

Congress of the United States
Washington, DC 20515

March 13, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 1244

Dear Administrator Brooks-LaSure,

We write seeking an update on CMS's progress in examining staffing in nursing homes and to encourage you to propose strong mandatory minimum staffing standards in the forthcoming proposed Fiscal Year 2024 Medicare payment rule. It has been one year since President Biden's State of the Union announcement concerning this study and over 20 years since CMS's last review. Meanwhile, many nursing home residents and workers have suffered from insufficient staffing. It is imperative that CMS finalize robust requirements this year.

Under the 1987 Nursing Home Reform Act, nursing homes must provide 8 consecutive hours of registered nursing services per day and 24 hours of licensed nursing services per day. As you know, the connection between staffing levels and the safety and quality of care is well established, with studies showing a correlation between inadequate staffing and lower quality of care. In 2001, a CMS study found that nursing home residents require 4.1 hours per resident day of direct nursing care spread across different roles (e.g., registered nurses, certified nursing assistants). To date, CMS has not required a minimum of 4.1 hours and this standard may now be too low, given changes in acuity of nursing home residents.

Last month, the HHS Office of Inspector General (OIG) found 95% of facilities met or exceeded Medicare's minimum nursing hour requirements during the COVID-19 pandemic.¹ Despite satisfying these minimal staffing requirements, facilities still failed to prevent disease spread and its devastating impact as more than 200,000 nursing home residents and workers died due to COVID. This tragic experience offers further evidence that current staffing requirements are insufficient to meet residents' needs. Other studies have demonstrated that higher nurse staffing ratios mitigated the effect of COVID-19 outbreaks in nursing homes and resulted in fewer deaths.² OIG recommended CMS reexamine and revise Medicare's minimum requirements and to improve staffing data collection by requiring a timestamp on staff levels to ensure facilities are

¹ <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.pdf>

² A full review of the extensive literature is beyond the scope of this letter; see for instance Schnelle, J.F., Simmons, S.F., Harrington, C., Cadogan, M., Garcia, E., & Bates-Jensen, B., Relationship of nursing home staffing to quality of care? *Health Services Research*, 39 (2):225-250 (2004), as well as the discussions in the 2022 National Academies of Science report, *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*, p. 70ff.

providing 24/7 nursing services, as required.³ We encourage CMS to adopt OIG’s recommendations to ensure facilities have adequate staff at all times.

Similarly, the Coronavirus Commission on Safety & Quality in Nursing Homes recommended CMS update minimum care standards, including standards for normal and emergency operations.⁴ The commission broadly recommended updating minimum care standards as well as to require 24/7 oversight by a registered nurse when a facility experiences a COVID-19 positive test. Such a requirement would ensure high acuity residents receive appropriate, skilled care to prevent unnecessary hospitalizations. We encourage CMS to examine such a requirement under all circumstances, not just during emergency periods. Nursing homes will always have high acuity residents, regardless of any outbreak or other emergency that may be occurring.

In addition to ensuring comprehensive minimum standards of care, CMS should adopt strong nursing staff-to-resident ratios to ensure workers are not overburdened and unable to meet their patients’ needs. While many factors, including compensation, benefits, and opportunities for professional development, affect job quality and turnover, it is clear that chronic understaffing contributes to high rates of stress, injury, and burnout among nursing assistants, and ultimately to high rates of turnover.⁵ Thus, we believe that creating a robust staffing standard will also go a long way towards improving the quality of nursing home jobs, which in turn will actually help attract more workers and resolve current workforce shortages in this industry.

We note that recent studies suggest that most for-profit nursing home companies remained profitable throughout the pandemic, including homes with high rates of COVID-19 infections.⁶ Although nursing homes received billions of dollars in payments from the Provider Relief Fund established during the pandemic, yet real wages for nursing assistants—a workforce largely made up of women of color—actually declined from 2020 to 2021, in contrast to wages for home care workers and workers in other residential care facilities.⁷

In order to ensure that minimum staffing standards can be implemented, we urge CMS to require full transparency concerning use of Medicare and Medicaid payments by nursing homes. If there is evidence that current payment rates are insufficient to support safe staffing levels, CMS should take further steps to ensure that nursing facilities have the financial resources to comply with, if not exceed, minimum standards. We believe that the separate rulemaking to strengthen enforcement of the Medicaid “equal access” provision (Section 1902(a)(30)(A) of the Social Security Act) currently underway at CMS offers an important opportunity to move toward this goal by creating a robust system for states to demonstrate that Medicaid rates for nursing homes

³ <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.pdf>

⁴ <https://www.cms.gov/files/document/covid-final-nh-commission-report.pdf>

⁵ PHI, *Direct Care Workers in the United States: Key Facts* (2022), p. 19.

⁶ Kingsley, DE and Harrington, C. COVID-19 had little financial impact on public traded nursing home companies, *JAm Geriatr Soc* 69(8), August, 2021, p. 2099-2102; Kingsley DE, Harrington C. Financial and quality metrics of a large, publicly traded U.S. nursing home chain in the Age of Covid-19. *International J. Health Serv.*, 2022. As the recent HHS OIG report cited above noted (p. 7), for-profit nursing homes “made up a disproportionate percentage of nursing homes with extremely high infection rates” during both major pandemic surges.

