimum
47 Staffing Rule would require nursing homes to have a minimum
48 number of registered nurses and nurse aides, while the
49 Medicaid Access Rule would require home health agencies to
50 pass through a minimum of 80 percent of all payments to the
51 direct care workforce.
52 While well-intentioned, these rules are misguided and
53 will ultimately threaten to undermine access to vital
54 services that our most vulnerable rely upon. The success of
55 our long-term care system is integral to the success of the
56 broader health care system.
57 Caregivers are the backbone of our long-term health care
58 system, providing around-the-clock care, and often times
59 undertaking physically intensive work to support our loved
60 ones.

61 We are at a critical juncture for our long-term health
62 care system. Since the start of the pandemic we have lost
63 hundreds of thousands of workers from nursing homes, as well
64 as home and community-based services. Nationally, there have
65 been more than 500 long-term care facility closures in 2020,
66 and the industry needs to fill 150,000 jobs just to reach
67 pre-pandemic levels, while the American _ while Americans
68 continue to age and need more long-term care. More needs to
69 be done.
70 However, instead of partnering with Congress, the Biden
71 Administration has _ is embracing central planning, claiming
72 their proposal will lead to more workers being hired and help
73 ensure safety. Unfortunately, this is far from reality.
74 These one-size-fits-all, Washington-knows-best approaches
75 will impose unfunded mandates on states and providers with
76 reducing overall access to vital services without addressing
77 the root cause of the problem.
78 Regarding the minimum staffing standards, analysis from
79 the Kaiser Family Foundation found that as many as 80 percent
80 of nursing homes would not be able to meet this _ its
81 requirements. Separate analysis found that the mandate will

82 cost Kentucky long-term care facilities $69 million annually
83 just to come into compliance. Even the Obama Administration
84 agreed about the harms of racial requirements, concluding in
85 2016 that this policy would stifle innovation, and wouldn't
86 improve quality, and lead to the elimination of jobs.
87 I had a long-term care administrator in Barren County
88 say our rural area in south central Kentucky simply does not
89 have access to additional workers. The lack of providers
90 that will result from this requirement will result in no
91 options for long-term care services. The Glasgow and Barren
92 County market has five nursing homes and acute care _ and an
93 acute care hospital competing for the same registered nurses.
94 America's seniors and future generations deserve
95 solutions that will increase access to affordable, high-
96 quality health care. I will continue to work, as the chair
97 of this subcommittee, toward achieving those objectives.
98 [The prepared statement of Mr. Guthrie follows:]
99
100 **********COMMITTEE INSERT**********
101

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102 *Mr. Guthrie. I will submit the full statement, I just
103 read excerpts from my full statement for the record.
104 But I will yield to my friend, Mr. Pence from Indiana.
105 *Mr. Pence. Thank you, Chair Guthrie, for yielding
106 time.
107 I am deeply concerned with the Biden Administration's
108 proposal to mandate minimum nursing staff ratios. This is
109 something I have really focused on on this subcommittee in
110 the whole duration I have been on it. I recently sent a
111 bipartisan letter to CMS with more than 90 of my colleagues
112 on both sides of the aisle to oppose this prospective policy,
113 in addition to the letter I sent on March 10.
114 Finalizing this HHS proposal would result in limited
115 access to care for seniors, mandatory increases in state
116 Medicaid budgets, and could most consequentially lead to
117 widespread nursing home closures. Nursing homes around the
118 country would need to hire nearly 13,000 more registered
119 nurses and 76,000 nursing assistants. I am on a community
120 college and we have a nursing program. We can't even get the
121 trainers to fill the demand of people that want to become
122 nurses, let alone get nurses out into the communities.

123 CMS's one-size-fits-all regulatory requirement for
124 nursing homes would result in numerous unintended
125 consequences for an industry that is facing workforce
126 shortages at unprecedented levels, particularly in rural
127 communities. CMS should instead collaborate and work
128 alongside nursing homes across the country to find innovative
129 solutions to improve the provision of care for seniors and
130 other vulnerable populations.
131 I look forward to hearing from all the witnesses here
132 today as they explain how this proposed rule would impact
133 their ability to serve new and existing residents across the
134 country.
135 [The prepared statement of Mr. Pence follows:]
136
137 **********COMMITTEE INSERT**********
138

139 *Mr. Pence. And Mr. Chair, I yield back.

140 *Mr. Guthrie. The gentleman yields back, and I will
141 yield back my time but submit my full statement. I yield
142 back my time.

143 I now recognize the gentlelady from California
144 Representative Eshoo, for five minutes for an opening
145 statement.

146 *Ms. Eshoo. Thank you, Mr. Chairman. And it is with
147 relief that I left the floor with many of you and the
148 election of the new speaker. So it is good to be back in
149 business, and godspeed. May he be successful to _ so that
150 there is success for the country.

151 In a Gallup poll conducted last month, 70 percent of
152 Americans said they were uncomfortable with the idea of
153 living in a nursing home. When asked to grade the overall
154 quality of care in nursing homes, Americans gave the
155 facilities an average grade of D-plus. These dismal marks _
156 most frankly, I am not surprised by them because I don't know
157 anyone that raises their hand and said, "I would be happy to
158 go to a nursing home.’‘ It represents many different things
159 to a whole cross-section of people.

160 We know that during COVID over 200,000 nursing home
161 residents died of the virus between January 20 and February
162 of 2022. So in a two-year period, almost a quarter of a
163 million Americans.
164 Even before the pandemic nursing homes faced quality
165 issues. And if there is anyone that is famous for
166 associating himself with the shortcomings in the nursing home
167 industry, it is Senator Chuck Grassley. He has conducted so
168 many investigations and, of course, there are GAO and HHS
169 inspector general reports that I think that colleagues on
170 both sides of the aisle are very familiar with.
171 Now the Biden Administration has proposed what they view
172 as a solution to the lack of staff providing care in nursing
173 homes. Red light and siren. Hire more people. It is as
174 simple as that.
175 We have all, I think, been in a hospital or a health
176 care setting where there is a button, and when we press that
177 button we want someone to come to us. Does it cost
178 something? Of course it does. Of course it does. But if
179 you _ if no one comes when you press the button, things go
180 downhill from there.

181 So the proposed rule requires a registered nurse to be
182 on site 24 hours a day, 7 days a week, instead of the current
183 minimum of only 8 straight hours a day.
184 The rule also requires 1 registered nurse for every 44
185 residents, and 1 nurse aide for every 10 residents.
186 The rule phases in for most facilities over three years,
187 but gives rural facilities five years to come into
188 compliance.
189 It also provides $75 million in grants to train nurse
190 aides.
191 The inability of nursing homes to hire and keep staff
192 has been a problem for over 30 years. This isn't something
193 new. According to the National Academies of Health, "Decades
194 of evidence support the need to enhance nursing home workers'
195 training, salary, and working conditions, yet little progress
196 has been made to improve the quality of these jobs.’‘
197 I know that we want to get to our witnesses because we
198 are going to be called for votes, and it is unfair to you,
199 the witnesses that have traveled from different parts of the
200 country to get here.
201 I hope, out of this debate and discussion, that it goes

202 beyond bashing the Biden Administration. There are real
203 issues with nursing homes in our countries. I am proud to
204 have worked with nursing home people to make improvements
205 over the years, but there are still many shortcomings, still
206 many shortcomings.
207 And I think, for those that will end up in a nursing
208 home _ and God knows, it may be many of us here making these
209 decisions today _ when we press the button, we want someone
210 to come, and they need to be well trained, and that the
211 people that they are serving can be served.
212 I have a constituent, she is a quadriplegic. She
213 depends on home-based services for daily activities. It is
214 next to impossible for her to find a place that can give her
215 the kind of care that she needs. We can do much better in
216 this country, so I will _ well, I was going to yield back
217 time, and I have gone over the time.
218 *Mr. Guthrie. Thank you.
219 *Ms. Eshoo. Thank you, Mr. Chairman.
220 *Mr. Guthrie. Thank you. The gentlelady yields back.
221 The chair recognizes the chair of the full committee, Chair
222 Rodgers, for five minutes for an opening statement.

223 *The Chair. I would like to thank our witnesses for
224 being here today.
225 As many of you know, our son, Cole, was born with that
226 extra twenty-first chromosome. Most of you know it as Down
227 syndrome. And today Cole is a 16-year-old. He is a high
228 school student with big dreams. He wants to be a football
229 player or a coach, a pastor, a race car driver, and he is
230 dreaming of going to college. For people with disabilities
231 like Cole, others born with intellectual and developmental
232 disabilities, or even seniors facing physical limitations in
233 their everyday lives, the sky is truly the limit to their
234 potential.
235 Long-term care services and supports, whether that be
236 those provided by home and community-based services _ or
237 HCBS, for short _ or in nursing home settings, are key to
238 ensuring that people can live successful and independent
239 lives.
240 As many of us know, there is a shortage of long-term
241 care providers. Since 2020 we have lost tens of thousands of
242 workers across both HCBS and nursing home settings as workers
243 left the field due to burnout or in pursuit of other

244 opportunities. While these stressors were present in the
245 long-term care field prior to the pandemic, they have gotten
246 worse. Even as other parts of the health care field began to
247 return to pre-pandemic employment levels, the future of care
248 for seniors and people with disabilities depends on us
249 finding a way to support long-term care workers.

250 I have been troubled by recent proposals from the Biden
251 Administration that, while they may be well-intentioned, I am
252 concerned are going to further undermine this workforce. The
253 Administration proposed the so-called Medicaid Access Rule,
254 which would require home health agencies to pass through a
255 minimum of 80 percent of all reimbursements directly to the
256 direct care workforce. State Medicaid directors and
257 advocates, however, have raised concerns, stating that such a
258 high threshold is out of reach for most agencies, and would
259 require agencies to have to reduce service and staff to be
260 able to ensure that they comply with the rule.

261 Put simply, this proposal would actively undermine
262 access to care, running counter to the very name of the rule.

263 Additionally, just last month, the Administration
264 followed the access rule with a proposal to require minimum

265 staffing levels for nursing homes. Like the access rule,
266 this minimum staffing rule is setting unrealistic staffing
267 thresholds. Independent analyses have found that as many as
268 80 percent of all nursing homes _ 80 percent of all nursing
269 homes _ will not be able to meet the requirements of the
270 rule, meaning that facilities are going to have to increase
271 costs even further, reduce censuses, and stop accepting new
272 residents, or potentially even close.
273 We all believe in access to high-quality care, but
274 proposed requirements that are untenable for four out of five
275 nursing homes do not represent a serious solution. And those
276 who rely on skilled nursing care deserve better than a
277 proposal that will dramatically reduce their care.
278 These top-down approaches are not the way forward in
279 supporting seniors and people with disabilities, and it is my
280 hope today that we will begin a conversation on ways that we
281 can find more meaningful solutions to help those in need. We
282 cannot let this rule simply go into effect, and watch idly as
283 individuals with disabilities and seniors lose the support
284 they need to maintain their independence. We do not want to
285 see people forced into hospitals for chronic conditions that

286 could have been avoided.
287 You know, I often say this. I am proud of the
288 bipartisan work of this committee. From passing Lower Costs,
289 More Transparency Act, to making health care more affordable
290 and accessible, to reauthorizing Mr. Guthrie's SUPPORT Act to
291 help those struggling with substance use disorder.
292 And I will note that my colleague, Mr. Pence, has just
293 led a bipartisan letter to the Administration, with over 90
294 members, raising concerns with the Nursing Home Staffing
295 Rule.
296 I hope, in the spirit of bipartisanship, we can discuss
297 these policies and find a pathway forward that helps people
298 with disabilities and seniors get the access and the care
299 that they need.
300 [The prepared statement of The Chair follows:]
301
302 **********COMMITTEE INSERT**********
303

304 *The Chair. I yield back.

305 *Mr. Guthrie. The gentlelady yields _ the chair yields
306 back. The chair will now recognize the ranking member of the
307 full committee, Mr. Pallone, for five minutes for questions
308 _ for an opening statement.

309 *Mr. Pallone. Thank you, Mr. Chairman. Today's hearing
310 is important. Quite frankly, it deserves thoughtful
311 consideration and discussion, not being shoved in between the
312 ongoing Republican efforts to elect a speaker that has
313 repeatedly caused committee activity to be delayed for hours
314 on end over the last three weeks.

315 Due to all of this uncertainty, we were not able to
316 include a witness who had been considering _ we had been
317 considering who is quadriplegic, and receives insurance
318 through Medicaid. Travel is understandably challenging for
319 him, as he needs to make sure it works not just for his
320 schedule, but also for his personal care worker.
321 Unfortunately, given the unpredictability, we were not able
322 to guarantee that this witness would be able to make his
323 return flight.

324 Of course, there would be less of an issue if the

325 Republicans still allowed us to have witnesses join
326 virtually, which we don't have under the current Republican
327 procedures. And that restriction on virtual hearings or
328 virtual witnesses is preventing important voices from being
329 heard at our hearings, including this hearing today.
330 But I want to say that the COVID-19 pandemic laid bare
331 what many of us have known for years: there is a staffing
332 crisis in our long-term care infrastructure. Chronic
333 understaffing threatens patient safety, access to care, and
334 contributes to provider burnout.
335 During the pandemic nearly one in four COVID-19 deaths
336 occurred in a long-term care facility, and understaffed
337 facilities were more than twice as likely early in the
338 pandemic to have COVID-19 infections as comparable facilities
339 with higher staffing levels. And this is tragic. And that
340 is why last Congress I introduced comprehensive legislation
341 that would increase staffing and oversight of nursing homes
342 in an effort to prevent a situation like what we witnessed
343 during the pandemic.
344 Now, I am pleased that Biden Administration has taken
345 steps to help address staffing issues in both nursing homes

346 and home-based settings. Research continues to show that
347 higher nursing home staffing levels are associated with
348 better patient outcomes. If we want to improve the quality
349 of care people receive in nursing homes, we need to ensure
350 there are enough qualified workers there to care for them.
351 The Administration's proposed rules would take steps to
352 do just that. They establish minimum staffing standards for
353 nursing homes, require that at least 80 percent of Medicaid
354 payments for home care services go through caregiver pay, and
355 expand nursing home oversight. These proposed rules are
356 strong first steps to help ensure that patients and nursing
357 homes and home and community-based settings are able to get
358 the care that they need, and these are important improvements
359 that must be made.
360 But I understand that it may take some facilities more
361 time than others to come into compliance. Fortunately, the
362 proposed rule already includes flexibility for certain
363 facilities. It allows for an exception for facilities in
364 areas where workforce shortages, if they are, make _ or if
365 they are making a good faith to hire additional staff, do not
366 have a history of safety violations.

367 The Administration is also proposing to phase in the
368 rules requirements gradually, with additional time for rural
369 nursing homes. So I am glad the Administration is serious
370 about taking steps to improve patient safety and safety
371 conditions, while also recognizing the unique challenges some
372 nursing homes may face in complying with the new rules.
373 I look forward to hearing our witnesses' perspectives on
374 the rule, and to working with all of you and with the
375 Administration to ensure that it is successfully implemented.
376
377
378
379 [The prepared statement of Mr. Pallone follows:]
380
381 **********COMMITTEE INSERT**********
382

383 *Mr. Pallone. And I yield back, Mr. Chairman.
384 *Mr. Guthrie. Thank you. The gentleman yields back.
385 That concludes our opening statements, and we will go to
386 witnesses' opening statements.
387 I will introduce all of you and then, when I call on
388 you, you will have five minutes. I think most of you have
389 testified before. If you haven't, then there will be a
390 warning light, a yellow light, with a minute _ after four
391 minutes, a minute to go, and that is when to start wrapping
392 up your _ so we are trying to get everybody and questions in.
393 So I will move straight to introducing our witnesses.
394 First we have Sarah Schumann, Vice President of
395 Operations for Brookside Inn; Mary Killough, Vice President
396 of Operations and Government Relations at AccentCare; Shelly
397 Hughes, Certified Nurse Aide; Lori Smetanka _ did I say that
398 correctly, Smetanka _ Smetanka, Executive Director of the
399 National Consumer Voice for Quality Long-Term Care; Patti
400 Killingsworth, former Chair of LTSS, TennCare, Chief Strategy
401 Officer at CareBridge Health.
402 So thank you and, Ms. Schumann, you are recognized for
403 five minutes for your opening statement.
404

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405 STATEMENT OF SARAH SCHUMANN, VICE PRESIDENT OF OPERATIONS,
406 BROOKSIDE INN; MARY KILLOUGH, VICE PRESIDENT OF OPERATIONS
407 AND GOVERNMENT RELATIONS, ACCENTCARE; SHELLY HUGHES,
408 CERTIFIED NURSE AIDE; LORI SMETANKA, EXECUTIVE DIRECTOR, THE
409 NATIONAL CONSUMER VOICE FOR QUALITY LONG-TERM CARE; AND PATTI
410 KILLINGSWORTH, FORMER CHIEF OF LTSS, TENNCARE, CHIEF STRATEGY
411 OFFICER, CAREBRIDGE HEALTH
412
413 STATEMENT OF SARAH SCHUMANN
414
415 *Ms. Schumann. Thank you, Chair Guthrie, Ranking Member
416 Eshoo, Ranking Member Pallone, and the members of the
417 Subcommittee of Health. Thank you for giving me the
418 opportunity to testify today.
419 My name is Sarah Schumann, and I am the operator of
420 Brookside Inn and Brookside Rehabilitation in Castle Rock,
421 Colorado, just south of Denver. I am here to talk to you
422 about the long-term care workforce, and how the recently
423 proposed staffing mandate from the Centers for Medicare and
424 Medicaid Services will have dangerous consequences.
425 Specifically, limiting access to care for our most

426 vulnerable.

427 I am a second-generation nursing home operator. My
428 father, a physician, founded our organization. I grew up in
429 a multi-generational household, and we had the privilege to
430 serve three of my grandparents who eventually lived and
431 passed in our communities. My mother, my grandmother, three
432 of my great-grandparents, and numerous aunts were all
433 licensed registered nurses. Inspired by the nurturing of
434 these women, I chose to become a chaplain and a certified
435 nursing assistant.

436 My life has been blessed with a deep love for our elders
437 and profound admiration of nurses. Having dedicated my adult
438 life to seniors and long-term care, I can say without a doubt
439 that this is more than just a job. That is why the current
440 workforce challenges and the looming Federal staffing mandate
441 are heartbreaking and terrifying.

442 We are still in recovery mode from the challenges of the
443 pandemic. Our staff are true heroes. Nursing homes are
444 facing a historic labor shortage, and the proposed staffing
445 mandate will only make things worse.

446 Colorado is one of the fastest-growing elderly

447 populations. But like the rest of our nation, our caregiver
448 workforce cannot keep pace. We are doing everything we can
449 to recruit more caregivers, but there are significant
450 obstacles. All of our local health care providers are
451 recruiting nurses, as well.

452 To attract more workers, Brookside has increased our
453 wages by more than 40 percent in almost all caregiver
454 positions. We have increased our benefits package. But even
455 with the higher pay and better incentives, we are still
456 facing hiring challenges simply because the number of
457 qualified caregivers that we need are not there.
458 Unfortunately, at times we have had to turn to costly
459 staffing agencies.

