

October 31, 2023

House Energy & Commerce Subcommittee Holds Hearing on Long-Term Care

On Wednesday (October 25), the House Energy and Commerce Committee's Health Subcommittee held a hearing on "Supporting Access to Long-Term Services and Supports: An Examination of the Impacts of Proposed Regulations on Workforce and Access to Care." The hearing focused on policies included in two recent Centers for Medicare and Medicaid Services (CMS) proposed rules: the Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting [proposed rule](#) and the Ensuring Access to Medicaid Services [proposed rule](#).

Specifically, the discussion focused on the proposed minimum staffing ratios for registered nurses (RNs) and certified nurse aides (CNAs) at long-term care facilities, which would require at least .55 hours per resident day for RNs and 2.45 hours per resident day for CNAs, as well as a requirements to have an RN onsite 24/7, as well as the proposal to require home health agencies to pass through a minimum 80% of all Medicaid payments to the direct workforce (the 80/20 rule), with Republicans speaking in opposition of the rules' top-down mandates and Democrats largely speaking in favor of the Biden administration's effort to address staffing shortages among long-term care facilities and home health agencies. During the hearing, lawmakers heard from a panel of witnesses representing nursing home administrators, home health agency administrators, certified nurse aides, and consumer advocates.

- *For more information:* <https://energycommerce.house.gov/events/health-subcommittee-hearing-supporting-access-to-long-term-services-and-supports-an-examination-of-the-impacts-of-proposed-regulations-on-workforce-and-access-to-care>

Opening statements

Subcommittee Chairman Brett Guthrie (R-KY): In his statement, Subcommittee Chairman Guthrie said the hearing aimed to "critically examine two proposed regulations from the Biden administration that threaten to disrupt care for millions of seniors": the proposed minimum staffing rule and the Medicaid access rule. Chairman Guthrie called the rules "well-intended but misguided," saying they threaten to undermine access to vital services for seniors. Chairman Guthrie noted there were more than 500 nursing home closures in 2020, citing data that show the "industry needs to fill 150,000 jobs just to meet pre-pandemic levels," as well as data that show 81% of nursing facilities would be unable to meet the minimum staffing rule requirements. Instead of partnering with Congress, Chairman Guthrie said the Biden administration issued a "one-sized fits all Washington knows best approach," without addressing the root cause of the problem. [Full statement](#).

Ranking Member Anna Eshoo (D-CA): In her statement, Subcommittee Ranking Member Eshoo spoke about the public's negative opinion of nursing homes, noting the concerns about care quality have existed since before the COVID-19 pandemic. Ranking Member Eshoo said the Biden administration's solution is "simple"; "hire more people." She noted that the current minimum for an RN to be onsite is eight consecutive hours per day, and one RN for every 44 residents and one nurse aide for every 10 residents. She noted that the rule acknowledges the difficulty faced by rural providers by granting those facilities five years to come into compliance, as well as grants to help train nurse aides. Ranking Member Eshoo said she hopes the Subcommittee's debate focuses on the "real issues" with nursing homes.

Full Committee Chair Cathy McMorris Rodgers (R-WA): In her statement, Committee Chair McMorris Rodgers spoke about her son's Down syndrome diagnosis and those with physical or developmental disabilities and the importance of long-term care. Chair McMorris Rodgers described the shortage of nursing home and home health workers in the United States. She said that while the Biden administration's proposals may be "well intentioned" she is concerned they will further undermine the nursing home and home health workforce shortage. She noted that advocates have raised concern that the Medicaid access rule's 80/20 requirement is "out of reach for most agencies" and would cause home health agencies to reduce services and staff. She added that the minimum staffing rule for nursing homes similarly sets "unrealistic staffing thresholds" and cited data that show 80% of nursing facilities would not be able to meet requirements. She said, "These top-down approaches are not the way forward in supporting seniors and people with disabilities." She said she hoped the discussion today would identify more meaningful solutions to help those in need. [Full statement.](#)

