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February 2, 2023

Chiquita Brooks-LaSure, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9911-P, P.O. Box 8016  
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

On behalf of nursing home residents, their families, and nursing home workers, the undersigned advocates write to express our strong support for the Centers for Medicare & Medicaid Services' (CMS) efforts to address the staffing crisis in our country's nursing homes. Central to this effort was President Biden's promise, almost one year ago, to establish and implement a minimum staffing standard. Since then, CMS has adopted a rigorous and fact-based approach to realizing this goal, embarking on a study of direct care staffing requirements, soliciting input from the public, and promising further opportunities for discussion when a standard is proposed. Implementing a minimum staffing standard would be the most significant increase in protection for nursing home residents in decades. As noted in your commentary, implementing a minimum staffing standard also enjoys broad support from the public.<sup>1</sup> Additionally, a minimum staffing standard would be a major advance in health, racial, and gender equity for residents and direct care nursing home workers.

As you are well aware, overwhelming evidence connects better health outcomes with higher staffing levels. In turn, the converse is also true: inadequate staffing results in poorer care and harms residents. Just recently, the Office of Inspector General of the U.S. Department of Health and Human Services (OIG) called into question the adequacy of current staffing standards when analyzing the devastating effect of COVID-19 on nursing home residents.<sup>2</sup> Another OIG report<sup>3</sup> in November 2022 found that inadequate staffing levels increase the likelihood that nursing home residents are illegally drugged, raising their risk of harm and even death. Poorly-staffed nursing homes are more likely to be cited for abuse, have worse health inspection results, and have lower overall ratings on CMS's Compare Care website.<sup>4</sup>

The current regulation that requires nursing homes to have "sufficient"<sup>5</sup> staff has failed. This opaque standard has resulted in a wide range of staffing levels across the country, leading to inequitable and disparate outcomes for nursing home residents. Recognizing these concerns, President Biden has made a minimum staffing standard the first and primary focus of his nursing home reform agenda.

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<sup>1</sup> 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.

<sup>2</sup> <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.pdf>

<sup>3</sup> <https://oig.hhs.gov/oei/reports/OEI-07-20-00500.pdf>

<sup>4</sup> <https://theconsumervoicework.org/uploads/files/issues/Staffing-Matters.pdf>

<sup>5</sup> 42 C.F.R. § 483.5.

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With an established federal standard for nursing homes participating in Medicare and/or Medicaid, all residents of such nursing homes across the country would be entitled to a reliable baseline of quality care.

Establishing a minimum staffing standard is a complex process that must account for the varying needs of nursing home residents. Consequently, many resident advocates have called upon CMS to consider resident acuity when establishing a standard. While there should be a baseline amount of care all residents should receive, many residents will require more care. CMS has adopted this model in Medicare's Patient Driven Payment Model (PDPM), which provides increased payment for residents with higher care needs. When nursing homes are paid based on the amount of care residents need, as in PDPM, CMS must ensure that care is being provided both to meet the needs of residents and for accountability of tax dollars. Implementing a staffing standard should match standards of care with payment.

CMS must ensure a staffing standard is implemented and enforced equitably. The care needs of nursing home residents may vary within a nursing home. A staffing standard must be person-centered, and meet residents' needs regardless of their zip code. Taking into account each resident's acuity is the only way CMS can ensure person-centered care that is tailored to the needs of individual residents and all residents receive an equitable and just standard of care.

President Biden also announced initiatives to make nursing home direct care jobs better. Currently, there is a job quality crisis<sup>6</sup> in nursing homes. According to CMS, the average annual nursing staff turnover is approximately 52% nationally. Nursing homes can hire workers but cannot retain them due to low pay, inadequate benefits and sick leave, poor training, poor working conditions, and little opportunity for career advancement. Notably, the poor quality of jobs has a disparate impact on workers of color, particularly women. Central to making jobs better is a minimum staffing standard, which will require nursing homes to use Medicare and Medicaid dollars on care and not for profits. A minimum staffing standard could help attract and retain staff and help ensure investments in staff pay, benefits, training, and career development.

Lastly, to assure the effectiveness of any staffing standard, CMS must require increased transparency in how nursing homes spend tax dollars. The widespread use of related party transactions that misdirect critical dollars away from direct care needs of residents and toward owner and operator profits is well-documented.<sup>7</sup> In 2015, related party expenditures totaled **\$11 billion dollars**. There is little to no accountability for how this money is used. Last year, the OIG acknowledged significant concerns with how nursing homes use related parties and announced they would investigate how CMS monitors these transactions.<sup>8</sup> CMS must increase scrutiny on Medicare and Medicaid cost reports and require increased disclosure of all nursing home finances. Transparency and accountability for the use of current taxpayer dollars for nursing home care is important before and if considering the use of additional taxpayer dollars.

The administration has promised some of the most critical and historic nursing home reforms in decades. We appreciate that you have taken a fact-based and data-driven approach to study and

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<sup>6</sup> [https://theconsumervoive.org/uploads/files/issues/High\\_Staff\\_Turnover-A\\_Job\\_Quality\\_Crisis\\_in\\_Nursing\\_Homes.pdf](https://theconsumervoive.org/uploads/files/issues/High_Staff_Turnover-A_Job_Quality_Crisis_in_Nursing_Homes.pdf)

<sup>7</sup> "These Administrative Actions Would Improve Nursing Home Ownership And Financial Transparency In The Post COVID-19 Period", Health Affairs Blog, February 11, 2021. DOI: 10.1377/hblog20210208.597573

<sup>8</sup> <https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000709.asp>

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propose a minimum staffing standard. We urge you to continue to stand with nursing home residents and workers and to act expeditiously to implement these much-needed reforms. We stand ready to support CMS in your efforts.

Sincerely,

AARP

AFL-CIO

American Federation of State, County & Municipal Employees

California Advocates for Nursing Home Reform

Center for Medicare Advocacy

Geriatric Circle of California

Justice In Aging

Long Term Care Community Coalition

Michigan Elder Justice Initiative

National Association of Social Workers (NASW)

National Association of State Long-Term Care Ombudsman Programs

National Consumer Voice for Quality Long-Term Care

PHI

Service Employees International Union