



November 3, 2023

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**Brian Patrick Kennedy**  
Speaker Pro Tempore  
Rhode Island General  
Assembly  
President, NCSL

**Sabrina N. Lewellen**  
Deputy Director - Senate  
Assistant Secretary of the  
Senate  
Arkansas General Assembly  
Staff Chair, NCSL

**Tim Storey**  
Chief Executive Officer  
NCSL

Dear Secretary Becerra and Administrator Brooks-LaSure:

Thank you for the opportunity to comment on the proposed Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS 3442). NCSL recognizes the strong connection between adequate staffing and the quality of care received by residents in long-term care facilities, and we are appreciative of the administration's efforts to address some of the long-standing issues that have undermined the safety and quality of life of over 1.2 million of our nation's most vulnerable residents. However, we have deep concerns about the potential impact on state spending in light of the significant workforce and resource challenges that would be required for compliance and urge you to pause this rulemaking and work with your state partners to more fully examine the impact of the rule and to consider adequate funding and implementation deadlines as well as additional flexibilities to address nurse shortages.

We anticipate significant upward pressure on state and federal Medicaid rates as nursing homes look to cover the costs of recruiting and retaining the additional staff needed to come into compliance. This comes in addition to the pressure already being felt to increase rates to offset low utilization rates since the pandemic. These are not idle predictions but rather based on analyses from Kaiser Family Foundation (KFF) and others. KFF estimates that 81% of nursing facilities nationwide would need to hire more RNs or nurse aides in order to comply—a number similar to the estimate CMS included in the rule. This comes against the backdrop of unprecedented workforce shortages within the nursing sector. In its 2022 [report](#), the National Academies of Sciences, Engineering and Medicine acknowledged the “dire staffing situations for many nursing homes.” In April of this year, the National Council of State Boards of Nursing issued a [report](#) detailing the departure of 100,000 registered nurses during the pandemic and documenting the impending departure of 900,000 nurses—nearly one-fifth of the nursing workforce—by 2027. A recent [analysis](#) by a private consulting group on behalf of industry trade groups estimates that nursing facilities would need to hire over 102,000 new full-time nursing positions including 80,077 nurse aides and 22,077 RNs to meet the rule's requirements.

Medicaid plays a *critical* role in financing nursing homes across the U.S. and is the primary payor of nursing home costs. In 2021, Medicaid [paid](#) over \$1 billion for institutional long-term services and supports, second only to Medicaid spending on hospitals. Increasing state payment rates in an effort to address compliance will further strain state budgets. At best, without additional funding, many facilities will be forced to apply for exemptions under the rule, undermining the intent to improve nursing home quality. At worst, these staggering numbers combined with steep competition from hospitals that are often able to offer higher salaries and signing bonuses suggest severe downstream consequences including closure of units, limitations on admissions and/or outright closures of nursing facilities. The impact of these closures will be felt most acutely by patients and local communities directly represented by state lawmakers.

Beyond the challenge and cost of hiring additional nursing staff, the rule also imposes unfunded reporting mandates on states with regard to the percentage of Medicaid payments for services that were spent on compensation for direct care workers and support staff, as well as a state website that makes public the results of the reporting requirements. All of this comes at a cost, which, according to CMS, amounts to \$23 million in start-up costs to states collectively and annual state operating costs of \$11 million collectively.

Again, NCSL urges CMS to pause this rulemaking to examine the impact of the rule more fully and collaborate with state partners to explore sufficient funding, realistic implementation timelines and potential opportunities to address nursing workforce shortages.

Respectfully submitted,

A handwritten signature in blue ink that reads "Tim Storey". The signature is written in a cursive style with a long, sweeping underline.

Tim Storey  
Chief Executive Officer  
National Conference of State Legislatures