Full Committee Ranking Member Frank Pallone (D-NJ): In his statement, Committee Ranking Member Pallone said, "Today's hearing is important" and expressed concern that the unpredictable schedule of the House prevented one of Democrats' witnesses from attending in person. He noted that there is a staffing crisis in the nation's long-term care infrastructure, and chronic understaffing jeopardizes patient safety and contributes to provider burnout. Ranking Member Pallone noted that last Congress he introduced legislation that would increase staffing and oversight of nursing homes and said he is pleased to see the Biden administration take steps to address nursing home care quality, calling the proposed rules "strong first steps to help ensure that patients in nursing home and home and community-based settings are able to get the care that they need," adding that it "allows for an exception for facilities in areas with workforce shortages." [Full statement.](#)

Witness Testimony

Sarah Schumann, Vice President of Operations, Brookside Inn. In her testimony, Ms. Schumann said if finalized, the proposed staffing mandate would have "dangerous consequences, specifically limiting access to care for our most vulnerable." She said that coming out of the COVID-19 pandemic, "nursing homes are facing a historic labor shortage and the proposed staffing mandate will only make things worse." She said her facility is doing everything possible to recruit more caregivers, including increasing wages by more than 40% for most caregiver positions and increasing their benefits package, but she noted there is significant competition for licensed nursing personnel in her local area. She raised concerns that the staffing mandate would have the "unintended consequence" of increasing the use of staffing agencies, which she said is financially unsustainable and impacts the quality of care. She noted that a recent analysis found the proposed rule would disproportionately impact facilities, like

Brookside, that serve a higher Medicaid population. She recommended policymakers implement workforce recruitment programs, loan forgiveness and tax credits for the nursing home workforce. [Full Statement](#).

Mary Killough, Vice President of Operations and Government Relations, AccentCare. In her testimony, Ms. Killough said that the Biden administration's proposed 80/20 rule "will not achieve the desired objective of increasing access to services or expanding the workforce. In fact, it will have the opposite effect." Ms. Killough said that if CMS finalizes the proposal the likely outcome would be that home care providers would close or that home care providers would reduce their service areas, with small providers and those serving rural areas experiencing the biggest impact. She said AccentCare supports higher wages for direct care workers, but notes that the proposed rule does not address historically underfunded provider payments and would jeopardize states' progress to increase direct care workers' wages. [Full Statement](#).

Shelly Hughes, Certified Nurse Aide. In her testimony, Ms. Hughes spoke favorably of CMS' proposed minimum staffing standard. She said, "Our long-term care system is on the verge of collapsing, and short staffing is the catalyst. A strong federal minimum staffing standard is the best way to rectify the devastating and deadly consequences short staffing imposes on our nation's nursing home workers and residents." She said, "On average, nursing assistants support 13 residents during a typical shift, but I've spoken with CNAs who have been responsible for upwards of 30 residents – alone." She asked committee members to consider this hypothetical situation: "You are the only CNA on the floor for 18 residents, and Mr. Smith is ready for his bath. You've gotten Mr. Smith undressed and are helping him into the tub. Suddenly, a few rooms down, you hear a bang and Ms. Jones calling for help. Do you leave Mr. Smith naked and alone in the bathroom? Or do you run to Ms. Jones, who may have fallen and injured herself? All the while, Mr. Johnson urinated in bed, and is laying in soiled clothes and sheets. Who do you go to first?" She said, "Nursing home workers and residents have been waiting for this rule for decades. We need this rule." [Full Statement](#).

Lori Smetanka, Executive Director, The National Consumer Voice for Quality Long-Term Care. In her testimony, Ms. Smetanka spoke favorably of CMS' proposed rule minimum staffing standard, saying, "Most problems with the provision of quality care and quality of life in nursing homes can be traced to inadequate staffing levels." She shared stories of understaffing impacting residents' quality of care, sometimes with life threatening consequences. She said that current federal staffing rules are inadequate and are "unevenly implemented and enforced," noting that "staff tell us about being responsible for 15, 20, or even more residents, and having to make difficult choices regarding whose needs are going to wait." Ms. Smetanka cited data showing not-for-profit nursing facilities are more likely to meet staffing standards than for-profit, saying, "It's not that facilities can't staff to recommended levels, it is that they choose not to." [Full Statement](#).

