

Congress of the United States

Washington, DC 20515

June 30, 2024

Mark Parkinson
President and Chief Executive Officer
American Health Care Association and the
National Center for Assisted Living
(AHCA/NCAL)
2 Massachusetts Avenue NE, Unit 77880
Washington, DC 20013

Katie Smith Sloan
President and Chief Executive Officer
LeadingAge
2519 Connecticut Avenue, NW
Washington, DC 20008

Dear Mr. Parkinson and Ms. Sloan:

We are writing regarding the American Health Care Association and the National Center for Assisted Living's (AHCA/NCAL) and LeadingAge's shameless attempts to sabotage a long-overdue CMS rule that would help millions of seniors living in nursing homes receive better quality care.¹ Your attempts to reverse this rule make a mockery of your claim that you have an "unwavering... dedication to providing quality care solutions for people who are frail, elderly, or living with disabilities," and you should put a halt to these misguided efforts.²

On May 23, 2024, AHCA, joined by LeadingAge, filed a lawsuit against the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) over the agency's "Minimum Staffing Standards for Long-Term Care Facilities" final rule that would, for the first time, set a national floor for minimum staffing requirements in Medicare and Medicaid-certified nursing homes.³ The rule will help millions of nursing home residents living in unacceptable conditions as nursing homes with higher staffing levels have higher overall quality ratings, lower levels of patient abuse, fewer cases of misdiagnosis and over-medication,

¹ Centers for Medicare & Medicaid Services, Federal Register, "Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting," May 10, 2024, <https://www.federalregister.gov/documents/2024/05/10/2024-08273/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid>.

² American Health Care Association and the National Center for Assisted Living, "About AHCA/NCAL," <https://www.ahcancal.org/About/Pages/default.aspx>.

³ American Health Care Association and the National Center for Assisted Living, "AHCA Files Lawsuit Against Federal Staffing Mandate," press release, May 24, 2024, <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/AHCA-Files-Lawsuit-Against-Federal-Staffing-Mandate.aspx>; Centers for Medicare & Medicaid Services, "Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS 3442-P)," press release, September 1, 2023, <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicaid>; LeadingAge, "LeadingAge to File to Join Lawsuit to Halt Nursing Home Staffing Mandates Implementation," May 28, 2024, <https://leadingage.org/leadingage-to-file-to-join-lawsuit-to-halt-nursing-home-staffing-mandates-implementation/>.

and better emergency preparedness.⁴ Decades of research have built an open-and-shut case that higher staffing results in higher quality care for nursing home residents.⁵

AHCA represents more than 14,000 nursing homes and assisted living communities that are responsible for caring for approximately five million vulnerable and sick nursing home residents across the country each year.⁶ It claims that “[f]or 75 years, AHCA/NCAL has remained unwavering in its dedication to providing quality care solutions for people who are frail, elderly, or living with disabilities and receiving care from our member facilities.” Similarly, LeadingAge is “a 5,400-member organization of nonprofit providers” that claims to be “steadfast in our goal to be the trusted voice for aging in America.”⁷ Your extraordinary efforts to throw a wrench in the Biden administration’s efforts to finalize a staffing minimum reveal that these self-serving mission statements are simply false.

Your organizations fought this rule from the start.⁸ In 2023, the AHCA spent around \$4.15 million on lobbying – the most it has ever spent in a single year.⁹ The organization has spent nearly \$17 million on lobbying since 2020, spending almost \$1 million on lobbying in just the first quarter of 2024.¹⁰ LeadingAge – which purports to represent not-for-profit nursing homes – has also spent over \$750,000 on lobbying since 2020.¹¹ Similarly, AHCA has spent over \$1

⁴ Offices of Senators Elizabeth Warren, Bernie Sanders, and Richard Blumenthal, “Residents at Risk: Quality of Care Problems in Understaffed Nursing Homes and the Need for a New Federal Nursing Home Staffing Standard,” report, November 16, 2023, <https://www.warren.senate.gov/imo/media/doc/Nursing%20Home%20Report%20110823.pdf>; Majority Staff of U.S. Senate Finance Committee and U.S. Senate Special Committee on Aging, “Left in the Dark: The impact of the 2021 Texas Blackout on Long-Term Care Residents and the Need to Improve Emergency Preparedness,” investigation, February 22, 2023, <https://www.finance.senate.gov/imo/media/doc/022223%20Left%20in%20the%20Dark%20Two%20Pager.pdf>; New York Times, “Phony Diagnoses Hide High Rates of Drugging at Nursing Homes,” Katie Thomas, Robert Gebeloff and Jessica Silver-Greenberg, September 11, 2021, <https://www.nytimes.com/2021/09/11/health/nursing-homes-schizophrenia-antipsychotics.html>; Human Rights Watch, “They Want Docile: How Nursing Homes in the United States Overmedicate People with Dementia,” report, February 5, 2018, <https://www.hrw.org/report/2018/02/05/they-want-docile/how-nursing-homes-united-states-overmedicate-people-dementia>.

