

October 12, 2018

Dear Representatives Smith, Crowley, Griffith, Lujan, Black, and Schweikert:

The undersigned organizations are writing to express our concerns regarding the Reducing Unnecessary Senior Hospitalizations (RUSH) Act of 2018 (H.R. 6502). The RUSH Act would allow Medicare to enter into value-based arrangements with outside medical groups for the purpose of providing telehealth and on-site first responder services to nursing home residents in an attempt to reduce rehospitalization. While the goal of reducing the rehospitalization of nursing home residents is commendable, the Act is a poor substitute for improving nursing home staffing.

Ultimately, the RUSH Act would create more questions than it answers and create more problems than it solves. How will the Secretary certify that these medical groups and its employees do not have a record of providing deficient care to patients? Are nursing home operators allowed to have an ownership interest in these medical groups? How will the Secretary ensure that residents are not being inappropriately kept at the nursing home to increase payments?

We believe that a better way to reduce unnecessary hospitalizations is to enforce existing federal law and to strengthen it. Under the federal Nursing Home Reform Law (enacted in 1987), every facility is required to have a registered nurse (RN) on duty eight hours a day, seven days a week.<sup>1</sup> Facilities are also required to have 24-hour licensed nursing services that are sufficient to meet the needs of residents.<sup>2</sup> Unfortunately, as many reports indicate, nursing homes all too often fail to meet the requirements of this federal law. *The New York Times* recently reported that the new payroll-based journal (PBJ) reporting system shows facilities have less staffing, especially on weekends, than previously conveyed to the government under the old self-reported system.<sup>3</sup> According to *The Times*, seven out of ten nursing homes had “lower staffing . . . with a 12 percent average decrease” and 25 percent of nursing homes “reported no registered nurses at work” for at least one day in the last quarter of 2017.<sup>4</sup> A follow-up article by *The Times* noted that Medicare lowered staffing star ratings for one out of 11 nursing homes (1,400) around the country because “they were either inadequately staffed with registered nurses or failed to provide payroll data that proved they had the required nursing coverage.”<sup>5</sup>

Failing to meet federal staffing requirements has serious implications for resident health and safety. Many studies have directly tied appropriate staffing levels with improved outcomes.<sup>6</sup> For instance, a recently-published study in the *Journal of Psychiatric and Mental Health Nursing* found that “[o]ne additional registered nurse hour per resident per day could reduce the odds of

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<sup>1</sup> 42 U.S.C. § 1395i-3(4)(c)(i).

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

<sup>3</sup> Jordan Rau, *It's Almost Like A Ghost Town. Most Nursing Home Overstated Staffing for Years*, N.Y. Times (Jul. 7, 2018), <https://www.nytimes.com/2018/07/07/health/nursing-homes-staffing-medicare.html>.

<sup>4</sup> *Id.*

<sup>5</sup> Jordan Rau & Elizabeth Lucas, *Medicare Slashes Star Ratings for Staffing at 1 in 11 Nursing Homes*, N.Y. Times (Jul. 27, 2018), <https://www.nytimes.com/2018/07/27/health/medicare-nursing-homes.html>.

<sup>6</sup> *More Nurses in Nursing Homes Would Mean Fewer Patients Headed to Hospitals*, Center for Medicare Advocacy, <http://www.medicareadvocacy.org/more-nurses-in-nursing-homes-will-mean-fewer-patients-headed-to-hospitals/> (last visited Oct. 3, 2018).

antipsychotic use by 52% and 56% for residents with and without a dementia diagnosis respectively.”<sup>7</sup> The Centers for Medicare & Medicaid Services (CMS) has also acknowledged the importance of appropriate staffing in meeting resident care needs. In an April 2018 memorandum, CMS stated that “[r]esearch shows the presence of an RN is strongly related to the quality and outcomes residents’ experience.”<sup>8</sup> The memorandum included a chart showing how nursing homes perform on three claims-based quality measures (30-day readmissions, emergency room transfers, and successful discharge to community) based on the decile of RN hours.<sup>9</sup> As the chart demonstrated, nursing homes with higher registered nurse hours have better outcomes on all three measures.<sup>10</sup>

While improved staffing results in lower rates of rehospitalization among nursing home residents, the goal of reducing rehospitalizations must be carefully balanced with each resident’s actual care needs. The RUSH Act would create a shared savings program that would result in payments to medical groups and nursing homes for reductions in rehospitalization; however, the Act does not implement any proper auditing procedures to ensure that residents are not being inappropriately kept at the nursing home in order to increase payments. As Doctors Joseph Ouslander and Robert Berenson wrote in *The New England Journal of Medicine*, “[s]etting unrealistic expectations and providing incentives to poorly prepared nursing homes to manage such care rather than transferring residents to a hospital could have unintended negative effects on the quality of care and health outcomes.”<sup>11</sup>

Our organizations believe, and the data indicate, that residents’ quality of care and quality of life would significantly improve if nursing homes improved staffing to meet and surpass that federal requirement. A simpler solution to the RUSH Act is to enforce the staffing requirements already required by federal and state laws. A better solution would be to improve upon the staffing requirements by implementing minimum staff-to-resident ratios and/or requiring a registered nurse to be on duty 24-hours a day, seven days a week.

Sincerely,

Center for Medicare Advocacy  
Long Term Care Community Coalition  
California Advocates for Nursing Home Reform  
National Consumer Voice for Quality Long-Term Care

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<sup>7</sup> Lorraine J. Phillips et al., *An observational study of antipsychotic medication use among long-stay nursing home residents without qualifying diagnoses*, *Journal of Psychiatric and Mental Health Nursing* (Jun. 17, 2018), <https://onlinelibrary.wiley.com/doi/10.1111/jpm.12488> (looking at 2015 long-stay residents in Missouri who lacked a qualifying or potentially qualifying diagnosis for antipsychotic drugs).

<sup>8</sup> *Transition to Payroll-Based Journal (PBJ) Staffing Measures on the Nursing Home Compare tool on Medicare.gov and the Five Star Quality Rating System*, CMS (Apr. 6, 2018), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO18-17-NH.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Joseph G. Ouslander, Robert Berenson, *Reducing Unnecessary Hospitalizations of Nursing Home Residents*, *New England Journal of Medicine*, 365: 1165-1167 (Sep. 29, 2011), <http://www.nejm.org/doi/full/10.1056/NEJMp1105449>.