Patti Killingsworth, Former Chief of LTSS, TennCare; Chief Strategy Officer, CareBridge Health. In her testimony, Ms. Killingsworth spoke about the need for a comprehensive workforce strategy for long-term services and supports and how the proposed CMS rules fail to meet that need. She said the minimum staffing standards should not be implemented without due consideration of the impact of such policies on the much larger number of people receiving (or waiting to receive) home- and community-based services (HCBS)." She also said that the pass-through percentage for Medicaid payments has "fundamental flaws and will not assure that the Medicaid payment is adequate." Instead, Ms. Killingsworth said, "We need a thoughtful more data-driven approach that seeks to understand what constitutes an adequate payment for these services, how it should be appropriately allocated between the wages of direct care workers and other essential indirect employer and agency costs, and how this

can be accomplished across long-term services and settings in a way that does not favor institutional care over HCBS, but assures equitable access to care for Americans in the setting of their choice.” [Full Testimony](#).

Q&A

Subcommittee Chairman Guthrie asked Ms. Schumann about the impact of the proposed minimum staffing rule if they were finalized. Ms. Schumann said her communities would not be able to meet the RN requirement, the 24/7 requirement, or the CNA requirement and noted that they have received a waiver from meeting Colorado’s 24-hour staffing requirement for the past two years due to the lack of RNs. Chairman Guthrie spoke about the bipartisan Building America’s Health Care Workforce Act to help address the nursing shortage. When asked if there is data to support CMS’ proposed 80/20 formula in the Medicaid access rule, Ms. Killingsworth said she isn’t aware of any publicly available data that would support the policy and that the one-sized-fits all approach does not account for diverse geographic areas or the home health workforce. When asked how the proposed rule would impact state efforts to address workforce challenges, Ms. Killingsworth said states have used additional funding to make temporary or permanent wage increases, as well as invest in staff education and training.

Ranking Member Eshoo asked about the typical wage for a nursing home aide. Ms. Schumann and Ms. Hughes said wages have risen since the COVID-19 pandemic, with Ms. Hughes saying the increases helped to stabilize some of the turnover at her facility. Rep. Eshoo said we need a sustained workforce that is adequately paid and acknowledged that such an ask would cut into profits. She noted that the current standard for nursing home staffing is left to the states and their guidance is simply to have “sufficient” staffing. That “can’t be enforced,” Rep. Eshoo said. In her closing remarks, she said nursing home staffing levels have been a concern for decades and called on Congress and the Subcommittee to find solutions to address the problem.

Chair McMorris Rodgers questioned whether the staffing crisis is just a money issue, noting that Sacred Heart Hospital in Spokane Washington needs 300 nurses. She asked Ms. Killough how CMS’ 80/20 rule would impact people with disabilities, Ms. Killough said providers already do not receive a sufficient rate and if they are required to send 80% to workers then they only have 20% left to handle administrative costs, facility improvements, training, supervision, which will impact quality and drive smaller businesses out of business. Chair McMorris Rodgers noted that Washington has a similar staffing rule, but it does not dictate the staff needed to meet those requirements. Ms. Schumann said it’s unfortunate that CMS’ rule excludes LPNs, as well as social workers and other support personnel. Ms. Killingsworth said money is not the only solution, noting that states have used training programs, combined with career ladders to draw people into the field, as well as initiatives aimed at recruitment and retention. She said we are at a place where we do not have enough people to support needed care in the US and “you cannot regulate or buy your way out of that problem.”

Committee Ranking Member Pallone criticized Republicans for opposing Democrats’ previous proposals to increase funding for HCBS without offering alternative proposals and praised the Biden administration’s proposed rules as a “strong first step.” In response to a question, Ms. Smetanka discussed the high turnover rates at nursing home facilities and ways to improve job quality to increase retention. Ranking Member Pallone also asked about patient and caregiver safety and Ms. Smetanka said staffing ratios play a key role. Ms. Hughes said recruitment is not the issue at her facility, it is the low staffing rates that perpetuate burnout that causes turnover.