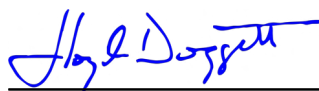
⁷ PHI, *Direct Care Workers in the United States: Key Facts* (2022), pp. 19, 24.

are adequate to support staffing and wage levels necessary to attract and retain sufficient staff to meet staffing requirements, and that these dollars actually go to support care for residents.

We know that developing a meaningful minimum staffing requirement involves complex and nuanced issues, such as variations in acuity levels and case mix, as well as the special circumstances of rural communities. Thus, we were pleased to see CMS not only undertake a serious study as a basis for future recommendations, in line with recommendations from the National Academies of Science, Engineering and Medicine, but also provide multiple opportunities for the public to weigh in during the pre-rulemaking stage. As CMS reported when summarizing the response to the Request for Information, the agency received more than 3,000 comments from a variety of sources, and “[O]verall, commenters were generally supportive of establishing a minimum staffing requirement,” with many commenters providing stark examples of the impact of inadequate staffing.⁸ Given this broad support and the comprehensive study undertaken over the past year, CMS should move quickly to propose minimum staffing requirements.

Residents deserve the best of care from highly trained and sufficiently numbered staff. We strongly urge you to include robust minimum staffing requirements in the forthcoming Fiscal Year 2024 Medicare payment rule. Thank you for your timely attention to this important matter.

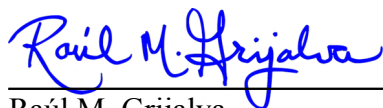
Sincerely,



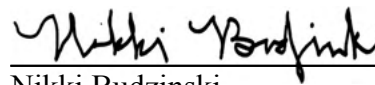
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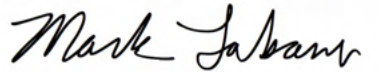
⁸ CMS, Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023, 87 FR 47600.



