

Congress of the United States

Washington, DC 20510

July 31, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Verma,

I write with deep concerns regarding staffing levels at nursing homes throughout the country. Recent data show that staffing levels in many nursing homes are considerably lower than previously reported, raising urgent questions about the quality of care that nursing home residents can expect to receive and the accuracy of the Five-Star Quality Rating System (Star Ratings) that helps individuals choose the best nursing home for themselves or their loved ones. I urge the Centers for Medicare & Medicaid Services (CMS) to update the Star Ratings figures to account for the new, more accurate staffing data and to include only staff that actually provide direct care when publicly reporting nurse staffing levels.

As you know, a provision of the Affordable Care Act requires nursing facilities to report, and CMS to gather and make public on Nursing Home Compare, nurse staffing data that are “based on payroll and other verifiable and auditable data.” CMS has implemented this requirement through a system it calls the Payroll Based Journal (PBJ). CMS recently released guidance on how PBJ data will be incorporated into the Star Ratings.¹

Unfortunately, it is evident from the first release of PBJ data that nursing homes have been over-reporting their nursing staff levels for years. According to an analysis of the data by *The New York Times*, seven in ten nursing homes are now shown to have lower staffing than previously self-reported.² The finding of lower staffing levels emphasizes the importance of the new reporting method. However, despite lower actual staffing levels, CMS has “set [Star Ratings] thresholds by keeping the number of nursing homes in each rating category approximately the same as they were under the previous ... methodology.”³ This decision masks

¹ CMS Letter to State Survey Agency Directors, QSO-18-17-NH (April 6, 2018): <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf>

² Rau, Jordan. “‘It’s Almost Like a Ghost Town.’ Most Nursing Homes Overstated Staffing for Years.” *The New York Times*, 7 July, 2018.

³ CMS Letter to State Survey Agency Directors, QSO-18-17-NH (April 6, 2018): <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf>

the lower staffing levels that PBJ documents and gives the public highly misleading information, implying, incorrectly, that direct care staffing levels are not changed. CMS needs to revise the distribution of star ratings to report nursing staffing levels more accurately, as documented by PBJ.

Additionally, I am concerned that the PBJ data allow for staff other than those directly providing nursing care to be counted. As required in the Technical Users Guide, nursing homes in their reporting must document if nursing staff members are providing direct services, conducting administrative duties, or undergoing training.

The specific PBJ job codes that are used in the RN [Registered Nurse], LPN [Licensed Practical Nurse], and nurse aide hours calculations are:

- *RN hours: Includes RN director of nursing (job code 5), registered nurses with administrative duties (job code 6), and registered nurses (job code 7).*
- *LPN hours: Includes licensed practical/licensed vocational nurses with administrative duties (job code 8) and licensed practical/vocational nurses (job code 9)*
- *Nurse aide hours: Includes certified nurse aides (job code 10), aides in training (job code 11), and medication aides/technicians (job code 12)*

The important identification of direct service hours, however, evaporates when the data are made public, because CMS combines *all* nurse and nurse aide hours into a measure for Total Nursing Staff.⁴ CMS's overly inclusive standard for public reporting, which includes nurses, both RNs and LPNs, with administrative duties, aides in training, and medication aides/technicians, raises concern that PBJ data are artificially inflated. I request that CMS include only staff who are directly providing nursing care when calculating and reporting Star Ratings for staffing levels so that individuals have an accurate understanding of how many staff are actually on-site to provide direct care to residents.

In addition, the complexity of your rating standard, updated as recently as July of 2018, continues to trouble me. Your guide allows for adjustments based on a number of factors, ultimately distorting the standardization of the ratings that facilities receive. It is nearly impossible to compare nursing homes across states on an equal standard. This poses a particular challenge to those who are looking to choose a facility and are comparing options in a variety of locations. I encourage you to examine ways by which you can reduce the complexity of these ratings while guaranteeing that they remain as accurate as possible.

The availability and accuracy of PBJ data are an important form of oversight to ensure the safety and well-being of the more than 1.4 million Americans currently living in nursing homes. These data can assist individuals and family members in choosing the best nursing home for their needs and monitoring the care once they are there. Adequate staffing helps to ensure that residents receive the treatment they deserve and need; similarly, inadequate staffing can lead to preventable injuries, illnesses, and hospitalizations. Inadequate staffing represents a significant

⁴ *Id.*

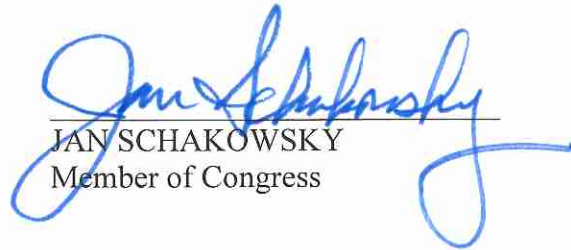
problem in nursing homes, particularly on the weekends, as data show that there are 11% fewer nurses and 8% fewer aides to provide care to residents during that time.⁵

The data provided through the Star Ratings System are crucial in their ability to advise Americans on the care options that are best for them or their loved one. It is extremely important that CMS do all it can to ensure that these data, and the rating each facility receives, are accurate, standard, and easy to understand. I request that you update the staffing ratings accordingly and that you re-evaluate the inclusion of certain staff within the staffing level data.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



JAN SCHAKOWSKY
Member of Congress

⁵ Rau, Jordan. “‘It’s Almost Like a Ghost Town.’ Most Nursing Homes Overstated Staffing for Years.” *The New York Times*, 7 July, 2018.