



AFL-CIO

AMERICA'S UNIONS

**American Federation
of Labor and
Congress of Industrial
Organizations**

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September 17, 2024

Dear Lawmaker,

On behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), I write to express our strong opposition to three pieces of legislation that may soon be marked up by the full Energy & Commerce Committee:

- H.R. 9067, “Building America’s Health Care Workforce Act,”
- H.R. 3227, “Ensuring Seniors’ Access to Quality Care Act.”
- H. J. Res. 139, providing for congressional disapproval of the rule submitted by the Centers for Medicare & Medicaid Services relating to Minimum Staffing Standards for Long-Term Care Facilities.

Despite their names, we believe these bills would be devastating for residents and workers in nursing homes.

H. J. Res. 139

The connection between staffing levels in nursing homes and the quality of care is well-established by decades of research. A federal minimum staffing requirement is necessary given the widespread tendency of nursing homes to staff at levels so low that care is often compromised.

Industry claims that there are not enough people willing to work in a nursing home flies in the face of the government’s own economic data. There are more than 130,000 nursing home workers who quit work or were let go during the pandemic and have not returned to the bedside. That is more than enough to fill the estimated 77,000 additional certified nurse assistants required by the new staffing standard. Those workers are trained and ready to return to the bedside if there is safer working conditions.

For most facilities, the challenge is not hiring new nursing staff but retaining them. The average nursing home continues to lose over half of its nursing staff every year. For some workers, it is burnout as a result of low staffing. For others, it is a matter of having better economic opportunities elsewhere. To the extent that facilities are facing a labor shortage, it is a problem they created, and they can fix it.

We share the concerns of many communities about nursing home closings. As the trade association representing non-profit nursing facilities has noted, there have been hundreds of facility closures annually. Facilities close because of poor quality of care and low occupancy rates; in some cases, closures result from state efforts to “rebalance” their Medicaid long-term care program to increase home and community-based options. Increasingly, closures are the result of private equity investors deciding that certain facilities are not profitable enough. In other words, facilities will continue to close for a variety of reasons that have nothing to do with staffing.

Approving a CRA would circumvent a fair and open regulatory process in which thousands of workers and consumer voices in favor of the final regulation; to intervene now would be to elevate the voices of those with a financial interest over the voices of independent experts who have found overwhelming evidence that staffing standards would improve the lives of residents and workers in nursing homes. Barring HHS from ever developing a staffing standard would tie the hands of the federal government when it comes to improving the quality of nursing home care and nursing home jobs.

As we said in our July 9th letter with 49 other labor organizations, it is absolutely critical that those who want to stand with workers do so united in their opposition to these attacks on pro-worker rulemaking. Each vote for one of these CRA disapproval resolutions is a vote against labor.

H.R. 9067

This legislation would reinstate the temporary nurse aide (TNA) waiver created during COVID that waived federal training requirements. Facilities would only need to provide the training required by the states, which in some cases is as little as an 8-hour training module. The bill would also allow competency evaluations to be conducted in the facilities where TNAs work if the state does not offer in-person or online evaluations at least weekly. This would allow TNA training even in facilities with serious violations.

The 75-hour training standard for nurse aides required by the 1987 Nursing Home Reform Law was a major step toward ensuring quality of care and a safe workplace; this legislation would erode that progress. While we urgently need to grow the workforce, we do not want to do so by creating a segment of the workforce that is insufficiently trained. This legislation leaves the residents vulnerable to what we saw during the recent COVID crisis when facilities employed people with insufficient training and basic skills – often with fatal consequences.

H.R. 3227

Current law currently prevents nursing homes from conducting their own Certified Nursing Aide (CNA) training programs if they have been found to have committed certain violations. However, these nursing homes may petition the Secretary of Health and Human Services to allow them to continue to operate their training program if the facility shows the violation was not related to direct resident care. H.R. 9067 would remove this discretion from the Secretary and automatically allow facilities to continue to operate their training programs if the violation was not related to “direct patient harm.” While we appreciate the fact that facilities with a demonstrated pattern of poor care would not be able to conduct their own training program, the new standard would allow nursing homes that have falsified records or retaliated against a whistleblower to operate these training programs -- even though such conduct is an undertaken to hide poor care and harm.

We urge you to vote against these bills when they come up for consideration by the full committee.

Sincerely,



Jody Calemine
Director, Government Affairs