Rep. Michael Burgess (R-TX) asked about the data methodology CMS used to reach the 80/20 pass-through threshold. Ms. Killingsworth said we need a better definition for what is included in that 80%. Rep. Burgess expressed concern that travel costs and mileage for home health care workers in rural areas are not included. When asked, Ms. Schumann said she does not know why CMS left LPNs out of the nursing home staffing ratio rule.

Rep. John Sarbanes (D-MD) asked about the burden staffing shortages are having on caregivers and patients. Ms. Hughes said on the days when they have enough staff, she loves her job and is able to provide the level of care patients need, but on the days they have “staff challenges” they cannot properly care for patients. She spoke about the particular care needs of patients with dementia and how staff cannot provide the needed one-on-one care when there are only two people caring for the entire facility.

Rep. Bill Johnson (R-OH) spoke critically about the Medicaid access rule’s 80% threshold and the impact this could have on rural businesses. He said he heard from one home health provider in his district who said the rule would put them out of business. While Rep. Johnson agreed staff need to be appropriately compensated, he disagreed with the rule’s approach. Instead, he suggested electronic health records (EHRs) be more widely adopted by nursing facilities. Ms. Schumann said her facility does have EHRs and said it helps ease some of the documentation burden and communication with providers.

Rep. Tony Cárdenas (D-CA) noted that the share of the population age 65 and older has doubled in recent years and the workforce has not been able to keep pace. Ms. Smetanka said the rules could help to improve recruitment and retention by improving the quality of the job.

Rep. Greg Pence (R-IN) cited data on the workforce shortage and the impact increasing wages could have on the problem. He asked the witnesses if there are enough trained nurses in the country to fill the current shortage. Ms. Schumann and Ms. Killingsworth said there are not enough people, however, Ms. Hughes said she believes there are enough people, noting she sees qualified people leave due to the conditions. Ms. Smetanka said more needs to be done to increase recruitment and retention, but she feels there may be enough. Rep. Pence also asked about adequate levels of staff to train future nurses.

Rep. Raul Ruiz (D-CA) said the nurse-to-patient ratio at many facilities is unsustainable. Ms. Hughes said for a long-term care unit that has about 60 residents, you should have six CNAs and three licensed nurses. She also said nursing facilities need to enact better onboarding and training for new CNAs. Rep. Ruiz also spoke about the importance of federal funding for these programs.

Rep. Diana Harshbarger (R-TN) said she is worried about the domino effect of these two rules. Ms. Killingsworth said the 80/20 rule will increase the cost of community-based services and force more people out of home care and into institutional care, further exasperating shortages in those settings. Rep. Harshbarger spoke about Tennessee’s TennCare III Demonstration and Ms. Killingsworth said they have learned a lot through the program on providing quality, efficient care.

Rep. Robin Kelly (D-IL) asked if there are federal programs that should be re-evaluated to support workforce in rural communities. Ms. Smetanka said the data doesn’t show a difference in staffing levels between rural and urban long-term care facilities. Ms. Hughes said she has worked at her facility for 14 years, but new CNAs often

only staff for a few months. Ms. Schumann said there is a burnout issue with the workforce, but noted most people who enter this work stay.

Rep. John Joyce (R-PA) spoke critically about the proposed rules imposing a top-down approach on long-term care facilities and the disproportionate impact on rural areas. Ms. Schumann said she is concerned that the nursing home rule's provisions would force her facility to close, as well as others in her area. Ms. Killough said the Medicaid access rule would have a disproportionate impact on smaller and rural providers who serve vulnerable populations. Ms. Killingsworth said the rule would force home health providers to limit services or staff.

Rep. Nanette Barragán (D-CA) spoke about community care resources included in the Build Back Better Act and Ms. Smetanka said additional resources would be beneficial and said that higher wages would be a factor to help improve recruitment and retention in long-term care. When asked about how the proposed rules could improve care for minorities and people of color, Ms. Hughes said it would help eliminate geographic disparities by setting a floor across the country and suggested things like loan forgiveness could further drive people to stay in the profession.