460 I am concerned the staffing mandate would have the
461 unintended consequence of increasing the use of agency staff.
462 That is not the best solution for quality of care for our
463 residents, and it is financially unsustainable. In one of
464 our facilities, 85 percent of our residents rely on Medicaid.
465 A recent analysis of the staffing mandate found that
466 facilities with a higher Medicaid census were less likely to
467 meet the proposed requirements. Again, I am concerned that

468 the Administration does not realize the unintended
469 consequences of this policy and how it will
470 disproportionately impact underprivileged seniors and
471 underserved communities.
472 Like most of the profession, Wall Street does not own my
473 company. We serve residents on Medicaid, and we do not have
474 the resources to fund this unfunded mandate. I am terrified
475 we would be unable to continue serving seniors in our
476 community. We are not alone in this fear. Nearly 300,000
477 nursing home residents nationwide could be displaced and left
478 scrambling for alternative care if this mandate proceeds.
479 In 2016, prior to the pandemic, I began my quest to
480 Congress asking for workforce relief. We entered the
481 pandemic with staffing challenges, and those challenges have
482 persisted. We cannot be expected to just magically grow new
483 caregivers. Instead of an impossible mandate, something that
484 94 percent of nursing homes, mine included, cannot currently
485 meet, we should be implementing solutions together such as
486 workforce recruitment programs, student loan forgiveness, and
487 tax credits for those choosing to work in our profession, and
488 we should be investing in our nursing schools and learning

489 institutions to help build a pipeline of caregivers for a
490 growing elderly population.
491 The caregivers in our nursing homes care deeply for our
492 beloved residents. The work we do is sacred. This is one of
493 the most compassionate and selfless professions in the world,
494 and we need your support.
495 As I wrap up my time with you I would like to ask the
496 committee, is there a way we can work together to create
497 supportive policies that will actually make a difference in
498 the lives of our seniors and our long-term care staff?
499 How can we together serve our precious elders?
500 How can we collaborate to support our nursing
501 professionals?
502 Can we together create solutions to develop a much-
503 needed workforce for skilled nursing communities?
504 Thank you.
505 [The prepared statement of Ms. Schumann follows:]
506
507 **********COMMITTEE INSERT**********
508

509 *Mr. Guthrie. Thank you.

510 The gentlelady yields back. The chair will now

511 recognize Ms. Killough for five minutes for her opening

512 statement.

513

514 STATEMENT OF MARY KILLOUGH

515

516 *Ms. Killough. Thank you. Ranking Member Pallone,
517 Chairman Guthrie, Ranking Member Eshoo, and the members of
518 the Energy and Commerce Health Subcommittee, thank you for
519 the invitation to testify today and the opportunity to
520 provide insight into issues related to direct care workforce
521 and access to Medicaid home and community-based services.

522 My name is Mary Killough, and I serve as Vice President
523 of Operations for AccentCare Personal Care Services in
524 Illinois. Our agency started operating in 1984, and employs
525 over 2,100 home care aides who provide home and community-
526 based services to over 2,900 older adults and individuals
527 with disabilities in their homes. As a leader of HCBS home
528 health and hospice services, AccentCare serves the entire
529 home care continuum, consistently delivering high-quality
530 care for our patients and program participants.

531 In addition to providing HCBS services in Illinois,
532 AccentCare employs over 15,000 direct care workers who
533 deliver over 15 million hours of care annually in Arizona,
534 New York, and Texas.

535 Since graduating from law school, I have spent the last
536 30 years working to protect and care for older adults,
537 individuals _ and individuals with disabilities. As a Cook
538 County state attorney, I prosecuted cases against individuals
539 who victimized seniors and persons with disabilities. As the
540 deputy director of the Illinois Department on Aging, I served
541 under two governors and managed the agency that directed and
542 implemented most aspects of aging policy and planning
543 throughout the entire state, including the largest waiver,
544 the aging waiver.
545 And now, as the senior leader at one of the largest
546 provider of home and community-based services in Chicagoland,
547 I am fortunate enough to work along dedicated colleagues like
548 home care aides that have been with the agency that I work at
549 for over two decades.
550 The direct care workforce is in crisis, and it will
551 require a wide range of policy programmatic changes to meet
552 the current and future demands of HCBS. Unfortunately, the
553 Administration's proposal mandated that HCBS providers pass
554 through 80 percent of Medicaid payments to direct care
555 workers will not achieve the desired objective of increasing

556 access to services or expanding the workforce. In fact, it
557 would have the opposite effect.
558 As I addressed in my written testimony, if CMS finalizes
559 the proposed one-size-fits-all federally-mandated wage
560 threshold, the likely outcome would be that home care
561 provider will close, and providers or proprietors reducing
562 their service areas, with these impacts being most felt for
563 the smaller agencies or rural providers that serve
564 participants from racial and ethnic minority groups.
565 AccentCare fully supports higher wages for the direct
566 care workforce, and we have been actively advocating in our
567 four operating states for higher payment rates with the
568 purpose of increasing home care aide wages. The
569 Administration's proposal does not address the primary issue
570 that has been suppressing direct care workers' wages, and
571 that is the historically underfunded provider payments, the
572 very payments that allow us to provide wages to our direct
573 care workforce.
574 States are making investments to increase payments to
575 support HCBS and the direct care workers who provide the
576 services. The overly prescriptive 80 percent wage pass-

577 through requirement would jeopardize that progress. In fact,
578 we note that many states, including those making those
579 historic investments such as Texas, have expressed concerns
580 with the proposal.
581 We must not undercut efforts to expand HCBS workforce,
582 increase wages, and improve quality of life for workers and
583 program participants. Solutions to the workforce shortage
584 will require home care providers, state and Federal
585 policymakers, key stakeholders to thoughtfully examine not
586 only the wages and benefits provided, but the myriad of
587 issues that have been identified over the past decades that
588 are limiting employment growth of direct care workforce.
589 Ensuring access to long-term care services within Medicaid
590 program will require a comprehensive approach with a wide
591 range of policy reforms, while maintaining the state's
592 flexibility as prescribed under the Medicaid Act.
593 My colleagues at AccentCare and I welcome the
594 opportunity to work with the committee, the Administration,
595 and a broad group of stakeholders to provide a pathway to
596 increase access to home care and services, and to maximize
597 direct care worker wages. By working together we can solve

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598 this issue. Thank you so much.

599 [The prepared statement of Ms. Killough follows:]

600

601 **********COMMITTEE INSERT**********

602

603 *Mr. Guthrie. Thank you, Ms. Killough.

604 The chair now recognizes Ms. Hughes for five minutes for

605 her opening statement.

606

607 STATEMENT OF SHELLY HUGHES

608

609 *Ms. Hughes. Thank you, members of the subcommittee,
610 for inviting me to speak today. My name is Shelly Hughes,
611 and I am a certified nurse's aide at a nursing home in
612 Bellingham, Washington, and a proud member of SEIU local 775.
613 I speak before you on behalf of the millions of nursing home
614 workers across the country whose lives depend on the choices
615 and actions of our lawmakers.

616 We need safe staffing now. That is not an opinion, that
617 is a fact. We have one united thesis. Our long-term care
618 system is on the verge of collapsing, and short staffing is
619 the catalyst. A strong Federal minimum staffing standard is
620 the best way to rectify the devastating and deadly
621 consequences of this crisis. CMS has proposed such a
622 standard, and it is imperative that we strengthen, implement,
623 and enforce this rule to the fullest extent.

624 If anything good came out of the COVID-19 pandemic, it
625 was being finally forced to confront the dire straits nursing
626 homes are in. Unfortunately, it took a global pandemic and
627 the deaths of 200,000 nursing home residents and workers for

628 the public to see how severe the staffing crisis is. But
629 these issues are not new.
630 Our population is rapidly aging, and plenty of people
631 want to do this work. So why is CNA turnover at nearly 100
632 percent? Poverty wages, a lack of benefits and training
633 opportunities, and so much more have made the nursing home
634 jobs we love nearly impossible to do. But short staffing
635 tops that list.
636 All of our residents have unique needs and require
637 specialized care. Tasks that take only a few minutes for you
638 or me could take my residents 45 minutes. You have to move
639 at their individual pace. But when you are working short
640 staffed, you often don't have that luxury.
641 I often work nights, 9:00 p.m. to 9:00 a.m. But the
642 urgency of care doesn't set with the sun. Because of short
643 staffing, I regularly work as 1 of 2 CNAs for 60 residents in
644 our long-term care unit. That means 30 residents per CNA.
645 How can you care for 30 individuals in just 12 hours?
646 Short staffing forces CNAs to make impossible, painful
647 choices every day. What would you do in this scenario? You
648 are the only CNA on the floor for 30 residents, and Mr. Smith

649 is ready for his bath. You have gotten Mr. Smith undressed,
650 and are helping him into the tub. Suddenly, a few rooms
651 down, you hear a bang and Mrs. Jones calling for help. Do
652 you leave Mr. Smith naked and alone in the bathroom, or do
653 you run to Mrs. Jones, who may have fallen and injured
654 herself? All the while, Mr. Johnson, down the hall, has
655 urinated in bed and is laying in soiled clothes and sheets.
656 Who do you help first?
657 I cannot describe the heartbreak CNAs experience when we
658 would have to tell a resident, "I can't,'' or "Not now,'' or
659 when we don't have time to speak with them at all. I have
660 dedicated my life to this work, but because of short staffing
661 I often feel helpless and defeated. Sometimes I get in my
662 car and sob because my residents were robbed of the quality
663 care and time I promised to give them. We are stuck in an
664 existential loop, where low staffing leads to even more low
665 staffing. A Federal minimum staffing standard can end this
666 cycle.
667 Nursing home residents are living, breathing people with
668 fears and passions and ambitions. Their needs change daily
669 and unexpectedly. We are seeing more and more residents with

670 mental health needs, which require a total sea change in how
671 a facility operates. Taking care of residents with complex
672 needs requires an advanced skill set and enough staff to
673 perform the necessary tasks. As it is, we don't have the
674 training or the staff to adapt to this new reality.

675 Residents cannot receive high-quality care without a
676 minimum number of CNAs. We are the fuel that runs the engine
677 in our nursing homes. We want to bring quality care to these
678 facilities. We want residents and families to feel secure
679 and well cared for. Workers need a seat at the table to have
680 more transparency with our employers. A Federal minimum
681 staffing standard would hold nursing home owners accountable
682 for what happens in their facilities, and would ensure public
683 funding for nursing homes goes to the bedside and not into
684 pocket books.

685 We have called for help for decades. We hear over and
686 over that decision-makers are committed to taking action.
687 When our elected leaders and employers say, "We are in this
688 together,’‘ we want to trust that they mean it. But
689 increased funding and resources are dangled before us like a
690 carrot on a stick.

691 Right now we have an opportunity to end this dangerous
692 game. A strong Federal minimum staffing standard for nursing
693 homes is the best action we can take to move toward a
694 long-term care system that provides dignified care to those
695 that need it, that attracts, retains, and sufficiently
696 compensates a professional workforce. Only then can we meet
697 the challenges we face in the coming decades.
698 Thank you.
699 [The prepared statement of Ms. Hughes follows:]
700
701 **********COMMITTEE INSERT**********
702

703 *Mr. Guthrie. Thank you, thank you for your testimony.

704 Ms. Smetanka, you are now recognized for five minutes

705 for your opening statement.

706

707 STATEMENT OF LORI SMETANKA

708

709 *Ms. Smetanka. Chairman Guthrie, Ranking Member Eshoo,
710 distinguished members of the committee, thank you for holding
711 this important hearing.

712 The National Consumer Voice for Quality Long-Term Care
713 works with and on behalf of long-term care consumers and
714 their families.

715 Most of us will need care and support during our
716 lifetime. Whether provided at home or in a long-term care
717 setting, nursing staff must be available to provide quality
718 care. The proposed nursing home minimum staffing and HCBS
719 access rules are designed to help ensure that there are
720 adequate nursing staff to meet the needs of care recipients,
721 while also improving access to care.

722 Inadequate staffing in nursing homes is a decades-old
723 problem, resulting in basic care being omitted, long delays,
724 and harm to both residents and workers. The current Federal
725 requirement for sufficient staff to meet resident needs has
726 been inadequately implemented and enforced. Thus, staffing
727 levels vary widely in facilities.

728 The impact of short staffing is disturbing: residents
729 being left in bed over entire weekends; twice-a-week showers
730 being reduced to weekly, yet still often missed; residents
731 eating alone in their rooms because not enough staff can help
732 transport them to the dining room; and waiting more than an
733 hour for help to go to the bathroom, that help not coming,
734 and sitting in soiled clothes until someone finally arrives.
735 One resident talked about her neighbor who, having a medical
736 emergency, called for help, yet died when no one responded
737 after nearly 45 minutes.
738 Staff also tell us about being responsible for 15, 20,
739 or more residents per shift, and having to make difficult
740 choices regarding whose needs are going to wait, or if they
741 are going to be met at all. One resident told us
742 understaffing means you don't get cleaned or changed, which
743 leaves you susceptible to all kinds of sicknesses. And that
744 is counterintuitive to how you are supposed to live in a
745 nursing home. You are not supposed to get sicker here
746 because of low staffing.
747 Twenty-two years after a CMS-sponsored comprehensive
748 study identified minimum levels of licensed nurse and nurse

749 aide time necessary to prevent harm to residents, most
750 nursing homes still do not meet this basic staffing level
751 because it has never been required or enforced.
752 It is possible, however, to meet recommended staffing
753 levels. Data shows that thousands of homes do it every day.
754 These are primarily non-profit nursing homes, and they
755 provide about 43 minutes more staff time each day than the
756 average for-profit home. The location of these facilities,
757 rural versus urban, is not a factor. It is not that
758 facilities can't staff to recommended levels, it is that they
759 choose not to.
760 The benefits to residents of higher staffing are
761 indisputable. Higher levels improve quality care. Most
762 homes that are rated _ highly rated in all 5-star categories
763 provide at least 4.1 hours per resident day of care. As
764 staffing levels decrease, so do star ratings. Most
765 troubling, as staffing levels decrease, the likelihood of a
766 home being cited for resident abuse increases significantly.
767 Each year, tens of billions of public dollars are paid
768 to the nursing home industry, yet the outcomes of many homes
769 are unacceptable. A review of Medicare cost reports and a

770 look into the widespread industry use of related-party
771 transactions raise critical questions about how Medicaid and
772 Medicare dollars are spent, whether the money goes towards
773 care or profit. For the safety and well-being of residents,
774 there must be better transparency and accountability for how
775 nursing homes spend the money they receive.
776 A staffing standard is simply a mechanism to ensure that
777 public dollars go towards direct care. Achieving quality
778 care requires developing and supporting the long-term care
779 workforce. This includes ensuring a living wage, skills
780 training, career ladders, and quality jobs. To the extent
781 that there are workforce shortages in communities, efforts to
782 promote recruitment and retention of staff must be a
783 priority. It is not an excuse, however, for accepting
784 substandard care for beneficiaries.
785 The proposed HCBS access rule also seeks to increase
786 access to in-home support services by requiring the 80
787 percent of Medicaid payments go towards worker compensation,
788 and requiring additional reporting and transparency. These
789 proposed rules, when finalized, will create better jobs,
790 reduce turnover, and increase access to home and community-

791 based services.

792 Calls to inhibit the rules are unjustifiable. Residents
793 and home care consumers are going without needed care and
794 services. The proposed rules will help move us in the right
795 direction. Now is the time to ensure that beneficiaries have
796 access to necessary staff and good care. Thank you.

797 [The prepared statement of Ms. Smetanka follows:]

798

799 **********COMMITTEE INSERT**********

800

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

801 *Mr. Guthrie. Thank you, thank you for your testimony.

802 The chair now recognizes Ms. Killingsworth for five

803 minutes for your opening statement.

804

805 STATEMENT OF PATTI KILLINGSWORTH

806

807 *Ms. Killingsworth. Thank you, Chairman Guthrie and
808 distinguished members of the committee. My name is Patti
809 Killingsworth. I am a lifelong family caregiver with more
810 than 25 years of Medicaid experience, most of that in
811 long-term services and supports. I currently serve as a
812 commissioner on the Medicaid and CHIP Payment and Access
813 Commission, and chief strategy officer for Cambridge Health,
814 but offer my testimony today based on my personal and
815 professional experience, and my commitment to those we serve.
816 The national shortage of direct force work _ of the
817 direct workforce is the greatest challenge that face LTSS
818 programs today. My written testimony provides context
819 regarding the longstanding and intractable nature of the
820 problem and its impacts, so I will focus my oral testimony on
821 the need for a comprehensive workforce strategy, why the
822 proposed regulations fall short of meeting that need, and the
823 critical importance of workforce alternatives to increase
824 personal independence and improve quality of life while
825 helping mitigate the impacts of the workforce shortage on

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826 access to care.

827 The direct workforce that supports individuals receiving
828 LTSS is a common one, with aides working across long-term
829 services and settings to deliver care. This means that any
830 policy actions taken either by Congress or by CMS must be
831 considered in light of the broader impact on the LTSS system,
832 including nursing facility and HCBS programs, populations,
833 and providers.

834 Minimum staffing standards relative to nursing home care
835 should not be established without due consideration of the
836 impact of such policies on the much larger number of people
837 receiving or waiting to receive HCBS. CMS should not
838 perpetuate or exacerbate longstanding institutional biases in
839 the Medicaid statute through workforce policies that drive a
840 greater share of a limited direct workforce as well as LTSS
841 expenditures away from community and to the institution.

842 Congress should instead take long-overdue actions to
843 remedy these institutional biases and assure equitable access
844 to LTSS for Americans in the setting of their choice, while
845 supporting states' efforts to rebalance their LTSS systems
846 and comply with the integration mandate of the ADA.

847 While the pass-through percentage for HCBS payments is
848 well-intentioned, it has fundamental flaws described in my
849 written testimony, and will not ensure that the Medicaid
850 payment is adequate, including the payment to the worker. We
851 need a more thoughtful, data-driven approach that seeks to
852 understand what constitutes inadequate payment for these
853 services, how it should be appropriately allocated between
854 the wages of direct care workers and other essential indirect
855 employer and agency costs, and how this can be accomplished
856 in a way that does not favor institutional care.
857 Pay is one of a set of key elements of a comprehensive
858 workforce strategy that includes uniform Federal minimum
859 training requirements with demonstration of competency career
860 pathways across secondary schools and post-secondary
861 institutions, expanded scope of practice to encompass
862 medication administration and routine health care tasks,
863 elevating the role with commensurate increases in pay and
864 focusing, and also limited nursing workforce on more complex
865 skilled nursing functions, and a common approach for both
866 nursing homes and HCBS to ensure the adequacy of Medicaid
867 payment and funding to the workforce, including transparent,

868 accountable reporting of LTSS Medicaid payments and cost; a
869 data-informed approach to ensure payment adequacy based on
870 analysis of a minimum of two years of payment and cost data;
871 a consistent policy approach across nursing facility and all
872 HCBS programs, providers, and populations that share a common
873 workforce and workforce challenges; and enhanced FFP for
874 state investments and increased payments to workers
875 delivering services in more cost effective HCBS settings,
876 either as a state plan option or an MFP-like demonstration.
877 We must also recognize that the overwhelming challenges
878 will not be solved by workforce solutions alone, and adopt
879 person-centered approaches that prioritize and support
880 independence and optimize the use of limited workforce
881 resources through the expanded use of assistive technology
882 and other alternative support options.
883 To that end, Congress should embed independence as a key
884 goal of HCBS throughout all applicable sections of title 19;
885 require that person-centered planning identify individualized
886 goals for employment in _ independence employment and
887 inclusion; and prioritize assistive technologies that will
888 maximize their opportunities to achieve those goals; require

889 that Medicaid HCBS are structured to ensure streamlined
890 access to technologies and services that increase
891 independence; and offer a more cost efficient way of meeting
892 support needs; and require a standardized and accountable
893 system of measuring effectiveness and supporting people to
894 achieve valued outcomes with streamlined authority mechanisms
895 and supports to states to implement value-based payments that
896 are aligned with those outcomes.