⁵ *Id.*

⁶ American Health Care Association and the National Center for Assisted Living, “AHCA/NCAL Releases State Of The Nursing Home Sector Report,” press release, February 6, 2023, <https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/AHCANCAL-Releases-State-Of-The-Nursing-Home-Sector-Report.aspx>.

⁷ LeadingAge, “About Us,” <https://leadingage.org/about-us/>.

⁸ American Health Care Association and the National Center for Assisted Living, “New Analysis Finds Federal Staffing Mandate Would Require 100,000 Additional Nurses and Nurses’ Aides, Cost \$6.8 Billion Per Year,” press release, September 26, 2023, <https://www.ahcancal.org/Newsand-Communications/Press-Releases/Pages/New-Analysis-Finds-Federal-Staffing-Mandate-Would-Require100%2C000-Additional-Nurses-and-Nurses%E2%80%99-Aides%2C-Cost-%246-8-Billion-Pe.aspx>; LeadingAge, “LeadingAge Reax to Biden Administration’s Proposed Staffing Mandates,” press release, September 1, 2023, <https://leadingage.org/leadingage-reax-on-biden-administrations-proposed-staffing-mandates/>.

⁹ OpenSecrets, “American Health Care Assn,” annual lobbying totals: 1998-2024, <https://www.opensecrets.org/orgs/american-health-care-assn/lobbying?id=D000000192>.

¹⁰ *Id.*

¹¹ OpenSecrets, “LeadingAge,” annual lobbying totals: 1998-2024, <https://www.opensecrets.org/orgs/leadingage/lobbying?id=D000046833>.

million on campaign contributions in every campaign cycle since 2020,¹² and LeadingAge has spent over \$9,000 in total on campaign contributions over the past four years.¹³

After CMS finalized the rule on April 22, 2024, the AHCA released a statement saying it was “exploring all options” to derail the rule, and the President and CEO of LeadingAge said it is “pursuing an aggressive, multifaceted strategy employing all the tools available to us — legislative, legal and regulatory” to “halt the regulation’s implementation.”¹⁴ Just over one week later, on April 30, the House Energy and Commerce Committee considered legislation that would prevent CMS “from implementing or enforcing” the Biden administration’s rule. On June 5, a Congressional Review Act resolution attempting to overturn the rule was introduced in the Senate.¹⁵

The basis of the nursing home industry’s opposition to this rule appears to be quite simple: greed. Industry claims that nursing homes cannot afford to hire more nurses¹⁶ are undermined by a recent investigation by our offices, which found that for-profit nursing homes have been stuffing hundreds of millions of dollars into their pockets with sky-high executive salaries, massive dividends, and large stock buybacks.¹⁷ Indeed, my staff analysis found that just three of your member organizations paid out nearly \$650 million in stock buybacks, dividends, and salaries to their executives and shareholders, all the while claiming they could not afford to meet the rules.

The federal government spends billions of dollars on Medicare and Medicaid payments to nursing home facilities each year—in fiscal year 2022, Medicare spending to nursing homes was projected to be approximately \$33.5 billion, with a \$1.7 billion increase on top of that in fiscal

¹² OpenSecrets, “American Health Care Assn,” summary, <https://www.opensecrets.org/orgs/american-health-care-assn/summary?toprecipcycle=2024&contribcycle=2024&lobcycle=2024&outspendcycle=2022&id=D000000192&topnumcycle=2024>.

¹³ OpenSecrets, “LeadingAge,” summary, <https://www.opensecrets.org/orgs/leadingage/summary?toprecipcycle=2024&contribcycle=2024&lobcycle=2024&outspendcycle=2022&id=D000046833&topnumcycle=2024>.

¹⁴ Politico, “Nursing Homes Plan Fight,” Chelsea Cirruzzo and Ben Leonard, May 23, 2024, <https://www.politico.com/newsletters/politico-pulse/2024/05/23/bird-flu-questions-linger-with-2nd-case-00159580>.

¹⁵ Office of Senator Joe Manchin, “Manchin Leads Bipartisan Fight To Protect Rural Nursing Homes From Biden Administration Overreach,” press release, June 5, 2024, <https://www.manchin.senate.gov/newsroom/press-releases/manchin-leads-bipartisan-fight-to-protect-rural-nursing-homes-from-biden-administration-overreach>.

¹⁶ American Health Care Association and the National Center for Assisted Living, “New Analysis Finds Federal Staffing Mandate Would Require 100,000 Additional Nurses and Nurses’ Aides, Cost \$6.8 Billion Per Year,” press release, September 26, 2023, [https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/New-Analysis-Finds-Federal-Staffing-Mandate-Would-Require-100,000-Additional-Nurses-and-Nurses%E2%80%99-Aides.-Cost-\\$6-8-Billion-Pe.aspx](https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/New-Analysis-Finds-Federal-Staffing-Mandate-Would-Require-100,000-Additional-Nurses-and-Nurses%E2%80%99-Aides.-Cost-$6-8-Billion-Pe.aspx).