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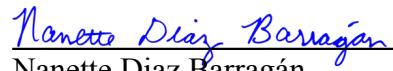
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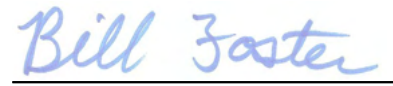
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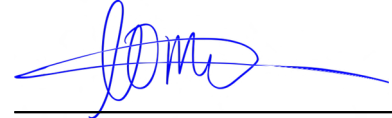
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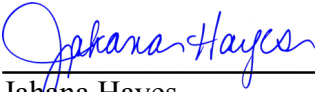
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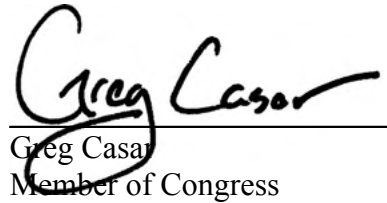
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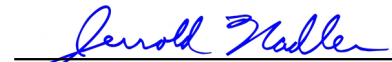
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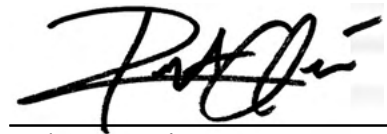
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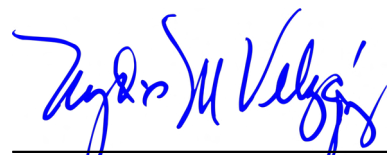
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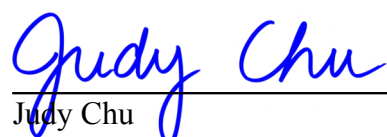
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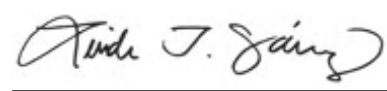
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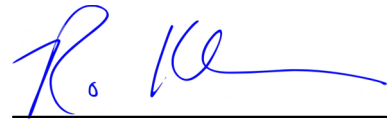
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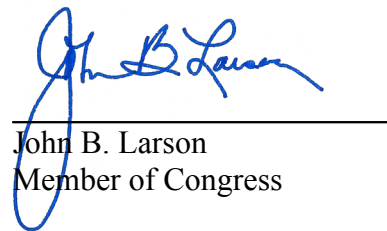
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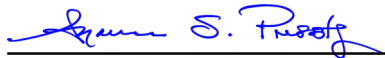
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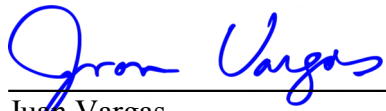
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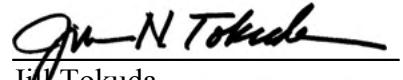
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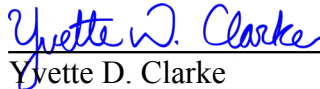
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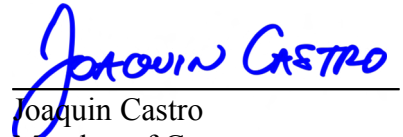
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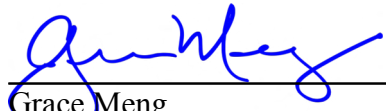
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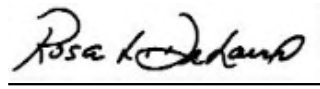
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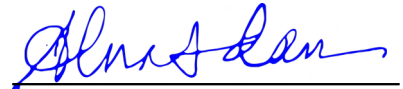
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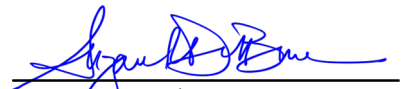
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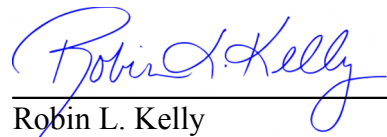
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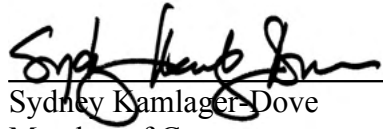
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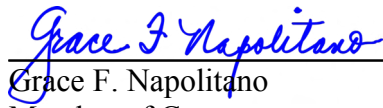
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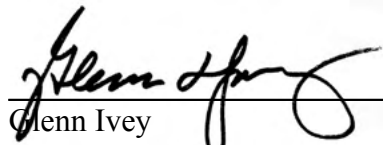
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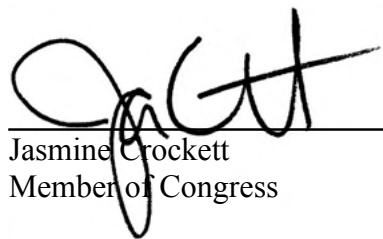
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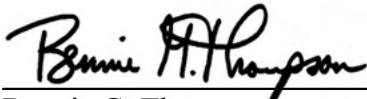
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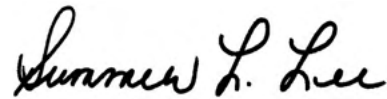
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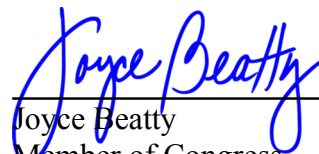
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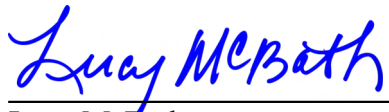
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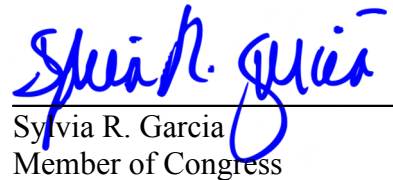
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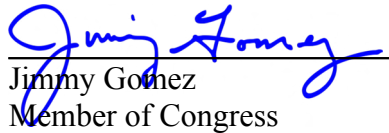
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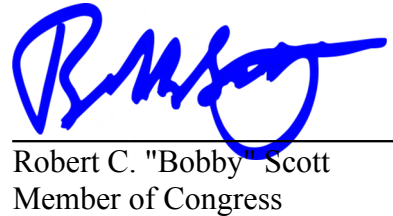
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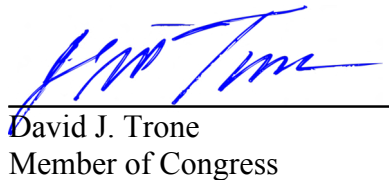
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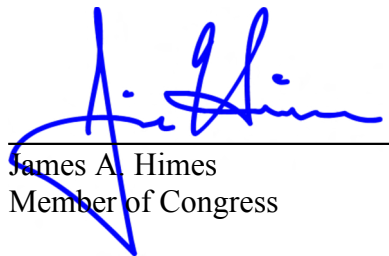
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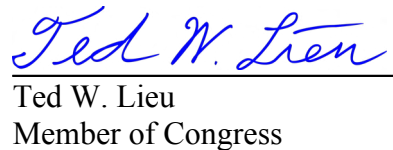
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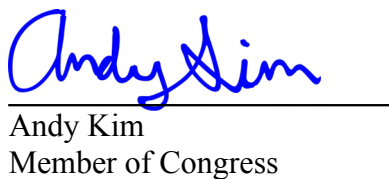
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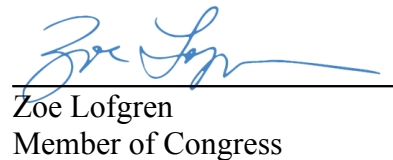
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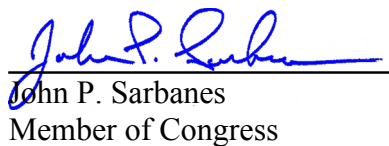
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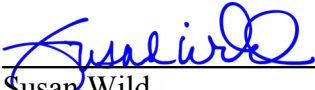
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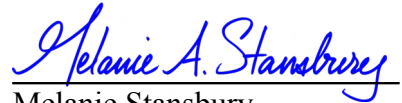
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