897 Technology will never be able to replace the high-value,
898 in-person care that so many individuals need, so a
899 comprehensive workforce strategy remains critical. But for
900 many older adults and people with disabilities, it offers a
901 significant opportunity to help ensure reliable assistance
902 that they need to live safe, meaningful lives in the
903 community, with increased independence and improved quality
904 of life.

905 And in a world where the gap between workforce demand
906 and supply is growing, it may well mean the difference
907 between people living in an institution and living in the
908 community with a level of independence that makes life worth
909 living. Thank you very much.

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910 [The prepared statement of Ms. Killingsworth follows:]

911

912 **********COMMITTEE INSERT**********

913

914 *Mr. Guthrie. Thank you. Thank you for your testimony.
915 That concludes witness opening statements. And we will
916 now turn to members' questions, and I will begin by
917 recognizing myself for five minutes for questions.
918 So Ms. Schumann, we are looking at _ you have to
919 absolutely consider safety first. You have to have access
920 and affordability. And you certainly don't want to
921 compromise safety to get access and affordability, nor do you
922 want to make it more expensive and more _ and less
923 affordability if you don't improve safety. So I just want to
924 ask you a couple of questions.
925 One, in regard to the proposed nursing staff ratio
926 requirements, can you walk us through the very realities you
927 would face if it were finalized, and could you comply without
928 cutting positions or limiting the number of Medicare
929 residents?
930 And do you have the local supply of labor to meet those
931 needs?
932 *Ms. Schumann. Thank you, Chair Guthrie, and thank you
933 so much for the support you have given our profession during
934 this challenging time with workforce issues. We greatly

935 appreciate it.

936 Currently, my communities would not be able to meet the
937 RN requirement, the 24/7 requirement, and the CNA
938 requirement. And in fact, Chairman, in the State of Colorado
939 we have had a 24/7 requirement for many years. And for the
940 past two years it has been waived in our state because our
941 state realizes that there is not an availability of RNs. We
942 have recruited. Historic _ my historic numbers, my RN hours
943 during this pandemic, have gone down 60 percent not by
944 choice, but because they are not available.

945 *Mr. Guthrie. I actually have a bill, the Building
946 America's Health Care Workforce Act, that would provide
947 temporary nurse aides with the ability to work in long-term
948 care facilities beyond the four months. And when _ and that
949 was implemented during COVID because we needed more workers,
950 and so that was a problem. We knew we had to improve access.

951 And when it was asked, I looked at it and said maybe we
952 should extend this in a permanent way. My first question
953 was, did _ is there any case anywhere in the country that
954 anybody was negatively affected because of that proposal?
955 And if there is one, I don't know it, or nobody reported to

956 that, as well.

957 But I want to ask you this. Part of the reason the

958 Biden Administration is focused on this _ we talked about

959 safety first _ is that _ of the prevalence of COVID-19 cases

960 in long-term care facilities. Is there any evidence to show

961 that staffing ratios _ we know we had issues in long-term

962 care facilities. Is there any evidence to show that staffing

963 ratios are equated to higher COVID case counts in any

964 facility?

965 *Ms. Schumann. Not to my knowledge, Chairman.

966 *Mr. Guthrie. Okay, thank you.

967 So, Ms. Killingsworth, major policy changes, especially

968 those that pass costs on to states and local governments as

969 well as private businesses, should be based on quality data.

970 Are you aware of any data CMS provided to support the 80/20

971 formula?

972 *Ms. Killingsworth. I don't believe that there is

973 publicly available data that could be used to draw a

974 conclusion that that is the appropriate level of

975 reimbursement to pass through to the frontline workforce.

976 *Mr. Guthrie. So we don't know of any data they

977 provided us _

978 *Ms. Killingsworth. I do not.

979 *Mr. Guthrie. _ for it. Also, do you think that this
980 one-size-fits-all approach makes sense for diverse geographic
981 areas with differing workforces?

982 *Ms. Killingsworth. Not only does it not make sense for
983 diverse geographic areas, it doesn't really even make sense
984 for the workforce because, in practice, the amount that gets
985 passed through, even across different populations and
986 programs, will differ for the same workforce delivering
987 essentially the same service.

988 *Mr. Guthrie. Okay. And can you provide examples of
989 how states have been attempting to address worker pay using
990 the flexibility afforded by the Medicaid statute?

991 And how would CMS's rule _ proposal undo some of the
992 progress individual states have made in trying to bring more
993 people into the workforce?

994 *Ms. Killingsworth. I think the majority of states use
995 the enhanced funding provided through the American Rescue
996 Plan Act to at least do temporary, if not permanent,
997 increases in wages for staff. They are also doing many

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998 things to invest in training for staff to promote recruitment
999 and retention, more of a comprehensive approach.
1000 Unfortunately, I think a mandate will require a shift in
1001 attention and in focus to really meeting the terms of that
1002 mandate in ways that will undermine the work that states are
1003 currently doing.
1004 *Mr. Guthrie. Okay, thank you. I will yield back a
1005 minute of time in trying to keep it going _ moving forward,
1006 and I will recognize my friend from California, Ms. Eshoo,
1007 for five minutes for questions.
1008 *Ms. Eshoo. Thank you, Mr. Chairman, and thank you to
1009 each one of the witnesses. You gave very important
1010 testimony, and we appreciate it.
1011 This is an issue that I think we don't ever want to face
1012 up to, really, in a family until it happens, you know. And
1013 like so many issues here in the Congress, this is about
1014 money. It is all about money. It really is all about money.
1015 If anyone doesn't think so, you just scratch a little from
1016 the top layer like a scratcher, you know, and it is about
1017 money.
1018 And now, according to MACPAC, nursing homes receive over

1019 $66 billion from the Medicaid program alone. About 1.3
1020 million Americans live in nursing homes. What is the typical
1021 wage for nursing aides in a nursing home?
1022 Why don't we start with you, Ms. Schumann, what is the
1023 typical wage for a nursing aide?
1024 *Ms. Schumann. Thank you, Ranking Member. It does
1025 depend, of course, on locality. My starting wage for a nurse
1026 aide is $23 an hour, plus shift differentials, plus benefits,
1027 including full paid insurance and insurance for their
1028 children for health, medical, dental, and 3.5 weeks a year of
1029 paid time off.
1030 *Ms. Eshoo. Now, in your testimony you noted that your
1031 nursing home increased wages by more than 40 percent in all
1032 caregiver positions. What were the wages before you
1033 increased them 40 percent?
1034 *Ms. Schumann. Our wages were 18. The increase in 40
1035 percent also includes overtime and additional benefits.
1036 *Ms. Eshoo. So it was $18 an hour before that?
1037 *Ms. Schumann. With shift differentials.
1038 *Ms. Eshoo. And Ms. Hughes, what is the story with
1039 where you work?

1040 *Ms. Hughes. Where I work in Washington, we have
1041 recently gotten the floor for CNAs up to $20 an hour. There
1042 are some facilities that are offering similar wages, 22, 23,
1043 24. A lot of those increases happened during the pandemic.
1044 Before that our starting wages looked more like 16, $17.
1045 *Ms. Eshoo. And as the wages went up, were there fewer
1046 people to fill those positions?
1047 *Ms. Hughes. Eventually _
1048 *Ms. Eshoo. Or did it solidify the workforce and say _
1049 *Ms. Hughes. It helped _
1050 *Ms. Eshoo. _ well, at least now we are getting paid
1051 more?
1052 *Ms. Hughes. _ to stabilize. It helped to stabilize
1053 the workforce. I, you know, can remember personally begging
1054 people just to hold on until, you know, we got a new contract
1055 negotiated because it seemed like there was going to be some
1056 new money available for raises.
1057 So in my facility, yes, we were able to hang on to
1058 workers a little bit better than some of the surrounding
1059 facilities.
1060 *Ms. Eshoo. So there was an increase _ there _ are most

1061 of the patients Medicaid where you work?

1062 *Ms. Hughes. Yes, in our long-term care unit most of

1063 those people _

1064 *Ms. Eshoo. And Ms. Schumann, what about your place?

1065 *Ms. Schumann. One of my communities _

1066 *Ms. Eshoo. I admire your _ the tradition in your

1067 family of nursing and care.

1068 Are the majority of your patients, your clients,

1069 Medicaid?

1070 *Ms. Schumann. Thank you. In one of our communities it

1071 is 85 percent. So yes.

1072 *Ms. Eshoo. Eight-five percent Medicaid?

1073 *Ms. Schumann. Yes.

1074 *Ms. Eshoo. Well, I think that if we want a level of

1075 care that we can be proud of, and have anyone from _ any of

1076 our relatives in a place of care, you need to _ people need

1077 to be paid.

1078 I don't think anyone that is working in this industry is

1079 demanding that their demands are off the charts. But unless

1080 you have enough people being paid _ and you have increased,

1081 which is very good _ they simply _ you know what it does for

1082 _ where there are fewer, in my view, fewer care givers, even
1083 if their pay has gone up, if there aren't enough it degrades
1084 the level of work that those workers can do.
1085 I raised two children. Some days _ they are 18 months
1086 apart _ I thought I had 10 children in terms of their
1087 demands. Now, I am not saying every patient is a child, but
1088 it takes a lot. I took care of my mother and father. I took
1089 care of them, and it takes a great deal to take good care of
1090 them.
1091 So I don't know about the rest of the members. I think
1092 it is very important, and I know it cuts into profits and
1093 that is the issue. But we need a sustained workforce that is
1094 _ that _ they work hard. They earn this pay. And if we are
1095 not committed to the standards _ we have no standards right
1096 now unless we have good people like you that have a pride in
1097 their own business. What is the standard? It is one word.
1098 *Voice. Oh, sufficient.
1099 *Ms. Eshoo. Sufficient. What the hell is sufficient?
1100 Who can define it? It is like nailing Jello to a wall. So
1101 there isn't any way that that can be enforced.
1102 *Mr. Guthrie. I hear it all the time.

1103 *Ms. Eshoo. So we need strong standards and the right
1104 kind of pay and a trained workforce to take care of those
1105 that are in our nursing homes.
1106 Thank you, Mr. Chairman.
1107 *Mr. Guthrie. Thanks. The gentlelady yields back. The
1108 chair recognizes the chair of the full committee, Mrs.
1109 Rodgers, for five minutes for questions.
1110 *The Chair. Thank you, Mr. Chairman. We have all had
1111 family members that have spent _ you know, have been in some
1112 of these facilities. Certainly, my family has. And we share
1113 the absolute commitment to standards, to a well-trained and
1114 paid workforce.
1115 You know, I note that in Spokane, Washington right now
1116 Sacred Heart needs 300 nurses, 300 nurses at Sacred Heart
1117 Hospital. So the idea that it is just a money issue, I am
1118 not _ when you don't have the people, how are you supposed to
1119 find these people?
1120 I am also a mom with a son who has Down syndrome. I
1121 know firsthand what it means to care for a family member who
1122 has a disability. You know, and Cole succeeds in school and
1123 life thanks to his own tenacity, his strength, but also

1124 support from his family, his friends, his teachers. And
1125 there is countless of Americans with disabilities who rely on
1126 services that are provided to them.
1127 Ms. Killough, I wanted to ask you about the 80/20 pass-
1128 through rule because these individuals with disabilities are
1129 counting on the services that you provide to make sure that
1130 they can be successful and independent in their lives. So
1131 just _ would you speak to the implications of the proposed
1132 80/20 pass-through rule on people with disabilities?
1133 *Ms. Killough. Thank you for the opportunity to speak
1134 on this.
1135 If this pass-through goes through, it would cause _
1136 first of all, it would cause a sufficient rate. We can't pay
1137 what we don't receive, as far as a provider rate. We cannot
1138 pay out wages unless we get a sufficient rate on behalf of
1139 the state to be able to pay these wages. If we do not get a
1140 rate of pay, what would happen is that it would undercut
1141 other aspects. If 80 percent goes out to the direct care
1142 workforce, the other 20 percent, which we must use to do _
1143 handle administrative costs _ facilities, training,
1144 supervision _ you know, it is nice to have a workforce out in

1145 the home, but if you don't have adequate supervision, your
1146 quality goes down. Those issues will remain in effect.
1147 And the smaller organizations, it is an economy of
1148 scale. The smaller organizations cannot deal with that 80
1149 percent pass-through.
1150 *The Chair. Thank you. Thank you for that insight.
1151 Ms. Schumann, I don't believe that there is a one-size-
1152 fits-all solution to the workforce shortage. Everywhere we
1153 go, we are hearing about the workforce shortage. And the
1154 needs of the people in Eastern Washington differ from that in
1155 Seattle, which differs from other people across the country,
1156 maybe New Jersey.
1157 The State of Washington does have a law requiring
1158 nursing homes have enough staff to provide for over three
1159 hours of care per resident per day. This is about on par for
1160 the total number of hours that the proposed rule would
1161 require. However, our state's law does not delineate who has
1162 to provide this care. It could be from registered nurses,
1163 nurse aides, or licensed practical _ yes, practical nurses.
1164 The Federal proposal, however, would require a minimum
1165 of half-an-hour's worth of support be provided by a

1166 registered nurse, and the rest be provided by a nurse aide,
1167 and it would exclude licensed practical nurses entirely from
1168 the standard.
1169 Can you speak to the challenges of such a rigid
1170 requirement that dictates the facilities, the specifics of a
1171 facility, and how they be staffed?
1172 *Ms. Schumann. Thank you, Chairwoman. I think it is an
1173 unfortunate oversight that this proposed mandate excludes
1174 LPNs.
1175 In our community we have several individuals who have
1176 gone a career path and become CNAs to LPNs. LPNs bring a
1177 much-needed diversity to our community. They work in tandem
1178 with registered nurses and physicians and CNAs to provide
1179 outcomes of care.
1180 In addition, social workers are not recognized in this
1181 mandate. Activities personnel are not recognized in this
1182 mandate. Physical therapy, occupational therapy, none of the
1183 other modalities that we provide in our profession have been
1184 recognized by this mandate.
1185 *The Chair. Okay, thank you.
1186 Ms. Killingsworth, I wanted to ask you because we hear a

1187 lot about what is not going right: we don't have enough
1188 workers, too many regulations, not enough money to go around.
1189 In spite of this we do have states that are making progress
1190 on addressing these shortages. So would you maybe give us
1191 some insights into what states and plans are doing to address
1192 these challenges, and what opportunities we may have to
1193 support them?

1194 *Ms. Killingsworth. Thank you, Chairwoman. It is an
1195 important thing for us to understand, is that money may be
1196 one part of a solution but it is not the entirety of the
1197 solution. This is a complex issue with _ that will require a
1198 comprehensive approach.

1199 I think states that are making progress have been very
1200 strategic in that approach. They have combined training
1201 programs with career ladders that really draw people into the
1202 field. They are doing more to support workforce recruitment
1203 and retention. They are doing more to elevate the social
1204 value and role to really enhance the work that that workforce
1205 is able to provide in ways that then draw a higher salary for
1206 the workforce.

1207 So there are opportunities to make progress. But as a

1208 practical matter, we are at a place in this country where we
1209 do not have enough people to deliver all of the supports that
1210 individuals need, and you can't regulate or buy your way out
1211 of that problem.
1212 *The Chair. Thank you. Thank you all for being here
1213 and what you do.
1214 I yield back.
1215 *Mr. Guthrie. Thank you. And now we are kind of even
1216 with the ranking member and chair, so we are going to try to
1217 stick to five minutes so we can get as many questions as we
1218 can before we votes.
1219 So Mr. Pallone, you are recognized for five minutes.
1220 *Mr. Pallone. Thank you, Mr. Chairman.
1221 Republicans claim that the rules under discussion today
1222 are an unfunded mandate. But last Congress, when Democrats
1223 on this committee voted to provide states with a substantial
1224 increase in Federal dollars to invest in the home and
1225 community-based services and the HCBS workforce, Republicans
1226 stood in opposition. Meanwhile, they have offered no policy
1227 proposals of their own, other than weakening regulations.
1228 Greater Federal investment in long-term care services

1229 shouldn't be controversial. In fact, the testimony of the
1230 Republican's own witness, Ms. Killingsworth, suggests greater
1231 Federal investment in these services is needed.
1232 And our seniors and caregivers deserve better, in my
1233 opinion. We owe it to them to ensure that they are able to
1234 age and be cared for with dignity and compassion, that they
1235 have access to the care that they need when they need it.
1236 And the Biden Administration's proposed regulations would be
1237 a strong step in that direction.
1238 So I would like to ask some of the witnesses to address
1239 some of the claims that we have heard today. Let me ask
1240 first, Ms. Smetanka, you have heard testimony that there
1241 aren't workers available to meet the minimum staffing
1242 standards. Could you respond to that claim?
1243 *Ms. Smetanka. Yes, thank you Congressman.
1244 Well, part of the issue is in some communities there may
1245 be challenges with identifying workers. But a big part of
1246 the problem also is turnover among staff that are in
1247 long-term care facilities right now. In nursing homes the
1248 turnover rates range between 50 and 100 percent, based on the
1249 research that you look at and the data that you are looking

1250 at. If you can't keep staff, that is going to be a problem
1251 when you are needing to continue to fill positions with new
1252 people.
1253 So a really important part of this issue is talking
1254 about how we need to reduce the turnover, how we need to
1255 improve job quality and conditions for workers so that they
1256 are wanting to stay in these facilities and stay in this
1257 field.
1258 *Mr. Pallone. Now, according to your testimony, not-
1259 for-profit nursing homes seem to generally have higher
1260 staffing levels than for-profit nursing homes. Can you
1261 explain why you believe that is the case?
1262 *Ms. Smetanka. Yes, the data showed _ and this is CMS's
1263 data that showed staffing levels in non-profit versus profit
1264 nursing homes, and it does show that they staff at nearly 43
1265 minutes more per day per _ for residents than for-profit
1266 homes. And the only thing that we can attribute that to is
1267 they put more resources into direct staff. They are putting
1268 more money into it.
1269 *Mr. Pallone. I appreciate that. I just want to make
1270 sure that we are focused on patient and caregiver safety. So

1271 let me ask you also, how do minimum staffing standards in
1272 nursing homes impact on the quality of life experienced by
1273 residents in those nursing homes?
1274 *Ms. Smetanka. What we found is that there need to be a
1275 minimum threshold below which you can't go in order to
1276 provide care for residents, in order to meet the basic needs
1277 of residents. The studies show _ the data show that, the
1278 more staff you have, the higher the quality care, the better
1279 outcomes for individual residents.
1280 By having the staff on hand, not only are they meeting
1281 basic needs of residents, they get to know the residents,
1282 they spend time with them, they recognize triggers, they
1283 recognize preferences and goals of those individuals. They
1284 are able to actually sit and provide the additional care that
1285 those individuals need. They are able to identify much more
1286 quickly changes in condition, and they are able to then also
1287 respond to issues that they may need if they need to redirect
1288 a resident who may be in distress, or may be having outbursts
1289 of some kind. They are better able to respond to the needs
1290 of that individual person, and to provide the person-centered
1291 care which, ultimately, improves not only quality of life,

1292 but quality of care for those people.

