



The Honorable Bob Casey
United States Senate
393 Russell Senate Office Building
Washington, D.C., 20510

February 13, 2023

Dear Senator Casey,

On behalf of the Pennsylvania Health Care Association (PHCA) and our members, including nursing homes, personal care homes and assisted living communities throughout the commonwealth, I write to you to share our concern with the Centers for Medicare and Medicaid Services' (CMS) exploration of a nationwide staffing regulation for nursing homes. The potential consequences of a national standard could undermine recent legislative and regulatory achievements in Pennsylvania, and could force our sector — which cares for tens of thousands of frail seniors and adults with disabilities every day — down a disastrous path that will jeopardize patient care.

First, please know that we share a common goal. As Chairman of the Special Committee on Aging, you are committed to ensuring care is available for our elderly population — our loved ones and neighbors — in Pennsylvania and across the country. The members we serve, including nearly 250 nursing homes and 200 personal care homes and assisted living communities, share in this mission and make care possible every day.

However, your letter to CMS Director Chiquita Brooks-LaSure, dated February 10, 2023, voiced support for a recently-completed study with unknown results and a forthcoming recommendation on nursing home staffing that could undermine our shared mission and destroy any remaining stability in our sector. This, at a time when the entire health care continuum has been disrupted due to a lack of skilled nursing care — and, ultimately, [skilled workers](#).

For too long, we have been forced to fight against a national campaign for an arbitrary, one-size-fits-all staffing minimum for nursing homes, which has historically been targeted at 4.1 PPD. And even though [CMS](#) itself has stated, “we do not necessarily find that the 4.1 [staffing requirement] is the right standard for every facility,” our fight has continued.

Pennsylvania is a prime example as to why this rulemaking should be left to the states, rather than the federal government.

As you are aware, Pennsylvania's Department of Health proposed a 4.1 PPD minimum for nursing homes in July 2021. In the months following the release of that proposal, PHCA worked with SEIU Healthcare PA, former Governor Tom Wolf, members of the state legislature, and other long-term care stakeholders to reach a compromise on an attainable, realistic, and improved staffing minimum. We analyzed what could work for our state's long-term care footprint, and what would serve our residents better than a blanketed regulatory mandate. We were successful in finding common ground on higher staffing minimums, as well as staffing ratios to ensure that more frontline caregivers would be working during day and night shifts. Additionally, as a result of our collaboration, these new minimums were accompanied by a much-needed Medicaid reimbursement increase — the first in Pennsylvania since 2014.

Truly, the unified effort between our organizations, as well as our state leaders in the Wolf administration and General Assembly, will ensure that this new staffing minimum improves patient care while also respecting the dire workforce challenges our sector is experiencing.

We believe it's our recent work that should be utilized as a national example of thoughtful, deliberate consideration of a staffing minimum, rather than a months-long study conducted by CMS — especially one that has the potential to be biased in nature due to the publicly-voiced agenda of the Biden administration.

If CMS were to propose a national 4.1 staffing minimum, the effects would be [catastrophic for Pennsylvania providers](#), as well as the residents they serve — and those left waiting in line to be admitted for care. This would not only further hinder access to care, it would overwhelm communities as providers shutter their doors, unable to sustain their operations. Then, who will care for our elderly and disabled loved ones?

If CMS does move forward, we request that you support the following conditions of a proposed federal staffing minimum so that essential nursing care can continue:

- CMS should be obligated to work with states, stakeholders and industry leaders to define the best path forward to enhance care, just as we did in Pennsylvania.
- The policy should be fully paid for upfront by the federal government, with updates to keep pace with costs.
- The policy should not go into effect until the workforce is sufficient and available.
- The policy should have a reasonable definition of which workers count in the staffing number, including broad definitions of 'nurse' and 'direct care'.
- The policy should include waivers for facilities that are trying in good faith to comply but simply cannot find the workers.
- CMS should phase the policy in and/or conduct a demonstration project.

Thank you for your consideration of this important matter. Should you have any questions related to the state of long-term care in Pennsylvania, please do not hesitate to contact me via email at zshamberg@phca.org.

PHCA and our members stand ready to work with you and other stakeholders to advance care — just as we did last year. But we must have a seat at the table.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zach Shamberg', with a long horizontal flourish extending to the right.

Zach Shamberg
President and CEO
Pennsylvania Health Care Association