Rep. Mariannette Miller-Meeks (R-IA) spoke about her background as a nurse and doctor and her time spent volunteering in nursing homes. She noted that many state Medicaid programs have expressed concern about CMS' Medicaid access rule and the decision not to accept exceptions to the 80% threshold. She suggested CMS consider an alternative approach such as scaling the threshold based on the provider's size, rural urban status, risk of closure, and/or exceptions processes. Rep. Miller-Meeks raised concerns that the proposed rule could impact care for seniors, individuals with disabilities, and veterans receiving home and community care. When asked about the rule's potential impact on the home care provider network, Ms. Killough said if finalized as written the rule will cause providers to close. When asked about the impact of the nursing home staffing rule, Ms. Schumann said it would drive up costs and limit access to care.

Rep. Larry Bucshon (R-IN) spoke about the existing RN shortage and how the proposed rules could force providers to close because they can't meet the staffing ratios. Rep. Bucshon asked Ms. Schumann how the rule would impact her facility's ability to provide career growth opportunities, who said the rule would force her facility to scale back offerings. Ms. Killingsworth said states need flexibility to target staffing levels as needed, which Rep. Bucshon agreed with.

Rep. Kim Schrier (D-WA) noted that Washington state has been trying to address staffing levels and ratios but said that despite those efforts "it remains a challenge." Instead, she focused her comments on improving career opportunities to improve the staffing pipeline and retention. While the rule includes some funding to help train nurses, Rep. Schrier said more complex and significant efforts are necessary. Ms. Schumann said it is a challenge to recruit staff and spoke about struggling to get applicants for open positions. Ms. Hughes said working with local community colleges and unions can ensure career opportunities for nursing home workers.

Rep. Morgan Griffith (R-VA) asked Ms. Killough whether CMS' Medicaid access rule exceeds its authority under the Medicaid Act. Ms. Killough said it does not adhere to the law because the law allows states to determine what payments are sufficient to ensure patient access to providers. Rep. Griffith asked about alternative ways to

address the problem, such as a Virginia policy to waive local zoning laws to allow people to set up temporary family health care structures to care for family members.

Rep. Earl 'Buddy' Carter (R-GA) spoke about his experience as a community pharmacist and raised concerns about the impact the proposed rules would have on care. When asked about other ways to attract workers, Ms. Schumann said student loan forgiveness would be “amazing,” and suggested pass-through tax credits for individuals who work in nursing facilities, as well as enabling foreign born nurses to enter the workforce. Ms. Hughes said easing state by state credentialing and certification and improving the working conditions within nursing homes would also be beneficial.

Rep. Dan Crenshaw (R-TX) spoke critically about CMS' proposed nursing staffing ratios and the Medicaid access pass-through threshold. Ms. Killough said it's unclear how the 80/20 rule would be implemented and posited it would likely fall to the states to collect that data. Ms. Schumann said it would be difficult to meet the proposed nursing home staffing ratio and how to handle things like staff callouts.

Rep. Gus Bilirakis (R-FL) called the proposed rules “disastrous” and criticized the rules for circumventing the state's legislative processes. He asked the witnesses for alternative solutions to support home-and community-based care. Ms. Killough and Ms. Killingsworth said the COVID-19 pandemic forced providers to think creatively around home-based care, such as medication management. Ms. Killough also suggested payment methods for family caregivers.

Rep. Jeff Duncan (R-SC) spoke critically about the proposed rules and the impact on long-term care facilities that are already struggling with “overregulation.” He asked Ms. Schumann about existing staffing ratios, who said the federal government dictates “sufficient staffing” which gives states the ability to determine what is a sufficient staffing level and enforce those thresholds. Ms. Schumann said she is concerned that her facility and others would be unable to meet the proposed federal ratios due to the existing staffing shortage.

If you have questions, please contact [Heather Meade](#) or [Heather Bell](#).

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