1293 *Mr. Pallone. Well, thank you. Now let me just ask one
1294 question of Ms. Hughes.

1295 Your testimony is particularly harrowing. You describe
1296 a situation where low staffing levels perpetuate low staffing
1297 levels. Can you talk a little about what you meant by that?

1298 *Ms. Hughes. Absolutely. We don't seem to have a
1299 problem with recruitment in my field of work. I know this
1300 from talking to caregivers in nursing homes all across the
1301 country. It is the same thing. New people come in knowing
1302 full well what to expect. They know what _ exactly what the
1303 pay is. They know the sort of things they will be doing in a
1304 nursing home. But what no one tells them is that the ratios
1305 will make it impossible to give decent care. It is not the
1306 low wages, it is not the backbreaking labor, it is the
1307 heartbreak that I see chase more, you know, fresh-faced new
1308 people away than anything else.

1309 When you are low staffed, you end up working more to try
1310 and fill those holes. That lives to _ leads to burnout,
1311 which leads to call-offs, which leads to more short-staffing.
1312 It is this perpetual cycle. And the only way to get out of

1313 it is just to put more people on the floor to care for our
1314 residents.
1315 *Mr. Pallone. Thank you so much.
1316 Thank you, Mr. Chairman.
1317 *Mr. Guthrie. Thank you. The gentleman yields back.
1318 The chair recognizes Dr. Burgess for five minutes.
1319 *Mr. Burgess. Thank you, Mr. Chairman. Let me start by
1320 asking unanimous consent to include three record _ letters
1321 into the record: one from the co-chair of the House Doctors
1322 Caucus, one from Creative Solutions in Health Care, and one
1323 from the Texas Association for Home Care and Hospice.
1324 *Mr. Guthrie. Seeing no objection, so ordered.
1325 [The information follows:]
1326
1327 **********COMMITTEE INSERT**********
1328

1329 *Mr. Burgess. Thank you.

1330 Ms. Killingsworth, let me just ask you. I mean, when
1331 this hearing was noticed, I got significant feedback from
1332 providers in my area, the home care and hospice folks. There
1333 is obviously a lot of concern of what the 80/20 rule
1334 requirement is going to do to their business. And every
1335 state has different requirements and different rates at which
1336 they pay. Texas is probably on the low end of the average.
1337 But can you talk a little bit about the data methodology that
1338 CMS is using to make these determinations? What is CMS
1339 including in that 80 percent?

1340 *Ms. Killingsworth. So I am not sure that I can
1341 actually speak to exactly what all CMS included in the 80
1342 percent. I think that there is a need for greater definition
1343 as to what exactly is included in that 80 percent.

1344 I think, as you point out, the _ it will pose
1345 significant challenges for providers, especially if that 80
1346 percent is narrowly defined and it does not take into account
1347 activities that are really necessary to support retention of
1348 workers, things like training and other kinds of support that
1349 are really important for the workforce. So really clear

1350 definitions are a part of what would be needed in order to
1351 enact a regulation.
1352 But I will say again the question is really will the
1353 regulation solve the problem, right?
1354 *Mr. Burgess. Yes.
1355 *Ms. Killingsworth. Or will it create greater
1356 challenges than the challenges that we are facing today, and
1357 have _ create even more access issues for people? And I
1358 think that is true for both of the regulations.
1359 *Mr. Burgess. Well, let me just tell you some of the
1360 pushback I have received on this.
1361 I have a congressional district that is sort of halfway
1362 in between the more populated eastern part of the state and
1363 the sparsely populated western part of the state. So some
1364 home care nurses have to travel a great deal. Their patients
1365 are _ of course, we don't want the patients in the hospitals,
1366 we want to take care of them at home as long as possible.
1367 But they have got to travel a long distance.
1368 My understanding is that their mileage calculation is
1369 not included in the 80 percent that is allowable by CMS.
1370 *Ms. Killingsworth. Yes, sir. That is my

1371 understanding, as well, and agree would be a particular
1372 burden on rural providers.
1373 *Mr. Burgess. So is there anything else that is not
1374 included in the 80 percent that you feel that your
1375 practitioners have to account for?
1376 *Ms. Killingsworth. I think there have been many
1377 comments submitted on the regulations which really highlight
1378 a number of things that have been omitted from the 80
1379 percent, again, along with just a lack of clarity in terms of
1380 what all is encompassed within the 80 percent.
1381 But I will say again it is the threshold itself, along
1382 with the lack of clear definition as to what should be
1383 included or excluded that is problematic.
1384 *Mr. Burgess. Ms. Schumann, let me ask you a question.
1385 You mentioned about licensed _ and thank you for your answer
1386 _ licensed practical nurses. What reason has the agency
1387 given you that they will not reimburse for licensed practical
1388 nurses, or that they can't be included in this?
1389 *Ms. Schumann. Thank you for your question,
1390 Representative.
1391 I don't know the reason why it was not included, but I

1392 can tell you that they are licensed nurses, they are
1393 licensed.
1394 *Mr. Burgess. And I have worked with many. I am a
1395 physician, I have worked with many over the years.
1396 I will also say this as a practical matter. State
1397 budgets right now are doing okay. But I will also tell you,
1398 as someone who has provided Medicaid services for 25 years
1399 back in Texas, when state budgets get tight Medicaid
1400 reimbursements is one of the first things that feels that
1401 squeeze. So it is another area where we need to be
1402 concerned.
1403 Ms. Killough, let me just ask you on the turnover rate
1404 side. How do you think this new rule is going to affect
1405 things on the turnover rate?
1406 *Ms. Killough. With regards to home and community-based
1407 services?
1408 *Mr. Burgess. Yes.
1409 *Ms. Killough. With regards to the pass-through, the 80
1410 percent pass-through rule with regards to direct workforce,
1411 it will not increase the workforce with regards to adding
1412 additional people in the workforce. We do not believe it

1413 will have that impact.

1414 *Mr. Burgess. I have got some additional questions I

1415 will submit for the record.

1416 [The information follows:]

1417

1418 **********COMMITTEE INSERT**********

1419

1420 *Mr. Burgess. Thank you, Mr. Chair.

1421 *Mr. Guthrie. Thank you. The gentleman yields back.
1422 The chair recognizes Mr. Sarbanes for five minutes for
1423 questions.

1424 *Mr. Sarbanes. Thank you very much, Mr. Chairman.
1425 Thanks to all our panelists, particularly Ms. Hughes.

1426 I want to thank you for your work and the work of your
1427 colleagues. You don't get enough recognition. I think you
1428 are part of, in a sense, a hidden workforce that makes the
1429 world go round. And I have a special appreciation of this
1430 because in the last year of my father's life he was in a
1431 nursing home setting, and I saw what a difference it made to
1432 him to have the right kind of care. And it was during the
1433 pandemic, so we only got to see him twice in that final year
1434 in person, and that was outside in a parking lot. But the
1435 nurses that attended to him were our heroes, and you
1436 represent them today.

1437 And you have talked about how stretched thin that
1438 workforce is, and how you have to strike a balance in terms
1439 of the care that residents need and what you can provide
1440 under the circumstances that you face. We know we are facing

1441 significant workforce shortages across the health care
1442 workforce, some driven by the pandemic, others were
1443 exacerbated by it. Can you speak to _ I mean, you have done
1444 it already, but maybe you could speak again to how
1445 challenging it has been for you and other caregivers to have
1446 to take the care of up to 30 residents, sometimes, per shift,
1447 and what that effect is on both the patient's well-being and
1448 the caregivers' well-being?
1449 I mean, what does it mean to be pulled in all those
1450 different directions?
1451 And I think you spoke to how demoralizing it is if you
1452 are someone who wants to provide care but just can't because
1453 you are being pulled in so many directions.
1454 *Ms. Hughes. Absolutely. There are good days and there
1455 are bad days. When things are working the way that they are
1456 supposed to, my job is wonderful. I love my job. When we
1457 have enough staff, I actually have the time I need to spend
1458 with my residents to talk with them, to provide the care to
1459 the level that is required. But on the days when we are
1460 staff-challenged _ because we are not allowed to say "short-
1461 staffed'' _ anything could happen.

1462 If you have someone _ I work at night, and that tends to
1463 be when residents with dementia and Alzheimer's have their
1464 greatest difficulty. The only way to properly care for them
1465 and keep them safe is one-on-one attention. You can't leave
1466 them alone. Bad things could happen. But if you are one of
1467 only two aides to take care of 50, 60 residents, how do you
1468 do that? How do you sit with Mr. Johnson to keep him from
1469 screaming or keep him from wandering from the facility
1470 because he is looking for his wife? He doesn't remember that
1471 she has been gone for 20 years. You can't tell him that.
1472 You have to go into their world. It is such an intimate
1473 experience. There is no way to provide that kind of care
1474 when you are pulled in multiple different directions.
1475 I am happy to do it. We are all happy to do this work,
1476 but we need to be given the tools in order to do it properly.
1477 I have seen _
1478 *Mr. Sarbanes. I appreciate that, and I remembered the
1479 different times of day when residents, patients become
1480 particularly agitated and need that kind of extra attention.
1481 It makes all the difference in the world.
1482 And, you know, I understand there is a chicken and egg

1483 dynamic here. There is a tension, right, because there is
1484 such a tremendous shortage out there. So people worry about,
1485 you know, if you just set a standard you are, like, putting
1486 your head in the sand against that reality. But my view is
1487 that there needs to be a standard to drive everything else
1488 that we need to do.

1489 So let's set that standard, which is what I think the
1490 Biden Administration is trying to do, and figure out how to
1491 meet it. Because if we meet it, we are doing right not just
1492 by you and your colleagues, but as you just so powerfully
1493 described, we are doing right by the people that we want to
1494 receive that care.

1495 And by the way, if they are in good hands, we also know
1496 that that positive sense and comfort and assurance cascades
1497 out to a whole extended family. And if the opposite is true,
1498 it has a negative, an anxiety-creating impact on that family.
1499 So that is why it is so important.

1500 *Mr. Guthrie. Thank you.

1501 *Mr. Sarbanes. Thank you.

1502 *Mr. Guthrie. I thank the gentleman. The time has
1503 expired. The chair now recognizes Mr. Johnson from Ohio for

1504 five minutes.

1505 *Mr. Johnson. Well, thank you, Chairman Guthrie, and
1506 good afternoon to our panelists. Thank you all for joining
1507 us today.

1508 But, you know, here we are, exposing yet another
1509 damaging rule proposed by this Administration that will put
1510 folks out of business if enacted. I have grave concerns over
1511 the provision in the proposed rule ensuring access to
1512 Medicaid services that would require states to mandate at
1513 least 80 percent of Medicaid payments for home and community-
1514 based services be spent on compensation to direct care
1515 workers.

1516 I think they should be compensated, don't get me wrong,
1517 I just _ I don't know how a business in rural Appalachia that
1518 is dependent almost solely on Medicaid patients would be able
1519 to survive that kind of deal. Just this week I heard from
1520 one of those in Youngstown, Ohio. Their opinion of this
1521 80/20 rule proposal was clear: If I have to pay 80 percent,
1522 I will be out of business.

1523 What is also clear is the authors of this rule at CMS
1524 have never signed the front side of a paycheck. They have

1525 never actually run the companies that they are trying to
1526 regulate. If 80 percent of Medicaid reimbursement is to go
1527 to compensation, then that remaining 20 percent, only 20
1528 percent, is meant to cover everything else, from insurance
1529 and legal fees to facility upkeep, operations, maintenance,
1530 and administrative costs. Energy costs alone, given the
1531 Administration's dedication to ensuring that Americans pay
1532 more at the pump and to heat their homes, means folks like
1533 this home health provider will either stop serving the
1534 Medicaid community or close their doors entirely. I would
1535 hope that this is not the intention of the Biden
1536 Administration.
1537 And let me be clear. I think everyone _ again, I want
1538 to say this _ I think everyone in this room wants to see the
1539 highest possible level of care provided. And to do that,
1540 staff must be properly compensated. But this rule is not the
1541 solution to that issue.
1542 So Ms. Killingsworth, let's assume the 80/20 rule is
1543 finalized. If a state like Ohio determined that they had to
1544 raise reimbursement rates to ensure they had sufficient
1545 providers to serve recipients but didn't have approval from

1546 the state legislature to increase the overall program
1547 funding, what other changes would have to be made to keep
1548 spending level?
1549 How would the _ how would those changes impact access
1550 for patients?
1551 *Ms. Killingsworth. Thank you for the question.
1552 State Medicaid programs basically have three levers to
1553 help them manage costs within a program budget: one of those
1554 is who you serve, another is the benefits you provide, and
1555 the third is what you pay providers to deliver those
1556 services. If one of those is mandated to increase
1557 substantially without approved resources to cover, that means
1558 one of the other two must be reduced, which means fewer
1559 people served or fewer benefits provided to those
1560 individuals.
1561 *Mr. Johnson. So basically, somebody is going to lose
1562 out in this deal if that were to go through.
1563 *Ms. Killingsworth. That is right.
1564 *Mr. Johnson. Okay. Well, I _ Mr. Chair, I have a
1565 request that _ I have here an article from the Home Care
1566 Association of America that outlines state home-care-based

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

1567 services' concerns about this proposed rule. I request that
1568 be entered into the record.
1569 *Mr. Guthrie. I have no objection. So ordered.
1570 [The information follows:]
1571
1572 **********COMMITTEE INSERT**********
1573

1574 *Mr. Johnson. One way to ease the burden on staff while
1575 increasing efficiency and outcomes for patients would be
1576 increasing the adoption of Electronic Health Records.
1577 Studies of EHRs _ that is what they are called _ found they
1578 enhance productivity and efficiency in primary care physician
1579 workloads. And a study of nurses in nursing homes published
1580 in the Journal of Applied Gerontology found that the majority
1581 of respondents evaluated the Electronic Health Record as easy
1582 to use, with a positive impact on quality of care through
1583 efficiencies gained in communication with the entire care
1584 team.

1585 Ms. Schumann, in your opinion, would wider adoption of
1586 integrated Electronic Health Records in nursing homes beyond
1587 the 18 percent that currently have these systems, would that
1588 ease some of the staffing shortages nursing homes are facing?

1589 *Ms. Schumann. Thank you for your question,
1590 Representative.

1591 We have had electronic medical records fully implemented
1592 in my community for 10 years. It does improve
1593 efficiencies _

1594 *Mr. Johnson. But would wider adoption help with this?

1595 *Ms. Schumann. It does improve efficiencies with
1596 communication with physicians or other _ or your colleagues.
1597 *Mr. Johnson. Okay. What about savings, what about
1598 from a savings perspective? Would the adoption of Electronic
1599 Health Records be a cost effective approach to improving
1600 quality of care and reducing workforce burdens for nursing
1601 homes?
1602 *Ms. Schumann. Considering the regulations that we
1603 have, and all the Ts we need to cross and Is we need to dot,
1604 having electronic medical records does provide some ease with
1605 all the documentation that we need to maintain.
1606 *Mr. Johnson. Okay, all right. Well, thank you very
1607 much.
1608 Mr. Chairman, I yield back.
1609 *Mr. Guthrie. The gentleman yields back. The chair
1610 recognizes Mr. Cardenas for five minutes for questions.
1611 *Mr. Cardenas. Thank you, Chair Guthrie and Ranking
1612 Member Eshoo, for holding this hearing to discuss long-term
1613 care workforce shortages, and I also want to thank you to the
1614 witnesses for sharing your expertise and your personal
1615 knowledge of the day-to-day workings of this very, very

1616 important issue, where we are trying to take care of people
1617 in this country.
1618 I know my colleagues hear about workforce shortages
1619 issues on a nearly daily basis, as we should be listening to
1620 what is going out there in our communities. These issues
1621 pose a massive threat to our ability to provide quality
1622 health care to all people who need it. And when it comes to
1623 our seniors and individuals with disabilities, we must
1624 recognize these are greater vulnerabilities than the general
1625 population.
1626 The share of the U.S. population aged 65 and older has
1627 more than doubled over the past 50 years, and now we are
1628 scrambling to ensure we have a pipeline of health care
1629 workers who will do this essential, often dangerous and
1630 grueling work, or leave our grandparents and loved ones
1631 without support that they need.
1632 The Bureau of Labor Statistics estimates that a
1633 projected overall demand for long-term services and support
1634 workers will grow by 44 percent between 2020 and 2035. The
1635 demand of these essential workers is clear. And as the need
1636 for the services grows, the workforce is only declining.

1637 Wages for these roles remain low, and burnout remains high.
1638 And as our population ages, we must build the resilience and
1639 longevity of the direct care workforce, which leads me to my
1640 first question.

1641 Ms. Smetanka, in your testimony you emphasized that
1642 development and support for the long-term care workforce is a
1643 critical component for achieving quality long-term care and
1644 services. What kind of support is most essential for the
1645 long-term care workforce, and can you expand on how these
1646 rules will impact quality of care?

1647 *Ms. Schumann. Well, yes. Thank you, Congressman, for
1648 your question.

1649 We do need to put more attention on how we recruit and
1650 retain workers in this country. That is a definite. Putting
1651 proposals in place to attract people to these jobs is really
1652 critical.

1653 One aspect of what these rules would do to help attract
1654 workers to the field is to make these jobs better so that
1655 people actually want to come and work in long-term care
1656 facilities, and make them places where people will want to
1657 stay.

1658 As my co-testifier here, Ms. Hughes, stated, part of the
1659 problem with attracting and retaining the workforce is job
1660 quality. That is an enormous part of it. And people who do
1661 not want to come and have overburdened work options in front
1662 of them, they need to be able to know that they are coming to
1663 a job where they are going to have a reasonable workload,
1664 they are going to have the supports necessary, the training
1665 necessary to provide the care to the individuals in front of
1666 them. And part of that is having enough staff available in
1667 order to be able to spend the time and provide the care and
1668 services to residents, and that is what these minimum
1669 staffing levels will do.

1670 *Mr. Cardenas. Thank you. I also want to note that in
1671 my home state of California 60 percent of the direct care
1672 workforce was estimated to be women of color. And at the
1673 national level, foreign-born workers make up about 25 percent
1674 of the direct care workers in the home care industry and
1675 about 19 percent of direct care workers in the nursing home
1676 care industry.

1677 Ms. Smetanka, can you expand on what recruitment efforts
1678 typically entail for these types of roles, and why is there

1679 such a disproportionate reliance on immigrant labor in this
1680 industry?
1681 *Ms. Smetanka. Well, I think the fact that these jobs
1682 have offered low wages and benefits, I think _ again, heavy
1683 workloads _ they have been jobs that have been very difficult
1684 to recruit for in many instances because, again, people don't
1685 want to overburden themselves with the jobs that they have,
1686 which is why we need more support.
1687 And frankly, whether it is a U.S.-born worker or an
1688 immigrant worker, or whomever, we all deserve quality jobs.
1689 And so we need to focus on improving the quality of the jobs
1690 in order to help reduce turnover and to recruit more people
1691 that want to work in this field.
1692 *Mr. Cardenas. Thank you.
1693 Ms. Hughes, I don't have much time so I am going to try
1694 to make this question quick. Have you _ do you know of any
1695 fellow workers who work a full-time job and/or overtime, and
1696 still have the need for public assistance, whether it be
1697 child care or food assistance or some other assistance to get
1698 by on a daily, weekly, monthly basis?
1699 *Ms. Hughes. Absolutely. I, myself, up until last

1700 year, qualified for our state Medicaid program.