¹⁷ Office of Senator Elizabeth Warren, “Warren, Lawmakers Call out Hypocrisy of Nation’s Largest Public, For-Profit Nursing Homes for Opposing New Biden Admin Staffing Rule While Spending Millions Enriching Executives and Shareholders,” press release, May 6, 2024, <https://www.warren.senate.gov/newsroom/press-releases/warren-lawmakers-call-out-hypocrisy-of-nations-largest-public-for-profit-nursing-homes-for-opposing-new-biden-admin-staffing-rule-while-spending-millions-enriching-executives-and-shareholders>.

year 2023.¹⁸ But reports of neglect and abuse in nursing homes run rampant,¹⁹ with stories of desperate nurses in chronically understaffed facilities reverting to the inappropriate use of antipsychotic drugs to sedate patients in dire need of attention.²⁰ The CMS nursing home staffing rule will result in significant changes, dramatically improving the quality of care for residents while improving working conditions for nursing home staff.²¹ There is no justifiable rationale for opposing this rule, but the nursing home industry, instead of acting in the best interests of its residents, is seeking to do so, with no accountability to the residents they serve.

You owe Congress and the public an answer for why you are spending millions of dollars on lobbying and campaign contributions in support of policies that would harm the residents living in nursing homes. We ask you to provide the following information by July 8, 2024:

1. Do AHCA and LeadingAge agree with the overwhelming evidence that improving nursing home staffing results in improved quality of care?
 - a. If not, what evidence are you relying on to reach this conclusion?
2. How did the AHCA reach the decision to file a lawsuit against the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) over their issuance of the “Minimum Staffing Standards for Long-Term Care Facilities”?
 - a. How much has the AHCA spent so far on this lawsuit?
 - b. What other organizations or groups is the AHCA partnering with in this lawsuit?
 - c. Did AHCA’s board discuss or vote on the decisions to file this lawsuit? If so, was the decision unanimous?
3. How did LeadingAge reach the decision to file a lawsuit against the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) over their issuance of the “Minimum Staffing Standards for Long-Term Care Facilities”?
 - a. How much has AHCA spent so far on this lawsuit?
 - b. Did LeadingAge’s board discuss or vote on the decisions to file this lawsuit? If so, was the decision unanimous?
4. What was the rationale for AHCA to file the case in the Northern District of Texas?

¹⁸ Centers for Medicare and Medicaid Services, “CMS Acts to Improve the Safety and Quality of Care of the Nation’s Nursing Homes,” press release, July 29, 2022, <https://www.cms.gov/newsroom/press-releases/cms-acts-improve-safety-and-quality-care-nations-nursing-homes>.

¹⁹ Human Rights Watch, “US: Concerns of Neglect in Nursing Homes,” report, March 25, 2021, <https://www.hrw.org/news/2021/03/25/us-concerns-neglect-nursing-homes>.

²⁰ Human Rights Watch, “They Want Docile: How Nursing Homes in the United States Overmedicate People with Dementia,” report, February 5, 2018, <https://www.hrw.org/report/2018/02/05/they-want-docile/how-nursing-homes-united-states-overmedicate-people-dementia>.

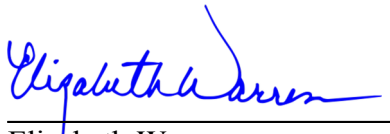
²¹ Office of Senator Elizabeth Warren, “At Hearing, Warren Calls on CMS to Finalize Proposed Nursing Home Minimum Staffing Rule to Ensure Safe, High-Quality Care,” press release, April 16, 2024, <https://www.warren.senate.gov/newsroom/press-releases/at-hearing-warren-calls-on-cms-to-finalize-proposed-nursing-home-minimum-staffing-rule-to-ensure-safe-high-quality-care>.

5. Do AHCA and LeadingAge support the Congressional Review Act resolution attempting to overturn the rule that was introduced in the Senate?
 - a. How much have your organizations spent lobbying on behalf of this resolution?

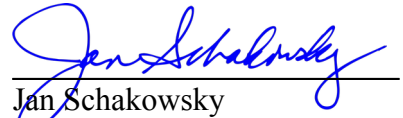
6. How much have AHCA and LeadingAge spent on political and legal campaigns against the “Minimum Staffing Standards for Long-Term Care Facilities” rule to date? How much have AHCA and LeadingAge budgeted to spend in 2024?
 - a. Which AHCA or Leading Age members have donated to your organization’s efforts to oppose this staffing rule? Please provide a list of the ten members that have provided the most funding.

7. What other campaigns are your organizations currently engaged in with respect to this rule?

Sincerely,



Elizabeth Warren
United States Senator



Jan Schakowsky
Member of Congress