

118TH CONGRESS
1ST SESSION

H. R. 5796

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 nursing home workforce.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2023

Mrs. FISCHBACH (for herself and Mr. PENCE) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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 nursing home workforce.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Rural Sen-
5 iors’ Access to Care Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) According to the Bureau of Labor Statis-
2 tics, between February 2020 and August 2023,
3 nursing homes in the United States lost nearly
4 200,000 employees.

5 (2) Forty-five percent of nursing home pro-
6 viders have reported a worsening workforce situation
7 since May 2022.

8 (3) Ninety-six percent of nursing home pro-
9 viders have reported difficulty in hiring staff.

10 (4) More than ninety percent of nursing home
11 providers have increased wages and bonuses to re-
12 cruit and retain staff.

13 (5) Nearly eighty percent of nursing home pro-
14 viders have hired temporary staff, who are often
15 much more expensive than permanent staff.

16 (6) The Centers for Medicare & Medicaid Serv-
17 ices reported that 129 nursing homes closed in
18 2022, threatening access for America’s seniors, espe-
19 cially in rural areas.

20 (7) The minimum staffing mandate in the pro-
21 posed rule entitled “Medicare and Medicaid Pro-
22 grams; Minimum Staffing Standards for Long-Term
23 Care Facilities and Medicaid Institutional Payment
24 Transparency Reporting” published by the Depart-
25 ment of Health and Human Services on September

1 6, 2023 (88 Fed. Reg. 61352–61429), will result in
2 nursing home closures, displacing an estimated
3 450,000 nursing home residents, harming access to
4 nursing home care, especially in rural areas (as de-
5 fined in the proposed rule).

6 (8) The minimum staffing mandate in the pro-
7 posed rule may exacerbate workforce shortages, es-
8 pecially in rural areas (as defined in the rule).

9 **SEC. 3. PROHIBITION ON FINALIZING PROPOSED STAFFING**
10 **RULE.**

11 The Secretary of Health and Human Services may
12 not implement, enforce, or otherwise give effect to the pro-
13 posed rule entitled “Medicare and Medicaid Programs;
14 Minimum Staffing Standards for Long-Term Care Facili-
15 ties and Medicaid Institutional Payment Transparency
16 Reporting” published by the Department of Health and
17 Human Services on September 6, 2023 (88 Fed. Reg.
18 61352–61429), and may not promulgate any substantially
19 similar rule.

20 **SEC. 4. ADVISORY PANEL ON NURSING HOME WORKFORCE.**

21 (a) IN GENERAL.—Not later than 60 days after the
22 date of the enactment of this section, the Secretary of
23 Health and Human Services (in this section referred to
24 as the “Secretary”) shall establish the Advisory Panel on

1 the Nursing Home Workforce (in this section referred to
2 as the “Panel”).

3 (b) MEMBERSHIP.—

4 (1) NUMBER AND APPOINTMENT.—The Panel
5 shall be composed of 15 members representing var-
6 ious geographic areas, appointed by the Secretary as
7 follows:

8 (A) 1 representative of the Secretary, who
9 shall serve as the chair of the Panel.

10 (B) 2 registered nurses who actively fur-
11 nish services in a skilled nursing facility or
12 nursing facility, one of whom shall represent a
13 rural area.

14 (C) 2 licensed professional nurses who ac-
15 tively furnish services in a skilled nursing facil-
16 ity or nursing facility, one of whom shall rep-
17 resent a rural area.

18 (D) 2 nurse aides who actively furnish
19 services in a skilled nursing facility or nursing
20 facility, one of whom shall represent a rural
21 area.

22 (E) 2 physicians who actively furnish serv-
23 ices in a skilled nursing facility or nursing facil-
24 ity, one of whom shall represent a rural area.

1 (F) 1 representative of the Centers for
2 Medicare & Medicaid Services.

3 (G) 1 representative of the Health Re-
4 sources and Services Administration.

5 (H) 2 individuals with professional exper-
6 tise related to the nursing home workforce, one
7 of whom shall have experience with respect to
8 the nursing home workforce in rural and under-
9 served areas.

10 (I) 1 representative of a not-for-profit
11 skilled nursing facility.

12 (J) 1 representative of a for-profit skilled
13 nursing facility.