1701 *Mr. Cardenas. And you worked full-time?

1702 *Ms. Hughes. Yes.

1703 *Mr. Cardenas. Okay. My time having expired, I yield

1704 back, Mr. Chairman.

1705 *Mr. Guthrie. Thank you. The gentleman yields back.

1706 The chair recognizes Mr. Pence for five minutes.

1707 *Mr. Pence. Thank you, Chair Guthrie and Ranking Member

1708 Eshoo, for holding this meeting.

1709 I normally don't do this, but I am going to go way off

1710 the reservation because chairman gave me a little extra time.

1711 And thank you all for being here today.

1712 I would like to submit for the record, Mr. Chairman, the

1713 following document from the American Hospital Association

1714 outlining the impact this rule would have on workforce

1715 shortages across the continuum of care.

1716 *Mr. Guthrie. No objection.

1717 [The information follows:]

1718

1719 **********COMMITTEE INSERT**********

1720

1721 *Mr. Pence. Highlighted in that proposal is _ proposed
1722 rule is the fact that, according to the Bureau of Labor
1723 Statistics, there are roughly 236,000 fewer health care staff
1724 in nursing homes and other long-care facilities compared to
1725 three years ago, which you all know, right?
1726 A report commissioned by the CMS analyzing a minimum
1727 nursing staffing requirement found that quality and safety
1728 thresholds could increase a modest 1 percentage point, while
1729 costing between 1.5 to 6.8 billion to fully implement. And
1730 this _ the Administration would provide 75 million for
1731 training, and that seems woefully inadequate. And as the
1732 ranking member said, it is all about the money. I understand
1733 that.
1734 And I have gone _ I have spent a lot of time on this. I
1735 led that letter. I appreciate everything you have done. As
1736 Cathy McMorris Rodgers said, I have also cared for family in
1737 my home, and had _ when we got to the point we could no
1738 longer do that, even after trying to bring in help, we had to
1739 go to a plan B, so I personally know what it is like.
1740 And then, as I mentioned in my opening statement, I am
1741 on a community college that _ we are trying to train nurses,

1742 and we don't have enough teachers to train them because being
1743 a traveling nurse pays $90 an hour and the _ Indiana
1744 University, you can't go that high in the scale. You can't
1745 pay somebody $4,000 a week to be a college professor. And
1746 8:00 to 5:00 isn't quite as interesting as what many of the
1747 staff can do, flexible hours on their own.
1748 So here is a real simple question. I am not going to
1749 get into the weeds on that, and I am going to ask each one of
1750 you, starting with Ms. Schumann, do you think there is enough
1751 staff out there to fill the shortages that we _ the 236,000
1752 people? Are there enough folks out there that are trained?
1753 *Ms. Schumann. Thank you, Representative. In my
1754 experience, there are not. And I would humbly request that
1755 we collaborate together to develop a workforce, because this
1756 problem is not going away.
1757 *Ms. Killough. I agree. I do not think there is enough
1758 out there with regards to a workforce that is available, and
1759 we will have to look at other areas such as family members
1760 and other people to be part of the workforce to care for
1761 people in their homes.
1762 *Ms. Hughes. I would have to disagree. I think that,

1763 potentially, there are. Like I said, in my line of work we
1764 see plenty of people come in and then walk right back out
1765 because the job isn't what they thought.
1766 *Mr. Pence. That are trained. I want to be _
1767 *Ms. Hughes. Yes.
1768 *Mr. Pence. I want to be _ understand.
1769 *Ms. Hughes. That are trained.
1770 *Mr. Pence. Okay.
1771 *Ms. Hughes. Absolutely.
1772 *Mr. Pence. Okay.
1773 *Ms. Smetanka. I think that more needs to be done to
1774 enhance training and recruitment, but I think that there is _
1775 there are people out there that want to work in this field,
1776 and want _
1777 *Mr. Pence. Yes, I will kind of get to that, and I am
1778 not trying to be pushy in the question, but are there trained
1779 staff out there now? That is really my question.
1780 *Ms. Smetanka. Well, I would have to defer to my
1781 colleague _
1782 *Mr. Pence. Okay, okay.
1783 *Ms. Smetanka. _ Ms. Hughes, to say if there actually

1784 are today.

1785 *Mr. Pence. Okay.

1786 *Ms. Killingsworth. I do not believe _ and I believe
1787 the data supports that there are not enough people to be able
1788 to deliver all of the services that are needed.

1789 *Mr. Pence. Yes, forget about what the _ what anyone
1790 wants to do and increase the number of staff members. So
1791 real quick, is there adequate education institutes? Yes or
1792 no?

1793 *Ms. Killingsworth. No.

1794 *Ms. Killough. We train, so I am going to say yes.

1795 *Mr. Pence. Okay, you do it yourself.

1796 *Ms. Hughes. Probably.

1797 *Mr. Pence. Okay.

1798 *Ms. Smetanka. Yes.

1799 *Ms. Killingsworth. I am sorry, I didn't understand the
1800 question.

1801 *Mr. Pence. Are there adequate education institutions
1802 to train the staff that is needed currently _ and we know we
1803 have a deficit _ or will be available to train the future
1804 need?

1805 *Ms. Killingsworth. No, not based on what is really
1806 needed.
1807 *Mr. Pence. Okay. Thank you, Mr. Chair, I yield back.
1808 *Mr. Guthrie. Thank you. The gentleman yields back.
1809 The chair recognizes Dr. Ruiz for five minutes for questions.
1810 *Mr. Ruiz. Thank you. Thank you, Mr. Chairman.
1811 With an aging population in the United States, the
1812 importance of a strong, long-term care workforce and reliable
1813 long-term care facilities like nursing homes cannot be
1814 understated. Our seniors rely on these vital services for
1815 the care that they need to maintain a healthy quality of
1816 life. Many nurses _ nursing homes struggle to hire, but more
1817 importantly, retain the number of registered nurses, RNs, and
1818 nurse aides, CNAs, needed to safely and appropriately care
1819 for all of their residents.
1820 When we look at why we are seeing this workforce
1821 shortage, two issues come to light: one is staffing levels
1822 or nurse-to-resident ratios, and the pay rate for nurses and
1823 CNAs. The nurse-to-resident ratio at many nursing homes is
1824 unsustainable. When nurses or nurse aides are responsible
1825 for caring for too many patients at once, staff all too often

1826 experience burnout, which leads to turnover. And, mind you,
1827 often times, errors, medical errors. When burnout occurs,
1828 vulnerable residents can fall through the cracks because the
1829 nurse or nurse aide cannot be everywhere at once.
1830 And let's talk about another factor contributing to high
1831 turnover and the weakened long-term care workforce, and that
1832 is pay. CNAs do the grunt work and provide the hands-on care
1833 residents need for everyday tasks like bathing and using the
1834 restroom. This is difficult, but essential work. But CNAs
1835 are paid low wages that lead them to look elsewhere in the
1836 job market. They are under-valued and under-paid, and this
1837 makes it difficult for facilities to retain staff.
1838 Ms. Hughes, you described in your testimony examples of
1839 the negative outcomes that occur for residents of long-term
1840 care facilities when nurses and nurse aides are tasked with
1841 caring for too many residents at once. What is your ideal
1842 patient _ resident-to-CNA ratio?
1843 *Ms. Hughes. Let's see. For our long-term care unit _
1844 and we have about 60 residents _ I think that we should never
1845 have fewer than 6 CNAs. That would be 10 residents per CNA.
1846 And we really need to have at least three nurses. And

1847 anything above that _

1848 *Mr. Ruiz. So 1 nurse to 10 residents?

1849 *Ms. Hughes. One CNA, yes.

1850 *Mr. Ruiz. One CNA to ten residents.

1851 *Ms. Hughes. One certified nurse _

1852 *Mr. Ruiz. How much is it now?

1853 *Ms. Hughes. That should be the maximum.

1854 *Mr. Ruiz. How much is it now, on average?

1855 *Ms. Hughes. On a very bad day it could be twice. It

1856 could be twice that.

1857 *Mr. Ruiz. One to twenty?

1858 *Ms. Hughes. You could have 20 residents. And at

1859 night, when we are short staffed, you could have 30

1860 residents. And if it is an absolute crisis, you are the only

1861 one there to take care of 60 people.

1862 *Mr. Ruiz. Based on your experience Ms. Hughes, what

1863 can caregiver agencies do to improve your experience as a

1864 CNA?

1865 And what do you need from an employer to be satisfied

1866 and remain on the job as a CNA?

1867 *Ms. Hughes. Well, if we are talking about, you know,

1868 brand-new recruits, people who have taken the classes and
1869 have passed the test, I think that there should be a longer
1870 period of time for them to be trained. We sort of put people
1871 right on the floor right out of the classes, and they may
1872 have never done any sort of work like this before. So there
1873 is a very steep learning curve, and I believe that that is
1874 responsible for our high turnover rate.

1875 If we could give people an easier time onboarding into
1876 this job, and never give them 10 residents, never give them
1877 20 residents, not, you know, for the first year that they are
1878 working this job, but that would require us to put so many
1879 more aides on the floor.

1880 *Mr. Ruiz. So a better onboarding _

1881 *Ms. Hughes. Yes.

1882 *Mr. Ruiz. _ with training and incremental growth in
1883 the responsibility would be helpful to relieve the immediate
1884 shock of being thrown into a situation where they are caring
1885 for 30 residents at the very beginning. Is that what _

1886 *Ms. Hughes. Absolutely.

1887 *Mr. Ruiz. Okay.

1888 *Ms. Hughes. And, you know, being able to work with

1889 experienced people makes a big difference.

1890 *Mr. Ruiz. Okay. So, you know, I have been talking
1891 about these issues in the context of long-term care
1892 facilities like nursing homes. But let's not forget the
1893 importance of home and community-based services in the
1894 long-term care sector. In-home care programs can be vital to
1895 the health and well-being of patients, and can provide a much
1896 higher quality of life for certain patients and better health
1897 outcomes.

1898 But quite simply, the best way we can address the
1899 challenges we have discussed today is to fund the government
1900 so that critical programs essential to the long-term care
1901 sectors remain funded and able to do the critical work our
1902 seniors and other patients needing long-term care depend on
1903 and on them to do.

1904 So we have a few days, and so I implore my Republican
1905 Congress to _ let's get the job done, and keep the government
1906 open so that everyday Americans can benefit.

1907 And with that, I yield back.

1908 *Mr. Guthrie. The gentleman's time has expired.

1909 Before I call the next _ there is a vote on the floor.

1910 There is only one vote. So what we are _ if you see some
1911 shuffling here, we have had some rotating. So we are going
1912 to try to get people to go vote and come back so we can try
1913 to keep this going. I know you all have spent a lot of time
1914 here today, so we are trying to make that happen.
1915 I will recognize _ pharmacy, but doctor _ Harshbarger
1916 for five minutes.
1917 *Mrs. Harshbarger. Thank you, Mr. Chairman.
1918 Thank you, ladies, for being here. And I want you to
1919 know that I have heard from dozens of health care providers
1920 from east Tennessee about how these two proposed rules would
1921 be devastating to their ability to deliver and provide
1922 quality care to seniors, people with disabilities. And I and
1923 many of my colleagues recently signed on to letters to CMS
1924 and HHS, urging those agencies to reconsider their approach
1925 to the _ both the proposed 80/20 rule and the proposed
1926 minimum staffing mandate rule.
1927 And Ms. Killingsworth, first I want to thank you for
1928 being here because you are an accomplished health care expert
1929 from the Volunteer State. So thank you for coming up.
1930 I am worried about the domino effects that these two

1931 rules will have together on access to care, because for years
1932 it has been a priority for us to move patients from
1933 institutions into home and community-based settings. And so
1934 I guess my question is, can you speak on how the 80/20 pass-
1935 through rule may undermine home and community-based services,
1936 and lead to increases in utilizing institutional care like
1937 nursing homes?
1938 *Ms. Killingsworth. Thank you, Congresswoman, for the
1939 question. It is such an important question.
1940 I think, as a practical matter, the 80/20 rule will
1941 significantly increase the cost of home and community-based
1942 services and place increased demand on an already limited
1943 workforce supply. And when there are insufficient resources
1944 to be able to provide the supports that individuals need _
1945 *Mrs. Harshbarger. Yes.
1946 *Ms. Killingsworth. _ and sufficient providers and
1947 sufficient workforce, it means that individuals will have no
1948 choice _
1949 *Mrs. Harshbarger. Yes.
1950 *Ms. Killingsworth. _ but to look to the institutional
1951 benefit, which is a mandatory benefit and, therefore, would

1952 be available to them. So I think it could very well have
1953 exactly the opposite effect that is intended.
1954 Add to that the fact that if the staffing rule goes into
1955 effect for nursing homes, and they are also competing to add
1956 additional staff on the nursing home side, which they already
1957 are, but it will drive up costs of those nursing facility
1958 services. Again, there is a workforce pool that everyone is
1959 sort of striving to draw from. And it will increase the
1960 demands on that workforce pool and, I am afraid, pull away
1961 from home and community-based services and into the
1962 institutional setting.
1963 *Mrs. Harshbarger. I can see how that happens. My dad
1964 is 90 years old, and they take care of him at home with
1965 hospice, even though he has a Parkinson's issue. And it is
1966 really difficult to get people just to come in and bathe him.
1967 Or, you know, we may _ it may be two times a week, but it is
1968 _ or three times a week, and it has cut back to two. And,
1969 you know, that is where myself or my sister, somebody, has to
1970 step in and help with that.
1971 Can you speak to what will happen if we require an
1972 enforcement of the nursing home staffing ratio at a time when

1973 there is a risk that this 80/20 rule could push more people
1974 into nursing homes?
1975 *Ms. Killingsworth. I think there are twofold
1976 challenges. One, obviously, is that we are going to see a
1977 number of nursing homes that are not able to comply with the
1978 rule and could, quite frankly, put nursing homes out of
1979 business in an attempt to comply with a rule, again, at a
1980 time when there will also be additional strain on the home
1981 and community-based services system and potentially fewer
1982 providers to deliver services in people's homes and,
1983 therefore, an increased demand.
1984 We are seeing increased demand already because of an
1985 aging demographic.
1986 *Mrs. Harshbarger. Yes.
1987 *Ms. Killingsworth. This will sort of be a trifecta of
1988 challenges that will be untenable.
1989 *Mrs. Harshbarger. Exactly. And I visited a number in
1990 my district, nursing homes, and the staff ratio, the quality
1991 of care, you know, these _ honestly, they love what they do,
1992 just like Ms. Hughes said. They will take care of those
1993 patients. And you know, some of them have been there 20

1994 years or more, and same way with the physicians taking care
1995 of those patients.
1996 But, you know, you have got experience, I guess,
1997 considerable experience with TennCare. That is Tennessee's
1998 Medicaid program. And most recently, the TennCare III
1999 demonstration that allows Tennessee to participate in savings
2000 it achieves by managing the Medicaid program well that can be
2001 invested in certain state health programs so long as these
2002 quality metrics are achieved, can you talk briefly in 36
2003 seconds about Tennessee's experience and successes,
2004 particularly in LTSS, and how that informs your workforce
2005 recommendations?
2006 *Ms. Killingsworth. Thank you for the question.
2007 We have learned an awful lot about how, if you let
2008 states really drive innovation, good things _
2009 *Mrs. Harshbarger. Yes.
2010 *Ms. Killingsworth. _ can be accomplished.
2011 In the first year of the TennCare III demonstration,
2012 there were hundreds of millions of dollars of savings that
2013 can be invested, and are being invested in ways that increase
2014 access to services for people with intellectual and

2015 developmental disabilities, for maternal care, and, for the
2016 first time ever, a comprehensive adult dental benefit.
2017 We have learned in long-term services and supports that
2018 there are more cost-effective ways of delivering services in
2019 the community, and a part of that really does include looking
2020 to workforce alternative solutions that allow people to both
2021 have more independence, but also allow those services to be
2022 delivered far more cost-effectively.
2023 *Mrs. Harshbarger. Well, I know I am out of time, and I
2024 will talk more to you.
2025 Ladies, thank you for being here.
2026 *Mr. Griffith. [Presiding] The gentlelady yields back.
2027 I now recognize Ms. Kelly of Illinois for her five minutes of
2028 questioning.
2029 *Ms. Kelly. Thank you so much. I represent the 2nd
2030 congressional district of Illinois, so the Chicagoland area.
2031 I am urban, suburban, and rural, and my office has received
2032 outreach from various stakeholders. I have heard from the
2033 American Federation of State, County, and Municipal, and I
2034 have received outreach from long-term care facilities.
2035 And I think we can all agree that we should be rewarding

2036 care work, which is physically and emotionally demanding
2037 work, as we have talked about. We should be rewarding
2038 workers whose job it is to take care of our most vulnerable
2039 population. And the low wages, difficult work conditions,
2040 and increasing workloads are contributing factors to the
2041 workforce crisis we are seeing across the long-term care
2042 industry.
2043 Ms. _ is it Smetanka? Okay. In general, it seems like
2044 rural health care facilities face distinct problems, from
2045 volume issues to lack of access to advanced technologies.
2046 This country is in the midst of a workforce shortage, and
2047 this shortage is hitting rural areas especially hard. Are
2048 there Federal programs that need to be reevaluated to help
2049 long-term care facilities improve the nursing workforce
2050 pipeline for rural communities?
2051 *Ms. Smetanka. Thank you for the question,
2052 Congresswoman.
2053 I think the data doesn't show a difference in staffing
2054 levels in long-term care facilities between rural and urban
2055 facilities. And so certainly maybe we need to look into that
2056 more closely as to why that is. But the data show that there

2057 is no meaningful difference between rural and urban
2058 facilities.
2059 I mean, certainly, we need to take all of the steps that
2060 have been addressed here today with respect to focusing on
2061 the workforce, focusing in on turnover rates, focusing in on
2062 making these quality jobs to attract people into this field
2063 so that we do have a good pool of people to pull from and
2064 that will stay and work in long-term care facilities and as
2065 home care aides in order to provide services for individuals.
2066 *Ms. Kelly. Thank you so much, and I wanted to ask Ms.
2067 Hughes.
2068 How long have you worked in the facility you work in?
2069 *Ms. Hughes. Fourteen years.
2070 *Ms. Kelly. Wow, 14 years. And in your experience, how
2071 long do you see people lasting because of lack of pay or the
2072 burden of work?
2073 *Ms. Hughes. Honestly, for a brand new CNA, we are
2074 lucky if they manage to stick around for a year. Most people
2075 only last a matter of months. Sometimes it is to go to a
2076 better-paying job, sometimes it is to stay home, or they just
2077 wash their hands of the entire idea of ever working in a

2078 nursing home again. Yes.
2079 *Ms. Kelly. Thank you.
2080 Ms. Schumann, since you said that you have improved
2081 salaries and _ have you seen people stay around longer? Have
2082 you _ what difference have you seen since you have done this?
2083 *Ms. Schumann. Thank you, Representative, for your
2084 question.
2085 It is a challenging time in nursing homes right now. We
2086 are recovering from the pandemic.
2087 *Ms. Kelly. Sure.
2088 *Ms. Schumann. So it is a very unusual time.
2089 Currently, our nursing staffing retention rate is about 78
2090 percent. We have a lot of core people that have been in _
2091 served with us for many years. It is a calling. And if
2092 individuals are called to do this work and have the heart for
2093 it, they typically stay.
2094 *Ms. Kelly. But do you also see CNAs, like Ms. Hughes
2095 said, leave in a matter of months, or _
2096 *Ms. Schumann. Certainly. There is a burnout issue and
2097 a turnover issue. We desire more workforce. That is not a
2098 concern of ours. We do desire to have more workforce, and we

2099 would appreciate any support and assistance we could get to
2100 build back a workforce.
2101 *Ms. Kelly. Thank you.
2102 And I yield back.
2103 *Mr. Griffith. The gentlelady yields back. I now
2104 recognize Mr. Joyce of Pennsylvania for his five minutes of
2105 questioning.
2106 *Mr. Joyce. Thank you, Mr. Chairman, and thank you for
2107 the witnesses for being here on an historic day, and thank
2108 you for your testimony and your work.
2109 Today's hearing puts into focus the undue burden that
2110 the Biden Administration's proposed rules will place on
2111 long-term care, as well as home and community-based services.
2112 As a doctor, I know that a one-size-fits-all approach to
2113 medicine and an unrealistic, top-down mandate on long-term
2114 elder and palliative care is not the solution, and the care
2115 that our nation's most vulnerable populations rely on will be
2116 gravely impacted by these proposed regulations.
2117 Just last week my colleagues and I wrote to Secretary
2118 Becerra and voiced our opposition to the staffing rule, a
2119 proposal that would limit access to care for seniors, cause

2120 mandatory increase in state Medicaid budgets, and could, most
2121 consequentially, lead to widespread nursing home closures.
2122 As someone who represents a predominantly rural
2123 district, I know that recent regulations will have a
2124 disproportionate impact on my constituents and their ability
2125 to access the care in the correct setting. The idea of
2126 enhancing access to care while simultaneously depleting an
2127 already dwindling workforce via unfunded mandates will do
2128 irreparable harm to these facilities, to the workforce who
2129 staff them, but most of all, to the patients who need you
2130 each and every day. This will do nothing to advance access
2131 to high-quality care, which is all of your goal, and I think
2132 all of us on both sides of the aisle share that common goal.
2133 Ms. Schumann, in your testimony you highlight that your
2134 own facility has recently increased wages and benefits
2135 packages. However, in face of that, you still have hiring
2136 challenges. Can you explain how this Administration's
2137 proposed role will impact your industry, your facility, and
2138 facilities that are situated in rural communities that I
2139 represent in central Pennsylvania?
2140 *Ms. Schumann. Thank you, Representative, for your

2141 question.

