Centers for Medicare & Medicaid Services

Department of Health and Human Services

Attention: CMS-3442-P

P.O. Box 8010

Baltimore, MD 21244-1810

November 6, 2023

Re: Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities (CMS–3442–P)

Dear Administrator Brooks-LaSure

The undersigned organizations strongly agree on the need for minimum staffing standards in long-term care facilities. The standards would improve the health and safety of residents and inhibit the tendency of many nursing home operators to reduce costs and boost profits by stinting on professional, licensed staff and direct care workers. The evidence of the damage this strategy causes is well established.

Staffing rules are needed and many organizations with a deep understanding of the needs of nursing home residents and the resources required to meet them have commented on the insufficiency of the standards in the proposed rule. We agree with these arguments and support these commenters in urging CMS to strengthen the standards in the final rule.

Our comments flow from the expertise and interests of our organizations and focus on the financialization of health care, specifically the exploitation of the health care system by organizations seeking to extract maximum short to medium term profits. Private equity (PE) companies in particular have a long history of this practice, with a notable focus on the nursing home industry. The Biden Administration knows this; the White House referred to "bad actors" in its October 2022 announcement of comprehensive steps to improve nursing home quality. CMS cited the evidence in the preamble to its proposed rule on nursing home ownership, issued earlier this year. PE companies own 11 percent of nursing homes in the U.S.

PE companies are drawn to health care because of the opportunities they see in market failures, inconsistent payment policies, and lax regulation or enforcement that can be exploited for financial gain. A PE owner's sole motivation is to boost what it can take from a firm in profits, fees, and charges quickly. To do this, PE companies may require facilities it owns to pay it a management fee, or even to sell off its real estate to provide a windfall for investors. Most PE acquisitions are heavily debt financed, with the debt obligation falling to the acquired facility, to limit risk to investors. The additional expenses that a PE company imposes on a facility – management fees, rent payments on property it once owned, debt service – deprive the facility of resources that would otherwise go to staffing and patient care. The result, too often, is a need

to reduce costs, which in a health care facility means cutting staff or shifting the balance of employees toward a lower-paid workforce with less training, to the detriment of both residents and workers.

The effects of this financialization among nursing homes is clear. A study by University of Chicago researchers found harmful effects such as greater use of antipsychotic medications and a higher probability of mortality in PE-owned nursing homes, which also had lower staffing ratios. A limited study by Americans for Financial Reform Education Fund found worse outcomes for workers and patients in New Jersey nursing homes during the height of the COVID-19 pandemic. For-profit facilities start from a position of lower staffing, and minimum staffing requirements can impede the race to the bottom that PE and other for profit owners' actions engender. Given PE's track record of damaging behavior in its ownership of nursing homes, however, CMS should be very sensitive to possibilities for gaming the staffing rule and take steps to close potential loopholes in the proposed rule. We therefore urge CMS to:

- Adopt a total minimum staff hours per resident day (HPRD), at a level that evidence suggests maximizes patient safety, to remove an incentive for nursing home operators to skimp on staff;
- Adopt a minimum HPRD for Licensed Practical Nurses, to eliminate the incentive for profit-seeking owners to use lower-paid staff with less training to perform some of the functions of LPNs;
- Exclude the Director of Nursing position from counting toward the clinical requirement that at least one Registered Nurse be on-site during all hours, for all shifts;
- Shorten the proposed implementation period: the PE business model is to maximize returns in a short period, often five years or less, and the long implementation period invites short-term exploitation;
- Clarify the exemption provision with objective, measurable criteria to minimize the potential for granting unwarranted exemptions;

Work with states (and support them financially) during the implementation period to bolster the depleted state survey agency workforce, to strengthen enforcement of staffing requirements based on individual facilities' acuity, with the federal staffing standard as a floor, not a ceiling.

The proposed rule is a major policy undertaking that affects a large, important, and influential industry. The rule must achieve its goal of preventing harm coming to nursing home residents because of inadequate staffing, and it must avoid the unintended consequences of unscrupulous owners using loopholes to circumvent the rule, rendering it ineffective or even harmful. We urge CMS to strengthen the standards and close the loopholes in the final rule.

Sincerely,

Accountable.US

Action Center on Race and the Economy

AFL-CIO

Americans for Financial Reform Education Fund

Center for Health and Democracy

Center for Popular Democracy

Communications Workers of America (CWA)

Consumer Watchdog

Health Care For America Now (HCAN)

National Employment Law Project

Partners for Dignity & Rights

People's Action

Private Equity Stakeholder Project

PSARA (Puget Sound Advocates for Retirement Action)

Strong Economy For All Coalition

Take Medicine Back

Take On Wall Street

The Center for Economic and Policy Research

United for Respect

VOICE (Voices Organized in Civic Engagement)