14 (2) TIMING OF APPOINTMENTS.—Each of the
15 appointments under paragraph (1) shall be made not
16 later than 60 days after the date of the enactment
17 of this section.

18 (3) TERMS; VACANCIES.—Each member shall be
19 appointed for a term not to exceed 2 years, and a
20 vacancy in the Panel shall be filled in the manner
21 in which the original appointment was made.

22 (4) QUORUM.—13 members of the Panel shall
23 constitute a quorum.

1 (5) FEDERAL ADVISORY COMMITTEE ACT.—
2 Chapter 10 of title 5, United States Code, shall
3 apply to the Panel.

4 (c) DUTIES.—

5 (1) MEETINGS.—

6 (A) FREQUENCY.—The Panel shall meet
7 not later than 180 days after the date on which
8 the appointments described in subsection (b)
9 are made, and not less frequently than twice
10 per year thereafter.

11 (B) PUBLIC ACCESS.—The Panel shall
12 make available on a public website of the De-
13 partment of Health and Human Services—

14 (i) real-time virtual access to each
15 meeting of the Panel; and

16 (ii) not later than 30 days after each
17 such meeting, a recording and transcript of
18 the meeting.

19 (2) REPORTS.—

20 (A) INITIAL REPORT.—Not later than 60
21 days after the initial meeting of the Panel
22 under paragraph (1)(A), the Panel shall submit
23 to the Secretary, the Committee on Ways and
24 Means and the Committee on Energy and Com-
25 merce of the House of Representatives, and the

1 Committee on Finance of the Senate, and shall
2 publish on a public website of the Centers for
3 Medicare & Medicaid Services, a report on the
4 state of the nursing home workforce, which
5 shall include—

6 (i) an assessment of the state of the
7 nursing home workforce in rural and un-
8 derserved areas, including an analysis of—

9 (I) workforce shortages; and

10 (II) with respect to individuals
11 entitled to benefits under part A of
12 title XVIII of the Social Security Act
13 (42 U.S.C. 1395 et seq.) and individ-
14 uals entitled to medical assistance
15 under title XIX of such Act (42
16 U.S.C. 1396 et seq.), barriers to ac-
17 cess to skilled nursing facilities and
18 nursing facilities caused by such
19 shortages;

20 (ii) an analysis of regulations, sub-
21 regulatory guidance, and guidance to State
22 survey agencies issued by the Secretary
23 with respect to skilled nursing facilities
24 and nursing facilities, and the effects of

1 such regulations and guidance on the nurs-
2 ing home workforce;

3 (iii) recommendations for the Sec-
4 retary to strengthen the nursing home
5 workforce, including recommendations for
6 decreasing regulatory burdens for skilled
7 nursing facilities and nursing facilities and
8 making financial investments in training
9 for health professionals; and

10 (iv) other information as the Panel
11 determines necessary.

12 (B) SUBSEQUENT REPORTS.—Not later
13 than 1 year after submitting the initial report
14 under subparagraph (A), and annually there-
15 after, the Panel shall submit and publish an up-
16 dated report in the same manner as required
17 under such subparagraph.

18 (d) DEFINITIONS.—In this section, the following defi-
19 nitions apply:

20 (1) NURSING FACILITY.—The term “nursing
21 facility” has the meaning given such term in section
22 1919(a) of the Social Security Act (42 U.S.C.
23 1396r(a)).

24 (2) NURSING HOME WORKFORCE.—The term
25 “nursing home workforce” means the workforce of

1 health professionals that provide direct resident care
2 in skilled nursing facilities and nursing facilities.

3 (3) RURAL AREA.—The term “rural area”
4 means any area outside a metropolitan statistical
5 area.

6 (4) SKILLED NURSING FACILITY.—The term
7 “skilled nursing facility” has the meaning given such
8 term in section 1819(a) of the Social Security Act
9 (42 U.S.C. 1395i–3(a)).

10 (5) UNDERSERVED AREA.—The term “under-
11 served area” means an area that is—

12 (A) a health professional shortage area, as
13 such term is defined in section 332(a)(1)(A) of
14 the Public Health Service Act (42 U.S.C.
15 254e(a)(1)(A)); or

16 (B) designated as a medically underserved
17 area pursuant to section 330(b)(3)(A) of such
18 Act (42 U.S.C. 254b(b)(3)(A)).

○