2142 This is a very concerning proposed mandate. I am
2143 concerned, after 25 years of serving the elders in my
2144 community, that I would have to shut down based on the fines
2145 proposed, based on the mandates proposed.

2146 I am in an urban area. I am just south of Denver. I
2147 can only feel for my colleagues who are in rural areas. I
2148 know there has been a disproportionate number of rural
2149 communities that have been closed, and our studies show that
2150 up to 208,000 residents could be displaced if this mandate
2151 were imposed.

2152 *Mr. Joyce. Over 200,000 patients displaced, and a
2153 disproportional impact on rural communities. This proposed
2154 rule would have severe deficits to all the work that you do.
2155 It would impose something that would be unheralded and truly
2156 unreasonable for you to expect to work through.

2157 The proposed 80/20 rule could lead to reductions in HCBS
2158 care in Medicaid by as much as 30 percent. The partnership
2159 for Medicaid home-based care found that over 90 percent of
2160 providers would face challenges in serving rural populations,
2161 and would cause cuts to clinical oversight, training, and

2162 non-direct care staff.

2163 Ms. Killough, is it fair to say that this new
2164 requirement could hurt access to care and cause providers to
2165 close or to reduce service areas?

2166 *Ms. Killough. Absolutely. It would definitely have a
2167 disproportional impact on smaller providers, ethnic providers
2168 who cannot meet the guidelines and be able to afford, with
2169 all the other costs, administrative costs of operating these
2170 businesses.

2171 *Mr. Joyce. Ms. Killingsworth, is it possible that the
2172 impacts on state budgets will actually adversely impact
2173 access to care?

2174 *Ms. Killingsworth. Thank you for the question.

2175 Absolutely, states have limited levers available to
2176 maintain the expenditures within a state Medicaid budget.
2177 And so if additional payments are required to increase
2178 payments to providers to help ensure that they can comply
2179 with the regulations, then that would, of necessity, mean
2180 there would have to be cuts in either the populations who
2181 receive these services or the benefits that are available to
2182 them unless states have unlimited resources to bring to the

2183 table, which they do not.

2184 *Mr. Joyce. And you are absolutely correct, those

2185 unlimited resources are not available.

2186 You previously managed long-term care services for a

2187 state. What flexibility did you have at the state level to

2188 try to manage some of these costs?

2189 *Ms. Killingsworth. What we did was really work with

2190 providers to try to come up with solutions that would support

2191 them with recruitment and retention efforts, by bringing in

2192 expertise, by also helping them to begin to collect data to

2193 use in their workforce development efforts, and then by doing

2194 targeted rate increases that we were really doing in

2195 partnership with them that would allow them flexibility to be

2196 able to pay their workforce more.

2197 *Mr. Joyce. In any sense could you see benefits from

2198 this proposed mandate?

2199 *Ms. Killingsworth. I think it is well intentioned, but

2200 ill conceived, and most likely to have negative consequences.

2201 *Mr. Joyce. And those negative concepts _ those

2202 negative consequences are why we convened.

2203 Mr. Chairman, my time is expired and I yield.

2204 *Mr. Griffith. I thank the gentleman for yielding back.
2205 I now recognize Ms. Barragan of California for her five
2206 minutes of questions.
2207 *Ms. Barragan. Thank you, Mr. Chair. We have heard
2208 today how the CMS proposed rules will impact the long-term
2209 care workforce and access to care for nursing home and home
2210 health patients.
2211 As a primary caregiver for my mom, this issue is deeply
2212 personal, and I recognize the need for Congress to address
2213 the unique challenges that the sectors face.
2214 Ms. Smetanka, Democrats included an increase in the
2215 Federal matching rate for Medicaid home and community-based
2216 services in the House-passed Build Back Better Act.
2217 Unfortunately, this funding did not make it into the
2218 Inflation Reduction Act. Can you talk about how this
2219 investment would help home care agencies meet the worker
2220 compensation requirement in the proposed Medicaid access
2221 rule?
2222 *Ms. Smetanka. Additional resources certainly are
2223 necessary in home and community-based services, and expansion
2224 into the availability of those services is something that

2225 certainly we hear a lot from people. They want to stay at
2226 home, they want to receive services in a location of their
2227 choice.
2228 And frankly, there are a lot of people living in nursing
2229 homes today that could live in the community if appropriate
2230 supports were necessary for them. So by adding the
2231 resources, as was proposed in the Build Back Better Act,
2232 would take important steps forward in helping to provide some
2233 of those additional supports into the home and community-
2234 based services sector and increase the availability of
2235 services.
2236 *Ms. Barragan. Well, thank you. You know, I just the
2237 other day I got an email that there is a waiting list again
2238 for the home _ in-home care program. I know when my mom
2239 applied for it, she was on the waiting list for six months.
2240 And there are people who, as you said, would rather be in
2241 their home than go into a nursing home.
2242 And we know people like my mother who have Alzheimer's
2243 who get the one-on-one attention at home _ would not get that
2244 into a nursing home, and the decline would be much quicker
2245 and much faster. So I see firsthand the importance of that

2246 funding, and I see the difference in families who have that
2247 ability to be able to stay in their home.
2248 I want to follow up with you. California recently
2249 passed a minimum wage increase for health care workers. Give
2250 us your thoughts. Will a higher minimum wage attract new
2251 workers for both home health agencies and long-term care
2252 facilities, given what we hear about the shortage?
2253 *Ms. Smetanka. Higher minimum wage and increased wages
2254 is one of the factors that will help attract people to this
2255 field. And so by having an increased minimum wage, that
2256 would help benefit bringing people into this area and want to
2257 work more in these facilities.
2258 *Ms. Barragan. Great, thank you.
2259 Ms. Hughes, nursing homes with a high share of Hispanic
2260 or Black residents had higher rates of death during the
2261 COVID-19 pandemic. While patients of color are more likely
2262 to have preexisting conditions that put them at higher risk,
2263 they are also more likely to be in facilities that are
2264 chronically under-staffed. Studies have shown that higher
2265 staffing is closely tied to higher quality of care and fewer
2266 COVID-19-related deaths. How can the minimum staffing

2267 standards proposed by CMS address health disparities and
2268 improve quality of care for patients that are maybe
2269 minorities or of color?
2270 *Ms. Hughes. Thank you for that question.
2271 I think that setting a Federal minimum floor that you
2272 can't go below would do a lot to fix this problem. The
2273 quality of care that you receive wouldn't be based on your
2274 zip code anymore, and I think that that speaks to the point
2275 you were trying to make.
2276 If you live in an area that is poor, that doesn't have
2277 good Medicaid reimbursement rates, and you work in a
2278 long-term care setting, there is going to be less money
2279 available to go to wages to pay for workers. Setting this
2280 floor will go a long way to fixing that.
2281 *Ms. Barragan. So Democrats have continuously fought
2282 for funding to provide training and increased compensation
2283 for health care workers, Ms. Hughes. With the minimum
2284 staffing proposed rule, CMS announced a campaign to support
2285 staffing in nursing, including $75 million in financial
2286 incentives through scholarships and tuition reimbursement.
2287 How would this type of funding help facilities meet the

2288 proposed staffing rules or requirements?

2289 *Ms. Hughes. I hope that it would help at all.

2290 I work in a town where the largest employer is a
2291 university. We have a large population of students, and I
2292 see plenty of them come through and choose not to stay. With
2293 increases in wages and maybe loan forgiveness, more of them
2294 may come in and actually stay and look at it as a good job
2295 and a real career.

2296 *Ms. Barragan. Great. Thank you.

2297 With that, my time has expired and I yield back.

2298 *Mr. Griffith. The gentlelady yields back. I now
2299 recognize Mrs. Miller-Meeks of Iowa for her five minutes of
2300 questioning.

2301 *Mrs. Miller-Meeks. Well, thank you, Mr. Chairman, and
2302 thank you to the witnesses for testifying before the
2303 subcommittee today.

2304 Unlike probably most members of our August committee, I
2305 actually volunteered in nursing homes, volunteered in mental
2306 health hospitals, was a student nurse prior to becoming a
2307 nurse, then continued to do nursing while I was putting
2308 myself through medical school. So it is an issue I might

2309 know just a little bit about.

2310 My district that I serve in Iowa also happens to be a
2311 rural district, although we have urban areas, as well.

2312 CMS's recent Medicaid access rule included a proposal
2313 that would require states to spend at least 80 percent of all
2314 Medicaid home and community-based service dollars on direct
2315 care workers. Many states have expressed concern with this
2316 rule, primarily with CMS's decision not to permit exceptions
2317 to the 80 percent threshold. This will likely impact two
2318 groups, small and new providers compared to large,
2319 established providers; and rural and frontier providers, who
2320 often have fewer options to optimize administrative costs and
2321 higher cost of recruiting and maintaining staff. This is a
2322 major concern for rural states like Iowa.

2323 CMS might want to consider alternative approaches such
2324 as scaling threshold based on provider size, rural-urban
2325 status, risk of closure, and/or an exceptions process for
2326 small providers. Of course, not all entities would utilize
2327 this process, but offering flexibilities to account for the
2328 geographic differences and challenges associated with those
2329 differences would make sense.

2330 And I know this personally, having cared for my mother
2331 with Alzheimer's who was in Oklahoma and I was in Iowa, and
2332 she lived with us for a year before going back to Oklahoma.
2333 As the chair of the Subcommittee for Veterans committee,
2334 I also want to focus my concern not only on what I think the
2335 impact will be for Iowan seniors and people with disabilities
2336 who depend on Medicaid, home-based services, but also our
2337 veterans who are increasingly relying on home-based,
2338 long-term care. A 2020 GAO report indicated that there is
2339 significant growth in veterans receiving home care and other
2340 home-based services. While veterans can receive this care
2341 through the VA benefit, many also receive home care services
2342 through Medicaid home and community-based service waivers.
2343 Regardless of the payer, the providers that are being
2344 targeted by the Medicaid access rules payment proposal serve
2345 both our broader population and veterans.
2346 Ms. Killough, given already limited provider resources
2347 in Iowa, I am concerned about what the Medicaid access rule's
2348 impact will be on provider networks to meet current and
2349 future needs of Iowans, including veterans. Can you talk a
2350 bit about how implementing this rule could affect the home

2351 care provider network overall, and what happens when
2352 individuals cannot receive home-based care?
2353 *Ms. Killough. Thank you for the question,
2354 Representative. You touched on it.
2355 First of all, you know exactly what the issue is. If
2356 they do not have the adequate, first of all, rates to pay,
2357 they need the funding. If the 80 percent rule goes through
2358 as written, that means providers will close, or they will not
2359 open up. And we need the expansion to deal with the growing
2360 population. And so we will have issues, and clients will not
2361 be able to receive care ultimately, and maybe turn to a
2362 nursing home setting.
2363 *Mrs. Miller-Meeks. Which is much higher cost.
2364 *Ms. Killough. Absolutely.
2365 *Mrs. Miller-Meeks. Ms. Schumann, to meet the proposed
2366 staffing levels nursing facilities would need to hire an
2367 additional 1,417 direct care staff or reduce resident count
2368 by 2,559, or 13 percent, in Iowa. However, such workers are
2369 not readily available, and that is regardless of pay. And
2370 recruiting and retaining them would significantly drive up
2371 costs for all health care providers.

2372 I will also note that 17 nursing facilities in Iowa
2373 closed in 2022, 15 of which were in rural communities.
2374 Can you please discuss the impact of the current health
2375 care workforce deficit, and how the proposed staffing ratio
2376 would influence that impact not only in the nursing home
2377 setting, but across the care continuum?
2378 *Ms. Schumann. Thank you, Representative. I think you
2379 mentioned it well, that it would drive up costs. And
2380 currently in my state we had a proposed Medicaid rate to go
2381 in effect of July 1, and we have yet to receive the dollars
2382 from that because the proposal and the approval is on CMS's
2383 desk, waiting for approval. It is a very complex system and
2384 a very complex process.
2385 Access to care will become an issue. People will either
2386 have to limit the admissions into their communities or they
2387 will shut down. And as you mentioned, rural communities are
2388 disproportionately impacted, and underserved communities are
2389 also disproportionately impacted.
2390 *Mrs. Miller-Meeks. Thank you, I yield back.
2391 *Mr. Guthrie. [Presiding] Dr. Miller-Meeks yields back.
2392 The chair recognizes Dr. Bucshon for five minutes for

2393 questions.

2394 *Mr. Bucshon. Thank you, Mr. Chairman. I appreciate
2395 the opportunity today to discuss proposals by the Biden
2396 Administration to implement staffing ratios and other
2397 requirements at nursing homes across the country.

2398 I was a physician before I was in Congress, a cardiac
2399 surgeon, and I understand how crucial it is that we have _
2400 that we provide patients access to quality health care. I
2401 recognize that facilities can only provide quality care if
2402 they have quality staff. And I have no doubt that, for most
2403 facilities _ that most facilities would benefit from an
2404 additional set of hands. But this has been a chronic problem
2405 for a long time.

2406 Here is the problem. Our health care system is facing a
2407 critical nursing shortage. So it is a rock and a hard place
2408 here with this rule. Even prior to COVID, projections
2409 suggested an implementing national _ an impending national
2410 shortage of RNs, and things only got worse during the
2411 pandemic.

2412 My home state of Indiana has about 44,300 job openings
2413 for nurses as we speak, every year, and is currently

2414 projected to need an additional 5,000 nurses by 2031. That
2415 is before any of these staffing ratio proposals are
2416 implemented.
2417 But rather than focusing on growing a sustainable
2418 workforce, the Administration has passed down a staffing
2419 mandate which could force facilities to cut services or shut
2420 down entirely when they are unable to comply. There is just
2421 nobody out there to hire. This would leave patients and
2422 their families hanging in the balance, particularly in rural
2423 areas like the one that I serve, the district I serve.
2424 Ms. Hughes, I have to agree with the statements in your
2425 testimony that it is beyond frustrating when people who sit
2426 behind a desk all day dictate staffing needs. But that is
2427 exactly what happened when CMS issued these proposals. This
2428 staffing mandate will exacerbate rather than alleviate
2429 existing staffing challenges. Providers in Indiana and
2430 throughout the United States will be unable to meet the
2431 staffing requirement, which will threaten patient access to
2432 care.
2433 Again, there is a nursing shortage. I described how
2434 short we are in Indiana. I think all of us want to provide,

2435 you know, as much care and _ for the safety and medical care
2436 of our clients, our patients. But a top-down mandate isn't
2437 the way to go, and many of you have described this workforce
2438 challenge.
2439 So Ms. Schumann, you have been a successful at offering
2440 _ have you been successful at offering career opportunities
2441 like helping current nurse aides train and become RNs?
2442 And would your ability to do this change under the rule?
2443 *Ms. Schumann. Thank you for your question,
2444 Representative.
2445 We have had great success with a lot of our certified
2446 nursing assistants going on to become LPNs. LPNs, licensed
2447 practical nurses, coming on to _ go on to become registered
2448 nurses.
2449 One of our greatest challenges, though, is training our
2450 CNAs. In the State of Colorado, about 60 percent of
2451 providers lost the ability to train CNAs due to civil
2452 monetary penalties imposed in the state during the survey
2453 process. In addition to that, some of our staff have to
2454 travel four hours to test to become certified in the State of
2455 Colorado. This is extremely discouraging, considering our

2456 workforce is predominantly made of women, and women with
2457 children.
2458 *Mr. Bucshon. Yes, it is a huge challenge. Do you work
2459 with your _ some of your educational institutions in the
2460 state to try to have that pipeline?
2461 And with that question, how is the competition for those
2462 people who are graduating?
2463 *Ms. Schumann. Thank you.
2464 *Mr. Bucshon. It is pretty tough, right?
2465 *Ms. Schumann. Yes, thank you for your question.
2466 The educators are part of a health care collaborative
2467 with providers, and there are more individuals interested in
2468 becoming nurses than there are places for them in the
2469 educational institutions.
2470 *Mr. Bucshon. Yes.
2471 *Ms. Schumann. It is very competitive to hire a nurse.
2472 *Mr. Bucshon. Same thing is true in Indiana, by the
2473 way. We have statewide junior college system, Ivy Tech, and
2474 we also have educational institutions, even four-year ones
2475 that _ and we still have chronic shortages.
2476 Ms. Killingsworth, in your testimony you mentioned your

2477 over 25 years of experience at state _ at the state Medicaid
2478 level. From a statewide perspective, do you believe that it
2479 is the most efficient distribution of resources to require RN
2480 care at the level proposed in the rule in all nursing homes?
2481 *Ms. Killingsworth. I think it is a practical matter.
2482 There are not enough nurses to be able to meet that staffing
2483 ratio requirement, especially when you take into account the
2484 totality of the health care _
2485 *Mr. Bucshon. But say, hypothetically, you did. Would
2486 that be the best way you would use extra resources, or is
2487 that a most efficient way to get patient care to your
2488 patients, do you think?
2489 *Ms. Killingsworth. I think that states need
2490 flexibility. And quite frankly, providers need flexibility
2491 to be able to target their staffing levels to the needs of
2492 the residents that they serve.
2493 *Mr. Bucshon. Agreed. That is my position. My
2494 position would be you need flexibility to decide what is the
2495 best way to take care of your clients. And a top-down rule
2496 is not what you need.
2497 I yield back.

