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Part 1

PROTECTING AMERICAN SENIORS' ACCESS TO CARE ACT

NOVEMBER 18, 2024.—Ordered to be printed

Mr. SMITH of Missouri, from the Committee on Ways and Means, submitted the following

R E P O R T

[To accompany H.R. 7513]

The Committee on Ways and Means, to whom was referred the bill (H.R. 7513) to prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the skilled nursing facility workforce, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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59–006

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting American Seniors' Access to Care Act".

SEC. 2. PROHIBITION ON FINALIZING PROPOSED STAFFING RULE.

The Secretary of Health and Human Services may not finalize, implement, enforce, or otherwise give effect to the proposed rule entitled "Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting" published by the Department of Health and Human Services on September 6, 2023 (88 Fed. Reg. 61352–61429) and may not promulgate any substantially similar rule.

Amend the title so as to read:

A bill to prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for skilled nursing facilities and nursing facilities.

I. SUMMARY AND BACKGROUND

A. Background and Need for Legislation

On August 29, 2023, the Centers for Medicare & Medicaid Services (CMS) released—apparently inadvertently—a report the agency commissioned to assess potential mandatory minimum staffing levels for Skilled Nursing Facilities (SNFs).[1] CMS had previously suggested this report would inform coming action related to nursing home staffing requirements. While the report, dated June 2023, found that higher staffing levels generally correlate with higher quality, the report cautioned, "there is no obvious plateau at which quality and safety are maximized or "cliff" below which quality and safety steeply decline."[2] Despite the fact that the CMS-commissioned report could not identify a staffing rate at which quality and safety are maximized, CMS nevertheless continued with a significant regulatory action to create a new federal staffing standard.

On September 1, 2023, CMS issued a proposed rule, "Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting."[3] Among other things, the rule proposed three new SNF staffing requirements that exceed the existing statutory staffing requirements found in Section 1819 of the Social Security Act, which requires SNFs to provide 24-hour licensed nursing service, including the use of an RN at least seven days weekly for eight consecutive hours daily.[4] Specifically, under the proposed rule, SNFs would be required to have a Registered Nurse (RN) onsite, provide at least 0.55 hours per resident day (HRPD) of care from an RN, and provide at least 2.45 HRPD of care from a Nurse Aide (NA).

The Committee is concerned that the proposed rule, if finalized, would have a deleterious effect on Medicare beneficiaries' access to SNF care. Specifically, one study examined Payroll-Based Journal

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[1] https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf.

[2] https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf.

[3] https://www.federalregister.gov/documents/2023/09/06/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid.

[4] Section 1819(b)(4)(C) of the Social Security Act.

data submitted to CMS by Medicare-certified nursing homes, estimating that Medicare-certified SNFs would need to hire an estimated 102,154 additional full-time employees, including 22,077 RNs and 80,077 NAs.[5] Additionally, the Committee is concerned that this mandate would be burdensome and unreasonable, given the considerable evidence of serious and ongoing staff shortages in the nursing home industry. For example, in February 2024, the Department of Health and Human Services Office of Inspector General published a report that emphasized the persistent staff shortages in the nursing home field, saying, "one of the biggest and most difficult challenges was the shortage of qualified staff."[6]

During the period after the proposed rule's publication, Committee heard concerns from a variety of stakeholders about the lack of qualified staff available to ensure SNFs meet the mandate, if finalized. For example, according to the leading national association representing nonprofit nursing homes, "there are simply no people to hire—especially nurses. The proposed rule requires that nursing homes hire additional staff. But where are they coming from?"[7] State-level nonprofit nursing home associations echoed these concerns, saying the CMS proposed rule would "further exacerbate the healthcare workforce shortages, place undue financial burdens on care facilities, and potentially decrease access to care . . ."[8] Another emphasized "there are simply not enough workers," and a third stated, "Adding impossible mandates will make accessing care more difficult for older Americans and their families as providers will have to limit admissions."[9] Especially concerning to the Committee is that more than 280,000 nursing home residents could be affected by census reductions performed to meet the mandated provider-to-staff ratios.[10]

On February 29, 2024, more than 1,000 organizations sent a letter to Chairman Smith and Ranking Member Neal saying, "this mandate will neither improve care nor address the workforce crisis . . . Now is simply not the time to implement a nursing home staffing rule that could severely impact the health care continuum and access for patients to critical care."[11] Signatories of the letter included non-profit nursing homes, as well as national and state-level associations representing non-profit, rural, and religious-affiliated nursing homes.

Based on the proposed rule's potential for serious harm, namely jeopardizing seniors' access to SNF services, congressional action is needed to prohibit the finalization and enforcement of the proposal.

