



The National
CONSUMER VOICE
for Quality Long-Term Care

**SUPPORTING ACCESS TO LONG-TERM SERVICES AND SUPPORTS:
AN EXAMINATION OF THE IMPACTS OF PROPOSED REGULATIONS ON WORKFORCE
AND ACCESS TO CARE**

**Hearing before the House Energy and Commerce Committee,
Subcommittee on Health**

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**Statement of Lori Smetanka
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Chairman Guthrie, Ranking Member Eshoo, and distinguished Members of the Committee, thank you for holding this important hearing. My name is Lori Smetanka, and I am the Executive Director of the National Consumer Voice for Quality Long-Term Care, a national advocacy organization that works with and on behalf of individuals receiving long-term care and their families.

With an increasingly aging population, most of us will need some level of care and support during our lives. Whether that care and support are provided at home or in a long-term care setting, there need to be staff available, including nurses and nursing assistants, to provide high quality care. The

proposed Nursing Home Minimum Staffing and HCBS Access rules are designed to help ensure that there is adequate nursing staff to meet the needs of nursing home residents and HCBS recipients, while also improving access to quality care for individuals receiving services.

Minimum Staffing Standards are Necessary in Nursing Homes

Most problems with the provision of quality care and quality of life in nursing homes can be traced to inadequate staffing levels. Residents, families, ombudsmen, and staff consistently report on the effects of short staffing, resulting in basic care being omitted, long delays in getting help, and harm to residents and staff.

Inadequate staffing in nursing homes is a decades-old problem. The requirement for “sufficient staff” to meet the care needs of residents, as required in the federal nursing home regulations¹, has been inadequately and unevenly implemented and enforced. Staffing levels vary widely from facility to facility

¹ 42 CFR 483

and across states. As a result, residents experience problems associated with inadequate staffing including weight loss, dehydration, increased infections, pain, incontinence, pressure sores, isolation, and death.

Examples of the impact of short staffing are disturbing. Residents have told us about being left in bed over an entire weekend despite asking multiple times to get up; having had showers reduced from twice a week to once per week, but even those are often missed; being told they have to eat by themselves in their room because there are not enough staff to help them get to the dining room; waiting more than an hour for help to go to the bathroom, help coming too late and then having to sit in soiled clothes until someone finally gets around to assist. A resident shared how her neighbor called for help – they were having a medical emergency – yet no one responded to the call bell for nearly 45 minutes, and the neighbor died. In addition, staff tell us about being responsible for 15, 20, or even more residents, and having to make difficult choices regarding whose needs are going to wait, or if they are going to be met at all.

As one longtime resident shared, understaffing means “you don’t get cleaned or changed which leaves you susceptible to all kinds of sicknesses” and that’s “counterintuitive to how you’re supposed to live in a nursing home. You’re not supposed to get sicker here because of low staffing. ”

In 2001, a study prepared for CMS identified minimum levels of Registered Nurse, Licensed Practical/Vocational Nurse, and Certified Nurse Aide time to prevent harm and jeopardy to residents.² Yet that standard has never been required or enforced by CMS, and, 22 years later, most nursing homes do not even meet this basic staffing level, let alone levels that would be needed based on the rising acuity of their residents.

Yet it is possible to staff to recommended staffing levels. Thousands of nursing homes do it every day. The 2023 staffing study commissioned by CMS found that non-profit nursing homes provide a total of 4 hours and 17 minutes of direct resident care per resident each day.³ That is 43 minutes more each day

² Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes – Report to Congress: Phase II Overview: Background, Study Approach, Findings, and Conclusions, [https://theconsumervoicework.org/uploads/files/issues/HHS_Staffing_Study_-_Background_\(1\).pdf](https://theconsumervoicework.org/uploads/files/issues/HHS_Staffing_Study_-_Background_(1).pdf)

³ Nursing Home Staffing Study, Comprehensive Report, <https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>

than the average for-profit home. A state-by-state analysis by Consumer Voice of CMS's Payroll Based Journal staffing data found that in all but one state, non-profit homes reported staffing levels considerably higher than for-profit homes.⁴ Importantly, the location of these facilities, rural vs urban settings, was not a factor in whether they staffed to recommended levels. In fact, the 2023 Abt study showed that staffing in rural and urban areas was almost identical. It's not that facilities can't staff to recommended levels, it is that they choose not to.