2498 *Mr. Guthrie. Thank you, Dr. Bucshon yields back.
2499 Dr. Schrier, you are recognized for five minutes for
2500 questions.
2501 *Ms. Schrier. Thank you, Mr. Chairman, and thank you to
2502 our witnesses for being here today. Thank you especially for
2503 coming out from Washington State, Ms. Hughes.
2504 In my district in Washington State and all across the
2505 country we continue to face a severe shortage of health care
2506 workers that directly impacts patient care. When nursing
2507 homes and long-term care facilities don't have the staff or
2508 the beds available for patients in need, it leads to long
2509 wait times for seniors who then get stuck in hospitals, and
2510 then those beds are not available for other patients who
2511 might need them. There is a whole cascading effect. And so
2512 ensuring that we have the workforce that meets the needs of
2513 our growing senior population is critical.
2514 Now, Washington State already has some of the most
2515 expansive staffing requirements of any state. They include
2516 some key differences from the CMS proposals, and an analysis
2517 from the Kaiser Family Foundation found that just under half
2518 of Washington nursing facilities, 49 percent, would currently

2519 meet the required RN and nurse aide minimum standards. So
2520 our state is already trying to address some of these concerns
2521 around proper staffing levels and adequate patient care, and
2522 it remains a challenge.

2523 So that is why I wanted to focus today on really
2524 capitalizing on opportunities to bring workers into the
2525 industry, and to ensure that those workers have a path for
2526 professional growth and family-wage jobs and advancement.
2527 And I am really glad to see funding included in the rule for
2528 training nurse aides to address the shortage. But I believe
2529 that more complex and significant efforts are also necessary.

2530 Ms. Schumann, first question is for you. Could you
2531 share what hiring and recruitment efforts look like for your
2532 facilities? What are the recurring challenges? How long do
2533 people stay, and are you meeting your requirements?

2534 *Ms. Schumann. Sure. Thank you for the question.

2535 It is a challenge to recruit, for sure. One of our
2536 individuals in our community spends most of her time just
2537 trying to recruit staff, and I would say maybe two applicants
2538 apply, and out of those interviews maybe one stays.

2539 And so these are for a lot of open positions. There are

2540 not people applying. There are not people even wanting to
2541 start a first day. So the people just absolutely are not
2542 there.
2543 *Ms. Schrier. And we hear those things from other
2544 employers, as well. And I would say that this particular
2545 line of work is a very difficult, challenging line of work.
2546 And when the pay does not match the skills and love and care
2547 required to do that job, people will look elsewhere.
2548 Ms. Hughes, thank you for being here and speaking
2549 directly to the experience of CNAs in Washington. In your
2550 testimony you mentioned the downward spiral that low staffing
2551 levels lead to, especially when it comes to staff retention.
2552 And I was wondering how the Federal Government can be better
2553 at addressing the recruitment and hiring needs of these
2554 facilities in order to grow the pipeline of nursing staff who
2555 will take care of our loved ones.
2556 *Ms. Hughes. I think that definitely reaching out to
2557 local community colleges, reaching out to people that are in
2558 my union, and making sure that, you know, everyone who wants
2559 a union has a pathway and a right to get to one.
2560 When I talk to these, you know, younger caregivers out

2561 there, they are full of so much passion and drive, but they
2562 are not willing to put up with poor conditions on the job.
2563 *Ms. Schrier. Understandable.
2564 *Ms. Hughes. Yes, absolutely.
2565 *Ms. Schrier. And our state has been leading in
2566 unionizing. And I know it is not directly applicable here,
2567 but home health care workers have a union in Washington
2568 State.
2569 With the growing number of seniors who will need
2570 long-term care services and supports, we have to find
2571 creative solutions to meet those demands on the _ with the
2572 existing infrastructure, and home health care is one of the
2573 solutions keeping people in their homes as long as possible
2574 to get that care and not overload nursing homes.
2575 And I was wondering, Ms. Killough _ did I say that
2576 correctly? How can home health care help to ease the burden
2577 on nursing homes and long-term care facilities?
2578 *Ms. Killough. Well, we have the same nursing home
2579 level of care need for people to stay in their homes, and
2580 they want to live in their home. So it gives them choice and
2581 it gives them the ability to live in their home with dignity,

2582 and provide that assistance. So without adequate workforce,
2583 that would not be available to them.
2584 *Ms. Schrier. And I am out of time, but perhaps you
2585 could submit an answer to the question of: financially and
2586 logistically, which becomes a more affordable and sensible
2587 option on a broad scale?
2588 Thank you for _
2589 *Ms. Killough. We will be happy to. Thank you.
2590 [The information follows:]
2591
2592 **********COMMITTEE INSERT**********
2593

2594 *Ms. Schrier. Thank you. I yield back.

2595 *Mr. Guthrie. Thank you. The gentlelady _ doctor
2596 yields back. The chair will recognize Mr. Griffith for five
2597 minutes for questions.

2598 *Mr. Griffith. Thank you very much, Mr. Chairman. I
2599 want to thank all of you for being here today. This is an
2600 important issue. And while I don't think that the current
2601 rule will help matters, I think it will make it worse, that
2602 being said, we have to work together, as I believe the
2603 ranking member said, to find out solutions. This is not just
2604 about bashing one administration or another, it is about
2605 trying to find answers together.

2606 So I am going to start with you, Ms. Killough. In your
2607 testimony you cite that the Clinton Administration filed a
2608 brief in the 9th circuit court case regarding state Medicaid
2609 agencies and payment rates. That brief submitted by the
2610 solicitor general claims that the purpose of section 1902-
2611 830(a) of the Social Security Act was to give states wide
2612 discretion to set Medicaid payments that are consistent with
2613 efficiency, economy, and access to quality care, and that the
2614 "Secretary does not dictate what level of payments would be

2615 sufficient to provide for equal access to such care and
2616 services, nor does the Secretary require the states to adopt
2617 any particular procedure or methodology for determining
2618 whether payments are necessary to meet the general criteria
2619 in the statute.'` All that was a quote.
2620 Now, section 1902(a)30(a), also known as _ you know,
2621 they always confuse you, you got the code section and then
2622 you have the statutory section that are not always the same,
2623 but it is the same section of the law, 42 USC 1396(a)30(a),
2624 states that state Medicaid plans must ensure that provider
2625 payments are "consistent with efficiency, economy, and
2626 quality of care, and are sufficient to enlist enough
2627 providers.'`
2628 Do you think what CMS is doing with these rules or with
2629 this rule violates what the law states and what the law
2630 intends, putting your law your hat on?
2631 *Ms. Killough. Absolutely. There _ nothing in what CMS
2632 is doing is going to allow for making sure states have the
2633 discretion to provide that.
2634 *Mr. Griffith. Right. And as many have said, the
2635 intent may be good, or what they are trying to do, because we

2636 need more workers. As Dr. Bucshon pointed out, we need more
2637 people getting their RNs. We need to go forward. We also
2638 need to look at other things.
2639 I was really intrigued with your testimony, Ms.
2640 Killingsworth, on technology, and using technology, and maybe
2641 trying to look outside the box. And that triggered _ even
2642 though I have a whole list of questions here that we worked
2643 on ahead of time, it triggered a thought in my mind.
2644 And so I went and got them to pull out the _ one of the
2645 last code sections I ever got when I was a member of the
2646 Virginia house of delegates was to change zoning laws in
2647 Virginia so that we could put temporary family health care
2648 structures on property. So we waived all the zoning laws if
2649 you meet the criteria, and you have got somebody that needs
2650 help, and you want to put _ I hate to say it, but the
2651 Washington Post dubbed it as a granny pod, but it is a
2652 medical health facility, basically a small home in the back
2653 on your lot _ waived all the local zoning rules if you are
2654 meeting this. And it has to be there temporarily, you can't
2655 leave it there permanently.
2656 Do you think something like that would help in

2657 alleviating some of the concerns? Because you can be with
2658 family members. As Ms. Barragan was saying, she is giving
2659 care to one of her parents who has got some Alzheimer issues.
2660 Do you think that might be helpful as one of the ways to
2661 figure out things outside the box, as opposed to putting
2662 strict requirements on 80/20 for _ you know, 80 percent of
2663 the money coming from Medicaid has to go to the worker?
2664 *Ms. Killingsworth. Thank you so much for the question.
2665 I do think there is a range of technologies, including
2666 the one that you spoke about, that would provide access to
2667 more cost-effective ways of supporting people, where family
2668 caregivers can be involved and you can leverage technology to
2669 also provide some of the supports that individuals need, and
2670 then really target those limited workforce resources in ways
2671 that better use those resources as well as the overall
2672 program resources.
2673 *Mr. Griffith. And Ms. Killough _ and this may not be
2674 your field, so just say so if it isn't _ but does the rules
2675 currently allow for any reimbursement for such a structure to
2676 be placed in the backyard of somebody's home?
2677 *Ms. Killough. I don't believe so, but it brings to

2678 mind that creativity is placed within states to have the
2679 opportunity to build such programs, and they should be given
2680 the freedom to do so.
2681 *Mr. Griffith. Yes, I had less than 10 percent of the
2682 people that I have now that I represent in a much smaller
2683 area, and somebody just walked into my office one day and
2684 said, "I got this idea,'' and the next thing you know, it is
2685 the law.
2686 Ms. Smetanka, what do you think? Is this something that
2687 would help?
2688 *Ms. Smetanka. Well, I mean, I certainly think that we
2689 should look at a whole range of solutions and creative
2690 solutions to meeting the care needs for our individuals.
2691 *Mr. Griffith. And would _
2692 *Ms. Smetanka. But we need some basic care levels and
2693 basic standards.
2694 *Mr. Griffith. And wouldn't it help if there was a
2695 little bit of Medicaid money that would help people stay at
2696 least with their loved ones, even if they have to be put into
2697 a facility that is just outside the back door?
2698 *Ms. Smetanka. Certainly, we need to look at how

2699 Medicaid dollars are currently being spent right now, and
2700 look at how they can actually meet the _
2701 *Mr. Griffith. Figure out how we can use _
2702 *Ms. Smetanka. _ the premise of the _
2703 *Mr. Griffith. _ the same money more creatively.
2704 And I will say, Mr. Chairman, I know I am over time but
2705 one of the things I thought about at the time was I had small
2706 children and, if I had a stroke or something, I wouldn't want
2707 to be in a nursing facility, while many of them provide great
2708 things. But I would want to be able to be there so that one
2709 of my sons or my stepdaughter could bring in that treasure
2710 they found in the backyard and show it to me. And so it is
2711 not just for the elderly, it is also for people that may have
2712 had something debilitating like that.
2713 I yield back.
2714 *Mr. Guthrie. Thank you. The gentleman yields back.
2715 The chair recognizes Mr. Carter for five minutes for
2716 questions.
2717 *Mr. Carter. Thank you, Mr. Chairman, and thank all of
2718 you for being here.
2719 I don't know this for certain, but I suspect that there

2720 is not another Member of Congress who has the experience that
2721 I have in nursing homes. You see, I was a consultant
2722 pharmacist in nursing homes. So I spent hours on end in
2723 nurses' stations going over patients' charts, making drug
2724 recommendations for those patients. And I have witnessed
2725 firsthand the work.

2726 Ms. Hughes, you mentioned _ you told stories about CNAs.
2727 I was there at night. I was there on the weekends. I saw
2728 what great value you bring. And CNAs and LPNs _ and I don't
2729 understand why they are left out of this. That baffles me,
2730 but it _ I just want you to know how much I appreciate the
2731 work that you do. This is more than just work; this is a
2732 calling. And just as I feel like I have been called to serve
2733 here in Congress, I feel like people who work in nursing
2734 homes, it is more than just the money. And money is
2735 important, there is no question about that. But it is
2736 extremely important.

2737 And, you know, Ms. Hughes, you mentioned about good days
2738 and bad days. And I can take it one step further. I have
2739 seen nursing homes _ I would walk in in the morning, and a
2740 couple _ and they would be great, clean and everything is

2741 great. In just a couple of hours, when you have got that
2742 many people together, particularly these _ this patient
2743 population, it could just fall apart. And all of a sudden
2744 there is just, you know, the smell of urine throughout the
2745 facility, and just trash everywhere. And it is not anyone's
2746 fault. It is just the way that it is in the nursing home
2747 situation. So again, I want you to know how much I
2748 appreciate it.
2749 Ms. Schumann, you said that these are compassionate and
2750 selfless people, and you are right, they are, and they
2751 deserve this. The _ what they do for these patients is
2752 extremely important.
2753 You also mentioned, Ms. Schumann, some of the things
2754 that we might be able to do, like student loan forgiveness,
2755 in order to attract other _ attract people to the facilities,
2756 and employees. And I wanted you to elaborate on some of the
2757 things you feel like we can do to get more people involved in
2758 this, because it really is a calling, and really is
2759 necessary.
2760 *Ms. Schumann. Thank you, Representative, for your
2761 question.

2762 Yes, student loan forgiveness would be amazing. The
2763 cost of becoming a licensed practical nurse or a registered
2764 nurse is astronomical.
2765 Pass-through tax credits that go to individuals who
2766 choose to work in our profession, would go directly to them
2767 on their tax returns would be amazing.
2768 I just also want to point out that currently there are
2769 over thousands of foreign-born nurses who have the
2770 appropriate visas to enter the country who have not yet been
2771 interviewed to enter the country. That would provide us
2772 immediate relief, as well.
2773 *Mr. Carter. That is great. Thank you for mentioning
2774 that, as well.
2775 Ms. Hughes, do you have any idea, any suggestions on
2776 what we could do to attract more people into this?
2777 I mean, look, this is _ when you say selfless, this is
2778 selfless. I mean, I have seen it. I have been there, hours
2779 on end, and I know what you do, and I don't know what it
2780 would take, you know, to attract more people to doing this
2781 type of work.
2782 *Ms. Hughes. Well, when it comes to the credentials,

2783 maybe having portable credentials. People come from out of
2784 state who have been doing this job forever, but essentially
2785 have to start all over, take the class, take the
2786 certification test to be able to walk into a nursing home and
2787 do the work that they have been doing for 20 years.
2788 *Mr. Carter. Sure, sure.
2789 *Ms. Hughes. So, you know, making that a little bit
2790 easier would go a long way, but just doing whatever we can to
2791 improve the conditions in the home.
2792 The number-one thing that I hear from people is that,
2793 you know, they are being given too many residents at a given
2794 time to do a good job.
2795 *Mr. Carter. Well, I want you to know that I think that
2796 these policies that are being promulgated here and being
2797 proposed are horrible. This is going to lead to nursing
2798 homes closing. In fact, almost 80 percent of facilities
2799 would be forced to close if this went through. And that
2800 shows you just the tone deafness of HHS and CMS in trying to
2801 propose something like this. They have no clue, no clue as
2802 to what I have seen and witnessed in my years of practice as
2803 a consultant pharmacist and the work that you do.

2804 And this is _ I have been in touch with the Georgia
2805 Nursing Home Association. They have already expressed to me
2806 their concern about this and how it is going to be
2807 devastating to the nursing homes. And where will these
2808 people go? Where are they going to go?
2809 I mean, the number-one reason that a lot of them are in
2810 nursing homes to begin with is medication administration,
2811 because they need help in administering their medications and
2812 getting their _ like, properly, like they should be. So that
2813 is something that we have to keep in mind, as well.
2814 But I just _ I am glad I had the opportunity to ask you
2815 questions and to be able to speak to you because I want you
2816 to know how much I appreciate everything that you all do.
2817 This is truly something that I have for years admired. And
2818 thank you all for being here today.
2819 And I yield back, Mr. Chairman.
2820 *Mr. Guthrie. Thank you. The gentleman yields back.
2821 The chair recognizes Mr. Crenshaw for five minutes for
2822 questions.
2823 *Mr. Crenshaw. Thank you, Mr. Chairman, for holding
2824 this hearing.

2825 I think it is worth noting we all agree that there is a
2826 serious problem in workforce shortages, and that our nurses
2827 work an impossible job, and especially in these long-term
2828 care facilities. It is an extremely difficult job, so it is
2829 no wonder that it is extremely difficult to find the people
2830 who want to do it. But I am surprised that anyone thinks
2831 that this solution would somehow create more of these
2832 wonderful people that we need so much of.
2833 You can create a mandate to create more nurses. It
2834 doesn't mean _ we can write a law that says there will be
2835 75,000 more nurses. It will not create 75,000 more nurses.
2836 It is just not how laws work, and it is not how nurses work.
2837 It is not how a labor market works. They don't just arrive.
2838 And there is a strange kind of philosophical assumption with
2839 a mandate. It assumes that nursing homes are purposefully
2840 not hiring nurses. That is the factual assumption being made
2841 when you are offering a mandate. You are saying, "You are
2842 not hiring nurses and you should be.’‘
2843 Okay. Is that _ who owns a nursing home? Is that true?
2844 *Ms. Schumann. We desire to hire more nurses,
2845 Representative.

2846 *Mr. Crenshaw. Okay, so you already desire to hire more
2847 nurses. They are not there. What if you _ I mean, could you
2848 up _ what is a reasonable amount you could raise your
2849 salaries to and they still _ would it make them exist?
2850 *Ms. Schumann. No, not under the current reimbursement
2851 system. We could not raise them to _
2852 *Mr. Crenshaw. Yes, so these are just facts of
2853 economics. Like, the people just aren't there. So these are
2854 economic facts. And it is important to note that we are
2855 bypassing basic factual analysis.
2856 Okay, but we do agree that there is a problem and that
2857 we want better care, we want nurses not to be burned out, and
2858 the only way to really do that is to create _ is to have more
2859 of them. And so there is a bunch of solutions we should be
2860 talking about to do just that.
2861 Ms. Schumann, I am really _ so that is the mandate on
2862 nurses. Then there is this other interesting rule on _ the
2863 80/20 rule. I am dying to understand how that would even be
2864 implemented. And it is a complex business. Any nursing _
2865 any facility is a very complex business. This 80/20 rule,
2866 how would that be implemented? Do you guys have any idea?

