

June 18, 2024

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Dear Dr. Werner,

I am reaching out, given your research expertise, to request any information you may be able to provide on the impact of minimum staffing requirements on patient outcomes, including mortality rates, in nursing homes.

On April 22, 2024, the Centers for Medicare and Medicaid Services (CMS) finalized a new rule that will, for the first time, set a national floor for minimum staffing requirements in nursing homes.<sup>1</sup> The rule requires that Medicare and Medicaid-certified nursing home facilities meet a minimum staffing ratio of 0.55 hours of registered nurse (RN) care per patient per day and 2.45 hours of nurse aide (NA) care per patient per day, as well as an overall total of 3.48 hours of nurse care per patient per day.<sup>2</sup> In addition, the new standards require that all nursing homes have at least one registered nurse on site 24 hours per day, 7 days a week.<sup>3</sup>

On April 30, 2024, the House Energy and Commerce Committee considered legislation that would prevent CMS “from implementing or enforcing” this new staffing rule.<sup>4</sup> On May 14, members of the House introduced a Congressional Review Act (CRA) resolution attempting to repeal the rule.<sup>5</sup> On May 23, the American Health Care Association and the National Center for Assisted Living (AHCA/NCAL), joined by LeadingAge, filed a lawsuit against CMS over it.<sup>6</sup> And on June 5,

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<sup>1</sup> CMS, “Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule (CMS 3442-F),” press release, April 22, 2024, <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicaid>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> McKnights Long-Term Care News, “Bill to block staffing rule, other LTC measures to headline Congressional hearing,” Kimberly Marselas, April 29, 2024, <https://www.mcknights.com/news/bill-to-block-staffing-rule-other-ltc-measures-to-headline-congressional-hearing/>.

<sup>5</sup> U.S. Congresswoman Michelle Fischbach, “Reps. Fischbach and Pence Introduce CRA to Overturn HHS Nursing Staff Mandate,” May 14, 2024, press release, <https://fischbach.house.gov/2024/5/reps-fischbach-and-pence-introduce-cra-to-overturn-hhs-nursing-staff-mandate>.

<sup>6</sup> American Health Care Association and the National Center for Assisted Living, “AHCA Files Lawsuit Against Federal Staffing Mandate,” press release, May 24, 2024, <https://www.ahcancal.org/News-and->

another CRA resolution to overturn the rule was introduced in the Senate.<sup>7</sup> Congress could vote on this CRA as soon as July 8.

I am writing to ask if you are able to provide my office with additional information on the impact of the CMS minimum staffing rule on patient outcomes. Given your expertise on the “effect of health care policies and delivery systems on quality of care,”<sup>8</sup> your extensive research on nursing home reform and nursing home staffing levels,<sup>9</sup> and your exploration of the impact of Medicare performance measures on mortality rates,<sup>10</sup> I am particularly interested in any information you are able to prepare on the impact of the new CMS rule on nursing home resident mortality. To better inform my office as this CRA vote approaches, I’d appreciate any such information by July 5, 2024.

Sincerely,



Elizabeth Warren  
United States Senator

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Communications/Press-Releases/Pages/AHCA-Files-Lawsuit-Against-Federal-Staffing-Mandate.aspx; LeadingAge, “LeadingAge to File to Join Lawsuit to Halt Nursing Home Staffing Mandates Implementation,” May 28, 2024, <https://leadingage.org/leadingage-to-file-to-join-lawsuit-to-halt-nursing-home-staffing-mandates-implementation/>.

<sup>7</sup> Office of Senator Joe Manchin, “Manchin Leads Bipartisan Fight To Protect Rural Nursing Homes From Biden Administration Overreach,” press release, June 5, 2024, <https://www.manchin.senate.gov/newsroom/press-releases/manchin-leads-bipartisan-fight-to-protect-rural-nursing-homes-from-biden-administration-overreach>.

<sup>8</sup> University of Pennsylvania Perelman School of Medicine, “Rachel M. Werner, MD, PhD,” <https://www.med.upenn.edu/apps/faculty/index.php/g275/p12390>.

<sup>9</sup> Health Affairs, “Nursing Home Staffing Levels Did Not Change Significantly During COVID-19,” May 2021, Rachel M. Werner and Norma B. Coe, <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.02351>; SSRN, “Long-Term Care Policy after Covid-19 — Solving the Nursing Home Crisis,” September 17, 2020, Rachel M. Werner, Allison K. Hoffman, Norma Coe, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3694030](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3694030).

<sup>10</sup> NIH, “Relationship between Medicare’s hospital compare performance measures and mortality rates,” February 21, 2007, Rachel M Werner and Eric T Bradlow, <https://pubmed.ncbi.nlm.nih.gov/17164455/#:~:text=Conclusions%3A%20Hospital%20performance%20measures%20predict,tightly%20linked%20to%20patient%20outcomes>.