The benefits to nursing home residents of adequate staffing are indisputable. Many studies have found a strong relationship between nurse staffing levels and improved quality of care in terms of both process and outcome measures. In Consumer Voice's reviews of staffing data published by CMS, the majority of homes most highly rated in all five-star categories provided at least 4.1 hours per resident day of care. The data also showed that as staffing levels in nursing homes decrease, so do the overall, health

⁴ Better Staffing is Achievable: A Look at For-Profit versus Non-Profit Nursing Homes, https://theconsumervoice.org/uploads/files/issues/Better_Staffing_Is_Achievable.pdf.

inspection, and staffing five-star ratings. Most troubling, the data showed that as staffing levels decreased, the likelihood of a home being cited for resident abuse increased significantly.⁵

Each year, tens of billions of dollars are paid to the nursing home industry, yet the outcomes from many homes are unacceptable. A review of Medicare cost reports and widespread industry use of related party transactions raises critical questions about how Medicaid and Medicare dollars are spent and whether the money is going towards direct care or going towards profit. To ensure the safety and well-being of residents, we must have transparency and accountability for how nursing homes spend the money they receive. A staffing standard is simply a mechanism to ensure that the public dollars go towards direct care. In fact, we recommend that Congress require facilities to spend a designated portion of their public reimbursement on staffing.

Supporting the Workforce and Improving Access to Care

⁵ Staffing Matters, <https://theconsumervoice.org/uploads/files/issues/Staffing-Matters.pdf>

A critical component for achieving quality long-term care and services for those needing them is the development of, and support for, the long-term care workforce. That includes ensuring a living wage, providing benefits, skills training, career ladders, and quality jobs. A nursing home industry report found that paying a living wage to nursing home workers would, among other things, lead to fewer staffing shortages, lower turnover, higher productivity, and improve quality of care and outcomes for residents.⁶

To the extent that there are workforce crises and shortages in communities, efforts to promote recruitment and retention of staff must be a priority. It is not an excuse, however, for accepting substandard care or conditions for residents or care recipients. Attracting new workers and retaining current staff will require a focus on improving wages and benefits, job quality, training, and opportunities for career development. These essential approaches must be supported not only by policies implemented by federal

⁶ Making Care Work Pay: How Paying At Least a Living Wage to Direct Care Workers Could Benefit Care Recipients, Workers, and Communities, https://leadingage.org/wp-content/uploads/drupal/Making%20Care%20Work%20Pay%20Report.pdf?_ga=2.118488393.1154178586.1601481977-1021098696.1598989890

and state governments, but also by holding providers of long-term care and services accountable for putting the necessary funds into providing the care that their residents and clients need.

The proposed HCBS Access Rule seeks to ensure access to high-quality, in-home support services by requiring greater transparency and accountability for how Medicaid dollars are spent. The rule would require that at least 80% of Medicaid payments for home care services goes towards compensation for direct care workers and require additional reporting and transparency provisions around access to services by beneficiaries, which are important steps toward ensuring and increasing beneficiary access to home and community-based services.

The HCBS Access Rule provisions are also consistent with Section 1902(a)(30)(A) of the Social Security Act requiring Medicaid payment rates to be consistent with efficiency, economy, and quality of care; and with section 2402(a) of the Affordable Care Act, which empowers HHS to ensure adequate numbers of direct care workers to provide HCBS. These regulations, when made

final, will create better jobs, reduce turnover, and increase individuals' access to HCBS.

Calls to delay or stop the finalizing and implementation of the rules are unwarranted. Current and future residents of nursing homes and individuals needing long-term care and services are bearing the brunt of inadequate policies and provider decisions to divert reimbursement from care by going without needed care and services. Further, CMS has proposed multi-year implementation periods for both the nursing home staffing rule and the access rule. There is sufficient time to prepare for compliance.

For decades we have seen the devastating consequences to residents of insufficient staffing levels at nursing facilities. Research and good practice have shown what needs to be done to provide better care and support staff. These proposed rules will help move us in the right direction. Now is the time to ensure that all facilities have sufficient staff to provide residents with good care.