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[5] https://www.ahcancal.org/News-and-Communications/FactSheets/FactSheets/CLA%20Staffing%20Mandate%20Analysis%20-%20September%202023.pdf.

[6] https://oig.hhs.gov/documents/evaluation/9808/OEI-02-20-00492.pdf.

[7] https://leadingage.org/leadingage-reax-on-biden-administrations-proposed-staffing-mandates/.

[8] https://leadingage.org/leadingage-state-executives-on-impact-of-cms-proposed-staffing-mandate/.

[9] *Id.*

[10] https://www.ahcancal.org/News-and-Communications/Press-Releases/Pages/New-Analysis-Finds-FederalStaffing-Mandate-Would-Require-100,000-Additional-Nurses-and-Nurses'-Aides,-Cost-$6-8-Billion-Pe.aspx.

[11] https://leadingage.org/wp-content/uploads/2024/02/FINAL-2.28.24-Protecting-Rural-Seniors-Access-to-Care-Act-H.R.-5796-WM-Mark-Up-Letter.pdf.

B. Legislative History

Background

H.R. 7513 was introduced on March 1, 2024, and was referred to the Committee on Ways and Means and the Committee on Energy and Commerce.

Committee Hearings

The Committee on Ways and Means held the following hearing(s) concerning the policy in H.R. 7513:

On March 28, 2023, the Committee on Ways and Means held a hearing titled, "President Biden's Fiscal Year 2024 Budget Request with Health and Human Services Secretary Becerra" to discuss the President's fiscal year 2024 budget request and related proposals including the proposal to implement staffing ratio mandates on nursing homes.

Committee Action

The Committee on Ways and Means marked up H.R. 7513, the Protecting America's Seniors' Access to Care Act, on March 6, 2024, and favorably reported the bill, as amended, to the House of Representatives (with quorum being present).

C. Designated Hearing

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop and consider H.R. 7513:

On March 28, 2023, the Committee on Ways and Means held a hearing titled, "President Biden's Fiscal Year 2024 Budget Request with Health and Human Services Secretary Becerra."

II. EXPLANATION OF THE BILL

A. Reasons for Change

Absent congressional action, the Secretary of Health and Human Services, acting through CMS, would be allowed to finalize the proposed staffing mandate. As the mandate would likely have deleterious effects on America's seniors, Congress must act to prohibit finalization, implementation, and enforcement of the proposed rule.

B. Explanation of Provisions

Section 1: Short title

The title of the bill is the Protecting American Seniors Access to Care Act.

Section 2: Prohibition on Finalizing Proposed Staffing Rule

Prohibits the Secretary of Health and Human Services from finalizing, implementing, enforcing, or otherwise giving effect to the CMS staffing mandate proposed rule.

C. Effective Date

The bill would become effective upon enactment.

III. VOTES OF THE COMMITTEE

In compliance with the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 7513, the "Protecting America's Seniors' Access to Care Act," on March 6, 2024.

H.R. 7513 was ordered favorably reported to the House of Representatives as amended by a roll call vote of 26 yeas to 17 nays (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Smith (MO)	X			Mr. Neal		X	
Mr. Buchanan	X			Mr. Doggett		X	
Mr. Smith (NE)	X			Mr. Thompson		X	
Mr. Kelly	X			Mr. Larson		X	
Mr. Schweikert	X			Mr. Blumenauer		X	
Mr. LaHood	X			Mr. Pascrell		X	
Dr. Wenstrup	X			Mr. Davis		X	
Mr. Arrington	X			Ms. Sánchez		X	
Dr. Ferguson	X			Ms. Sewell	X		
Mr. Estes	X			Ms. DelBene		X	
Mr. Smucker	X			Ms. Chu		X	
Mr. Hern	X			Ms. Moore		X	
Ms. Miller	X			Mr. Kildee		X	
Dr. Murphy	X			Mr. Beyer		X	
Mr. Kustoff	X			Mr. Evans		X	
Mr. Fitzpatrick	X			Mr. Schneider		X	
Mr. Steube	X			Mr. Panetta		X	
Ms. Tenney	X			Mr. Gomez		X	
Mrs. Fischbach	X						
Mr. Moore	X						
Mrs. Steel	X						
Ms. Van Duyne	X						
Mr. Feenstra	X						
Ms. Malliotakis	X						
Mr. Carey	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

With respect to clause 3(d) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involved no new or increased budget authority. The Committee states further that the bill involves no new or increased tax expenditures.

V. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to requirements

of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Chairman of the Committee shall cause such estimate and statement to be printed in the Congressional Record upon its receipt by the Committee.

VI. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings and recommendations that are reflected in this report.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill does not authorize funding, so no statement of general performance goals and objectives is required.

C. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the *Unfunded Mandates Reform Act of 1995* (Pub. L. No. 104–4). The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

E. Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

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