

United States Senate
WASHINGTON, DC 20510

June 3, 2024

The Honorable Denis R. McDonough
Secretary
Department of Veterans Affairs
810 Vermont Ave, NW
Washington, D.C. 20571

Dear Secretary McDonough,

We write to express concerns about the potential harmful impact on veterans resulting from the recently finalized Centers for Medicare and Medicaid Services (CMS) rule, entitled ‘Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting’ (RIN: 0938-AV25).¹ Our healthcare system is grappling with a severe shortage of qualified nurses and caregivers, spurred in part by challenges exacerbated by the COVID-19 pandemic. Long-term care facilities in Maine, North Dakota, and across the country have struggled to recover post-pandemic – we cannot simply will a new pipeline of healthcare workers into existence, and without staff to fill the required positions, many facilities face imminent closure. Given the impact CMS’ rule will have on the entire long-term care industry and access to services, we write to request a report from VA to better understand the impact of the Rule on veterans nationwide and in VA facilities.

In light of the anticipated impact of the CMS rule on the long-term care facilities serving our veterans, we introduced the *VA Report on Proposed CMS Staffing Ratios Act* (S. 3841), which would require VA to submit a report to Congress on the effect of the then-proposed minimum staffing ratios rule on access to VA long-term care facilities. The final rule covers a wide-ranging cross section of nursing and long-term care facilities nationwide, but we write with particular concern regarding its impact on the tens of thousands of veterans residing in 163 State Veterans Homes, over 130 Community Living Centers (CLC), and numerous Community Nursing Homes contracting with VA to provide care for our veterans.

As you know, veterans may receive long-term care services at VA CLCs, State Veterans Homes, or Community Nursing Homes. The Veterans Health Administration (VHA) may pay for the services depending on the care, but many of our veterans are covered by a combination of VHA, Medicare, and Medicaid – meaning these long-term care facilities providing care to veterans accept payment from Medicare and Medicaid too and thus are subject to CMS’ conditions of participation and the Rule.²

¹ <https://public-inspection.federalregister.gov/2024-08273.pdf>

² <https://www.veterans.senate.gov/services/files/4BB4DA3C-2C5A-4D34-A89A-CF560343B302>, page 4.

Regardless of the payer, it is critical our veterans and those served by long-term care facilities have access to adequate staffing levels to ensure patient safety. While we acknowledge the Rule's good intent—to improve patient safety through increased staffing levels—we are concerned it ultimately may lead to reduced access and worse health outcomes for veterans. If facilities are not able to hire nurses to meet the requirements of the Rule, we fear they will be forced to close their doors. The nursing home and long-term care industry struggled with adequate staffing levels before the pandemic, and continues to recover from staffing shortages that occurred during the pandemic. For example, in North Dakota, 50% of nursing facilities halted admissions in 2022 due to lack of staff and over the pandemic, these facilities lost over 15% of their staff, many of which have not returned. Similarly, between February 2020 and December 2022, Maine's nursing industry saw a significant decrease in employment levels, with nursing facilities seeing a 14.2% drop to their staffing levels. In Maine alone, four nursing homes have already announced plans to close this year, with one specifically indicating the inability to hire healthcare staff was one of the primary reasons they were forced to finally close. This situation is not unique to our states— 66% of facilities across the country believe they may have to close if their workforce challenges persist.³

Simply put – we are concerned long-term care facilities, including those serving veterans, may not be able to meet the new staffing requirements. Less than one in five nursing facilities nationwide currently meet all staffing requirements prescribed by the Rule.⁴ This is particularly concerning given the ongoing struggles of the long-term care industry to adequately hire staff. A recent survey indicated that 89% of nursing homes are actively trying to hire Registered Nurses, and 67% cite a lack of interest or qualified candidates as an obstacle towards hiring.⁵ An industry analysis estimates nursing facilities will have to hire an additional 102,000 nurses and nurse aides, which is 14,000 higher than CMS' estimate.⁶

We all want our veterans, older adults, and disabled populations served by long-term care facilities to have adequate staffing to meet their needs. Considering the majority of long-term care facilities nationwide would currently be deemed out of compliance with this rule, and are already struggling to hire and retain staff while on the precipice collectively of needing to spend billions of dollars more per year, we have serious concerns the industry will realistically be able to meet the goals of the Rule, let alone prevent massive widespread closures.

We are especially concerned about the direct effect on veterans, given that VA/VHA will need to pay for new hires and related costs at a time when the Department has already proposed to cut 10,000 employees. These proposed cuts were made before the CMS Rule was finalized, which is even more concerning for the potential impact of the Rule on veterans' care. Therefore, we request a report by July 15, 2024 on the impact of the recently finalized CMS rule on VA, including responses to the following questions:

³ <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/State-Of-The-Sector-Nursing-Home-Staffing-Shortages-Persist-Despite-Unprecedented-Efforts-To-Attract-More-Staff.aspx>

⁴ <https://www.kff.org/medicaid/issue-brief/a-closer-look-at-the-final-nursing-facility-rule-and-which-facilities-might-meet-new-staffing-requirements/>

⁵ *ibid* at 3

⁶ [https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Analysis-Final-Nursing-Home-Staffing-Rule-Would-Require-102,000-Additional-Caregivers-Cost-\\$6.5-Billion-Per-Year.aspx](https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/Analysis-Final-Nursing-Home-Staffing-Rule-Would-Require-102,000-Additional-Caregivers-Cost-$6.5-Billion-Per-Year.aspx)

1. What are the projections in terms of hiring needs for Registered Nurses (RNs), Certified Nurse Assistants (CNAs), licensed practical nurse/licensed vocational nurse (LPN/LVN), and other staff in long-term care facilities supported by the Department as a result of this finalized rule?
2. What is the projected budgetary impact on the Department as a result of this finalized rule?
3. Among the 14,000 nurses hired to work in VA facilities since January 2022, what percentage are working in long-term care (LTC) facilities affected by this rule?
 - a. Since January 2022, how many CNAs and LPN/LVNs have similarly been hired?
4. How many facilities serving veterans does VA anticipate needing to apply for exemptions discussed in the final rule?
5. Does VA have any concerns with the exemptions process in the final rule towards demonstrating a hardship exemption?
6. How many State homes would not meet the threshold for minimum staffing outlined in the final rule? How many veterans who live in such State homes would be affected?
7. How many community nursing homes currently contracted with the Department of Veterans Affairs would not meet the threshold for minimum staffing? How many veterans residing in community nursing home would be affected?
8. Will the final rule have any impact on community living centers of the Department? How many veterans would be affected?
9. Will the Department be able to adequately meet the long-term care needs of veterans including those residing in:
 - a. rural and highly rural areas;
 - b. medically underserved areas;
 - c. territories of the United States; or
 - d. Tribal areas?
10. How would the proposed staffing reductions, combined with the final rule, impact veterans' long-term care?

Thank you for your attention to this matter, and we look forward to hearing from the Department regarding our request. Please contact Kate Durost (Kate_Durost@King.senate.gov), Jon Heppen (Jonathan_Heppen@King.senate.gov), and Ryan Kenyon (Ryan_Kenyon@Cramer.senate.gov) with any questions.

Sincerely,

Handwritten signatures of Angus S. King, Jr. and Kevin Cramer in blue ink.

ANGUS S. KING, JR.
United States Senator

KEVIN CRAMER
United States Senator

CC: CMS Administrator Chiquita Brooks LaSure