2867 *Ms. Schumann. So I am a skilled nursing provider, not
2868 a home health provider. So fortunately, that is not one of
2869 the issues we are dealing with. We are dealing with the
2870 workforce shortage, and we are requesting collaboration to
2871 help build back the workforce.
2872 *Mr. Crenshaw. Okay. Maybe you could _ yes.
2873 *Ms. Killough. I will be happy to answer that because I
2874 don't know how it will be implemented.
2875 First of all, it doesn't give guidelines on
2876 implementation. It would fall upon the states to come up
2877 with how they would collect that data. And it doesn't really
2878 describe what the 80 percent or the 20 percent would consist
2879 of, or what the _ what you can count towards the 80 percent.
2880 So it would be very difficult to implement.
2881 *Mr. Crenshaw. Any background on where 80/20 even came
2882 from? Was it just arbitrary? What happens if you are a
2883 75/25? Like, are you put out of business? Any guidance from
2884 CMS on that?
2885 *Ms. Killough. No, it was really unclear where the 80
2886 percent came from. I know there were some states, ours being
2887 one of them in Illinois, that has a 77 percent, but there is

2888 no guidelines on where the 80 percent came from and exactly
2889 what would be covered under that 80 percent. They have some
2890 items listed, but not everything that is included in _ that
2891 we pay out for direct care workforce.
2892 *Mr. Crenshaw. Yes, it feels very arbitrary. You know,
2893 and I don't know whose great idea fairy was flying around at
2894 the time, but these are complex issues that require, I think,
2895 a little bit more analytical thinking.
2896 Back to Ms. Schumann, I mean, to comply with the
2897 mandates, how much staff would you actually need to hire to
2898 comply? And how does that compare to your hiring rate
2899 currently?
2900 *Ms. Schumann. Sure. So unfortunately, one of the
2901 challenges with the staffing mandate, it views everything on
2902 a daily basis. We deal with a lot of women who have children
2903 who may have to call out because their children are sick.
2904 And so if I have an RN who has to call out, and I cannot get
2905 coverage for her shift or his shift because their child is
2906 sick, then I would be out of compliance with this mandate.
2907 So being able to _ it is nearly impossible to be able to
2908 meet the standards right now, even if _ unless I were able to

2909 get an increased rate, a daily rate, and hire more and more
2910 and more RNs, and have maybe five on staff for a shift to
2911 mitigate any type of call off. I don't know how I would _
2912 *Mr. Crenshaw. And we are seeing these estimates that
2913 300,000 residents could be expelled from nursing homes as a
2914 result of this. Does anyone dispute that number?
2915 That is a real big deal that _ well, I am out of time.
2916 But _ sorry.
2917 *Mr. Guthrie. The gentleman yields back. The chair now
2918 recognizes Mr. Bilirakis for five minutes _
2919 *Mr. Bilirakis. Thank you.
2920 *Mr. Guthrie. _ for questions.
2921 *Mr. Bilirakis. I appreciate it very much. Thanks, Mr.
2922 Chairman. I want to thank the ranking member, as well, for
2923 holding this important hearing to shed light on these two
2924 disastrous proposals, these rules by this Administration that
2925 would threaten access to long-term care services for millions
2926 of Americans and seniors in nursing homes, particularly in my
2927 state of Florida.
2928 Unfortunately, those in my state know this all too well,
2929 as this is yet another attempt by the Administration to

2930 federalize the Medicaid program to a one-size-fits-all, to
2931 the detriment of patients. And again, we think outside the
2932 box, and it is working really well, that flexibility, in the
2933 State of Florida.
2934 Thankfully, Republicans on this committee are committed
2935 to holding CMS accountable for their Medicaid access rule,
2936 which would have damaging impacts on home and community-based
2937 services, as has been pointed out. All afternoon it has been
2938 pointed out.
2939 And leadership in Florida has also led the way in this
2940 effort. Our state agency for the Health Care Administration,
2941 Secretary Jason Wyatt, sent comments regarding the proposed
2942 80/20 rule to CMS, stating that it would be unduly
2943 burdensome, especially considering that Florida's statutorily
2944 requires HCBS providers to pay their direct care workers $15
2945 an hour. And ultimately, that is the minimum wage in
2946 Florida, $15 an hour. And ultimately, the rule circumvents
2947 the legislative process and prohibits states from
2948 administering their Medicaid programs, which is their lawful
2949 right and duty, in my opinion.
2950 The first question is for Ms. Killingsworth _ and

2951 forgive my voice. As you know, we already have workforce
2952 challenges and significant shortages among the LTSS staff
2953 nationwide. Even if these regulations were to work and
2954 resolve the shortages _ which we both know they will only
2955 make the problem worse, in my opinion at least _ we would
2956 still be experiencing shortages in short term, regardless.
2957 So can you tell us what can states and health plans do
2958 now to help support patients when there is a shortage of
2959 workers _ and there is _ in home and community-based
2960 settings?
2961 So I know this is a real issue, particularly in my state
2962 of Florida, where we have a lot of seniors. So if you could
2963 answer that question, I would appreciate it.
2964 *Ms. Killingsworth. Thank you, Congressman, for the
2965 question. It is a really important question because one
2966 thing that we saw during COVID was lots of people who
2967 struggled to have access to the care that they needed.
2968 And one of the things that we learned during COVID is
2969 that there are alternative ways, often times, of providing
2970 supports to people in order to meet those needs. Earlier it
2971 was mentioned that one of the primary reasons people go into

2972 nursing homes is because of medication administration. And
2973 yet across the market there are an array of very simple to
2974 incredibly complex medication management systems that allow
2975 people who have issues with medication to be able to manage
2976 those medications safely at home. And that could well mean
2977 the difference between whether someone is able to stay at
2978 home safely or go into a nursing home.
2979 That is just one example of a continuum of assistive
2980 devices that are now available to people that weren't
2981 available a couple of decades ago that will never fully
2982 replace the need for in-person assistance, but often times
2983 can give people back tremendous levels of independence in
2984 their lives, and then really be able to target that workforce
2985 much more efficiently.
2986 *Mr. Bilirakis. That is a good example. I appreciate
2987 it. I know there are many examples when you think outside
2988 the box like Florida does.
2989 So Ms. Killough, do you agree with what Ms.
2990 Killingsworth said, and can you elaborate on these thoughts?
2991 Beyond getting rid of this harmful 80/20 requirement,
2992 what are things that we can do instead to help support the

2993 HCBS workforce now, rather than worsen things?
2994 And again, you know, if we put our heads together we can
2995 come up with creative ways. I know there is a path there.
2996 So if you could answer that question, do you agree with Ms.
2997 Killough [sic]?
2998 *Ms. Killough. Yes, I absolutely agree with her. And I
2999 do think we have to think outside the box.
3000 Again, during the pandemic it forced us to think outside
3001 the box, and we were able to do a lot of things with some
3002 additional allowances from CMS at that time.
3003 I also believe recognizing legally responsible
3004 individuals to work, family members to help work for this
3005 workforce, they were excluded and unable to work unless _
3006 except for during the pandemic. I know we are requesting
3007 that in our state waiver, but allowing those individuals to
3008 be paid and work in the home will help assist this shortage
3009 also.
3010 *Mr. Bilirakis. Absolutely. And, you know, it will
3011 save money in the long run, as well.
3012 *Ms. Killough. Yes.
3013 *Mr. Bilirakis. So we appreciate it. But again,

3014 increasing the loved one's quality of life, so very
3015 important.
3016 Thank you. I yield back.
3017 *Mr. Guthrie. The gentleman yields back. That
3018 concludes all members of the subcommittee. So we are now
3019 going to move to waive ons. So we have members of the full
3020 committee that have waived on.
3021 Mr. Duncan, you are now recognized for five minutes for
3022 questions. Thank you for your patience and participating in
3023 the hearing.
3024 *Mr. Duncan. Thank you, Mr. Chairman.
3025 And as you ladies heard, I am not even on this
3026 subcommittee. This is an important issue to me because I
3027 have nursing homes and long-care facilities in my district.
3028 I signed onto a letter October 20 to Secretary Becerra.
3029 And in there there is a labor statistic from the Bureau of
3030 Labor Statistics: "There are roughly 235,900 fewer health
3031 care staff working in nursing homes and other long-term care
3032 facilities compared to March of 2020.'' Put that in
3033 perspective. That is more than the whole economy. Every
3034 manufacturing facility, every small business, that is more

3035 than the whole economy added in 7 of the last 12 months. It
3036 is a lot of people.
3037 And we have heard today the amount of training necessary
3038 for CNAs and LPNs and RNs and all the folks that are needed
3039 to work in this industry. Once again, though, we see the
3040 Biden Administration weaponizing HHS and CMS, and choosing
3041 politics and labor unions over providers and patients to
3042 continue their crippling and burdensome regulations. And
3043 that is what it is to the long-term care facility business.
3044 Their new victim is our nation's seniors and those with
3045 disabilities.
3046 I have spoken to constituents in my district who operate
3047 long-term care facilities, and they have expressed hardships
3048 that they have not only faced from a global pandemic, but
3049 also trying to comply with over-regulation. When I was
3050 running for Congress I visited with one of them. They showed
3051 me a binder that was about like this that _ 10 years earlier,
3052 the regulations they had to comply with. Then he pulled out
3053 in 2010 a number of binders probably stacked this high, if I
3054 remember right, of regulations that they had to comply with
3055 at that point.

3056 So these facilities offer critical care for our seniors.
3057 They offer ease of travel for families to be near their loved
3058 ones because of where they are located, especially in rural
3059 areas like mine. But because of unfunded staffing mandates
3060 for these facilities, they are at risk of closing those
3061 facilities, closing their doors, and leaving our most
3062 vulnerable with very limited options, hundreds of people
3063 unemployed, thousands of people unemployed, and families
3064 facing with what to do next with both their loved ones that
3065 are at the senior level that need that care, but also those
3066 with disabilities.
3067 So I want to thank you all for being here. It has been
3068 an interesting hearing. I have tried to listen and take in
3069 that information. My question is for Ms. Schumann.
3070 Are there ratios that long-term care facilities have to
3071 comply with, the number of CNAs for the number of patients or
3072 number of _ maybe higher than CNA, RN, LPNs to the number of
3073 patients in the facility?
3074 *Ms. Schumann. So currently our state does have a
3075 mandate of 2.0. And also there is sufficient staffing. What
3076 this does is it allows _ that is the Federal mandate,

3077 "sufficient staffing.'' What that does is it allows for
3078 individualization of the staffing patterns you may need.
3079 *Mr. Duncan. Let me ask. If the facility doesn't have
3080 _ doesn't meet that ratio, what happens when CMS comes in or
3081 CMS's inspectors, whether it is regional or local _ DHEC in
3082 South Carolina _ comes in and inspects? What happens?
3083 *Ms. Schumann. So the proposed mandate would implement
3084 fines.
3085 *Mr. Duncan. The current mandate implements fines,
3086 correct?
3087 *Ms. Schumann. The current state mandate, you would
3088 receive a state citation.
3089 *Mr. Duncan. They get a ding.
3090 *Ms. Schumann. Yes, but you _
3091 *Mr. Duncan. Citations end up adding up to more fines
3092 later.
3093 *Ms. Schumann. If the state surveyors decided that you
3094 did not have sufficient staffing levels, you would be cited
3095 for sufficient staffing levels.
3096 *Mr. Duncan. And a lot of times these long-term care
3097 facilities, Mr. Chairman, end up paying the fine versus

3098 fighting it. It is almost extortion by CMS.

3099 But how are long-term care facilities, Ms. Schumann,
3100 supposed to comply with this type of requirement when the
3101 workforce isn't available? This question has been asked
3102 numerous times. CMS has no vehicle to fund this mandate.
3103 How are you going to comply?

3104 *Ms. Schumann. I am very concerned that myself and a
3105 lot of my other providers will not be able to meet this
3106 mandate, and we will be forced to shut down.

3107 *Mr. Duncan. How long is the training for a CNA?

3108 *Ms. Schumann. In our community, when we offer CNA
3109 classes, it is two weeks of a classroom plus a week of
3110 clinicals, and then they shadow on providing direct care with
3111 another care worker.

3112 *Mr. Duncan. For how long do they shadow?

3113 *Ms. Schumann. It is typically about _ currently four
3114 months, and that is about how long it takes for them to be
3115 licensed within the State of Colorado.

3116 In the past they could become licensed sooner. We visit
3117 with them if they need more support before they are _
3118 historically, before they worked on their own.

3119 *Mr. Duncan. Registered nursing programs are four
3120 years, and then they have clinical on top of that?
3121 *Ms. Schumann. So that _ so an RN, you can get an
3122 associate's RN in two years, you can get a bachelor's RN in
3123 four years.
3124 *Mr. Duncan. Okay. Mr. Chairman, it is obvious, with
3125 the shortages that we talked about, the shortages we pointed
3126 to in the letter to Chairman Becerra _ Secretary Becerra and
3127 what we have heard here today, there is a huge labor
3128 shortage. Thank you for having this hearing.
3129 Thanks to the witnesses for pointing out the challenges
3130 they face. I know they _ the nurses and the CNAs and
3131 everybody that works in this want better hours, they want
3132 better pay. But how do you do that when facilities are
3133 looking to close their doors if they have to comply with
3134 these very costly mandates?
3135 So thanks for letting me go over. And with that I yield
3136 back.
3137 *Mr. Guthrie. Thank you. Thank you. The gentleman
3138 yields back. The ranking member has asked for two minutes to
3139 close.

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3140 *Ms. Eshoo. Thank you. Thank you, Mr. Chairman. I
3141 think it is _
3142 *Mr. Guthrie. I am going to object.
3143 *Ms. Eshoo. You are going to object?
3144 *Mr. Guthrie. I am not going to object, I am joking.
3145 *Ms. Eshoo. No, you wouldn't object. You are too nice.
3146 I want to thank the witnesses again.
3147 This has been a long afternoon, and you had to deal with
3148 the anxiety of whether this hearing would actually take
3149 place. You know, witnesses are very, very important to us in
3150 our work. And your testimony today is so important for the
3151 record and the patience of the people that are here in the
3152 audience.
3153 I think that _ because there is something that has been
3154 repeated over and over and over and over again today, and _
3155 we have shortages in just about everything in the country
3156 today. It is not the only, but that is not an excuse. But
3157 this is an issue that has been around as far back as 1986,
3158 where the National Academy of Medicine called for a minimum
3159 staffing standard, 1986.
3160 In 1999 Senate Special Committee on Aging led a series

3161 of hearings on the need for the increase of staffing that led
3162 to the 2001 CMS report. That was 1999. That is a quarter _
3163 two-and-a-half decades ago. Well, almost two-and-a-half
3164 decades ago.
3165 In 2022 the National Academies again called for an
3166 increase of staffing in our country.
3167 There was a 10 percent increase to the HCBS in the
3168 American Rescue Plan. My Republican colleagues all voted
3169 against it.
3170 I know that during the previous administration there was
3171 massive deregulation of the nursing home industry, including
3172 eliminating infection control. One of the members mentioned
3173 walking into a nursing home and the smell of urine. Well,
3174 you know what? If you don't have enough people taking care
3175 of the people that we all say we love, we admire, they have
3176 given so much _ their lives are a story, each one a beautiful
3177 story of the contributions they have made to our country.
3178 This is not to damn an industry. This is about improving
3179 things.
3180 So this is not new. We are talking about this little _
3181 woe is us in 2023, 1986, 1999, 2022, legislation to help

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3182 address this, and severe deregulation. And this is where we
3183 are.
3184 I am not suggesting that this is an easy thing that _
3185 snap fingers and this is going to be resolved. But, you
3186 know, I really believe that the issue _ and I said in my
3187 opening let's not _ I hope this is more than bashing the
3188 administration. You know, that may do something for someone
3189 in the short term. It does not help the people that are
3190 doing the work in nursing homes, and the patients.
3191

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3192 AFTER 6:00 p.m.

3193 *Ms. Eshoo. So I hope that we can add to the record
3194 that either in 2023 or 2024 the Congress of the United
3195 States, led by this committee, finally stepped up, finally
3196 stepped up. And I am convinced that, unless and until we do,
3197 it is going to be an even longer list of decades that we have
3198 the same issue, the same challenges, the same problems left
3199 unaddressed.

3200 So I appreciate your patience, especially since you
3201 don't agree with probably 90 percent of what I said. But you
3202 are a gentleman, Mr. Chairman.

3203 *Mr. Guthrie. Thanks.

3204 *Ms. Eshoo. And I thank you, and I yield back.

3205 *Mr. Guthrie. Well, you know, we _ what _ we agree on
3206 our families. These are our family members. I just went
3207 through this process just recently, unfortunately, just lost
3208 my mother-in-law, but _ through this process, and you want it
3209 to be safe. I mean, we all want it to be safe and the best
3210 quality. And workers like Ms. Hughes that they get to
3211 experience, that want to be there and want to take care of
3212 them.

3213 I can tell the way you talked about your work, you love
3214 the job that you do. You just want it to be an area where
3215 you can be successful. And that is what we all _ we all
3216 agree with that.
3217 And so the question that we went through was _ one was
3218 just affordability and then accessibility. We had something
3219 happen really quick with my mother-in-law, and we just didn't
3220 know what we were going to be able to do, and started looking
3221 into it. Fortunately, we were able to take care of her at
3222 home, but that was a tough situation on my sister-in-law and
3223 her husband. I just want _ but we just couldn't find a spot.
3224 It was just difficult. They were in _ north Alabama is where
3225 my wife is from, and they had a difficult time doing it.
3226 So what we want is the best we can have, but we also
3227 want it to be accessible, and have places for them to go, and
3228 make it affordable. And we want to create more CNAs. We
3229 want to create more LPNs and more registered nurses. And as
3230 we have a program to do that and a bill that I have, we have
3231 every _ I am telling you, every _ the issue is _ I know that
3232 you have private pay, which may _ or you have Medicaid. And
3233 so Medicaid doesn't reimburse enough to pay the wages that

3234 you probably need.

3235 You know, other health care providers get people with
3236 health insurance. And, you know, there is big subsidies in
3237 health insurance now. So, you know, the cost keeps going up.
3238 And so when they need more nurses, they hire a temporary
3239 nursing station. They come in and they do it. But when you
3240 are trying to keep it _ because most people pay out of pocket
3241 or they pay Medicaid. And so there is not a lot of insurance
3242 that covers long-term. There is available _ I get some
3243 products, but not much. And so it is just something we need
3244 to balance.

3245 But having the balance of opinion here today is
3246 important, and for us to hear it all is important. And I
3247 don't disagree with everything that she says. We just got to
3248 find the right balance so we can be _ have accessible,
3249 affordable, and safe _ and have a workforce that can be
3250 successful, not just the employees. I mean, not just the
3251 residents, but the employees to be successful.

3252 And you represented it well, Ms. Hughes, I appreciate
3253 that.

3254 Thank you all for being here. I do _ I know you all are

3255 ready for a break, too. It is getting warm in here, isn't
3256 it? But I am sorry for _ I was going to apologize. Sorry
3257 for the way the day has gone. It is not history we want to
3258 make, but it is absolutely a historic day to have a new
3259 speaker in the middle of a legislative session. So at least
3260 you can hopefully get solace that you were here all day, but
3261 you benefited from _ you were able to see that or be part of
3262 it, I guess, for the small consolation.
3263 So we have a record that _ you have seen the list for
3264 _
3265 *Ms. Eshoo. I have, Mr. Chairman.
3266 *Mr. Guthrie. I ask unanimous consent to insert into
3267 the record documents included on the staff hearing document
3268 list.
3269 Without objection, so ordered.
3270 [The information follows:]
3271
3272 **********COMMITTEE INSERT**********
3273

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3274 *Mr. Guthrie. And again, so members will be able to
3275 submit questions in writing because not a lot _ because of
3276 what was going on _ got to ask the questions they would like.
3277 So I remind members that they have 10 days to submit
3278 questions for the record, and I ask that the witnesses will
3279 reply promptly. Members should submit their questions by the
3280 close of business November the 8th.
3281 Again, thank you for your patience. Thank you for your
3282 testimony. Thank you for what you do. Thank you.
3283 And without objection, the subcommittee is adjourned.
3284 [Whereupon, at 6:03 p.m., the subcommittee was
3285 adjourned.]