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Twenty-One LeadingAge State Affiliates & 20 Attorneys General Join Lawsuit to Overturn CMS Staffing Mandate

Des Moines, IA- A total of 21 LeadingAge state affiliates, membership associations that represent hundreds of not-for-profit aging services providers across the country, have joined a lawsuit with 20 Attorneys General to overturn the Centers for Medicaid and Medicare Services' (CMS) staffing mandate. Led by LeadingAge Kansas, LeadingAge South Carolina, and LeadingAge Iowa, alongside other state affiliates, the suit filed on October 8th in the United States District Court's Northern District of Iowa, intends to overturn the mandate itself, and vacate certain of the more onerous requirements in the rule.

In April, CMS released the Nursing Home Minimum Staffing Standards final rule to the Federal Register. The rule requires all federally funded nursing homes to submit a revised facility assessment and changes the minimum number of hours per resident day (HPRD). All non-urban providers must provide 3.48 hours of direct nursing care per patient, per day and staff a registered nurse 24 hours a day. These specific breakdowns also require 0.55 RN and 2.45 certified nurse aide (CNA) coverage per patient, per day.

These newly-prescribed HPRDs mean nursing homes across the U.S. will need an additional 27,000 full-time registered nurses (RNs) and 78,000 full-time nurse aides costing over \$7 billion—an impossible requirement to meet amid a worldwide nursing shortage and dismal Medicaid reimbursement rates that do not fully cover the actual cost of care. Sadly, the HPRD limits the utilization of licensed practical nurses (LPNs) who provide most of the direct patient care in nursing homes, potentially displacing thousands of these workers across the U.S.

LeadingAge South Carolina CEO Kassie South noted that the industry needs solutions to the workforce shortage, not unattainable mandates.

"The Final Rule has already forced our nonprofit faith-based retirement communities to make difficult decisions about reducing their skilled nursing offerings, decertifying their skilled nursing beds, and in some cases closing their buildings all together. This affects our entire healthcare system and limits older adults' ability to receive care, especially in rural areas. We are amid the largest workforce shortage in our country and with the closure of skilled nursing communities, older adults and family members will have to travel great distances to receive care. This will further isolate older adults and negatively impact care outcomes," South said.

Other LeadingAge state affiliates who are plaintiffs in this case include Southeast (Florida, Alabama, Mississippi, and Louisiana), Pennsylvania, Nebraska, Maryland, Missouri, Colorado, South Dakota, Michigan, New Jersey, Tennessee, Ohio, Oklahoma, Delaware, Pennsylvania, Minnesota, and Virginia. These affiliates share the view that CMS' one-size-fits-all mandate is untenable and unsustainable for their respective not-for-profit provider members, and most skilled nursing providers across the country. The Attorneys General that are supporting the lawsuit from states across the country include Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Missouri, Montana, Nebraska, Oklahoma, North Dakota, South Carolina, South Dakota, Utah, Virginia, and West Virginia.

“Our faith-based and nonprofit nursing homes have continually proven they are committed to providing the highest quality care in the nation and stand ready to work hand-in-hand with the Biden Administration to enact real solutions for the entrenched workforce crisis in long term care,” said Rachel Monger, President & CEO of LeadingAge Kansas. “This proposed minimum staffing rule for nursing homes will result in nothing but reduced access to needed nursing home care, and even more closures of nursing homes, particularly across the rural communities in our country. The federal government cannot mandate staff where none exist, and we are asking the courts to overturn this ill-conceived and destructive regulation.”

About LeadingAge Iowa

For more than 50 years, LeadingAge Iowa has been the strong and distinct voice for not-for-profit aging services providers in Iowa as we strive to be the champion for advancement and innovation in aging services. Our members provide care to older adults across the care continuum and lead in innovative practices to serve the needs and preferences of the aging population. Learn more at leadingageiowa.org.

About LeadingAge Kansas

LeadingAge Kansas is an association of 160 not-for-profit and other mission-driven aging services providers dedicated to serving the needs of aging Kansans. We advance policies and promote practices and learning that empowers our members to help seniors live fully as they age. Our members serve nearly 25,000 seniors in Kansas each day. Learn more at leadingagekansas.org.

About LeadingAge South Carolina

LeadingAge South Carolina is a community of mission-driven aging services providers serving older adults in South Carolina. We value older adults and those who serve them and we champion, equip, and advocate for mission-driven aging services providers. LeadingAge South Carolina strives to be known as the trusted voice in aging by collaborating with providers to strategically manage change, innovate, and advocate to transform an aging South Carolina. Learn more at leadingagesc.org.

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