



Build Back Better and Older Adults

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On Friday, November 19, the House of Representatives passed the Build Back Better Act (H.R. 5376). As the national organization representing providers of aging services ***across the entire continuum of care***, LeadingAge supports the bill's extensive provisions expanding Medicaid Home and Community-Based Services, improving funding for the aging services workforce, funding for health care worker education, training, and recruitment, and significant new investments in affordable housing. We urge members of the Senate to preserve these important provisions and increase the funding for new construction of HUD Section 202 homes for low-income older people.

However, to preserve maximum choice for older people and their families, there are two provisions in the bill related to nursing home staffing that LeadingAge cannot support without key changes. Retaining the nursing home staffing study (section 30720) and the 24 hour registered nurse requirements (section 13200) as currently written will make it impossible for many nursing homes to survive. Legislation that supports some parts of the aging services continuum and potentially severely harms other parts of it limits the choices available to people who need support and their families.

Nursing Home Staffing Provisions Must be Fully Funded and Exemptions Must be Workable

H.R.5376 contains two provisions requiring increased staffing in Medicare/Medicaid certified nursing homes:

- Sec. 30720, a study to determine minimum staffing ratios for nurses and direct care staff to result in a regulation mandating staffing ratios in Medicare/Medicaid nursing homes for the first time.
- Sec. 132000, requiring that all Medicare/Medicaid nursing homes have an RN on duty 24/7.

LeadingAge strongly supports ensuring that nursing homes are appropriately staffed to provide the highest quality of care and our members attempt to do this every day. However, neither of these two nursing home provisions in H.R. 5376 include funding to pay additional staff. In addition, both provisions refer to existing waivers for provider organizations that are unable to recruit staff after exhausting all possible sources; it is not clear that the current waivers will work for these two new requirements.

Over the years, studies have confirmed that not for profit nursing homes have higher staffing ratios, pay their direct care staff higher rates, and generally have better records on quality of care and life for residents.¹ However, the social, economic, and medical consequences of the coronavirus pandemic along with an on-going national shortage of professional nurses², have combined to put that record in

¹<https://medicareadvocacy.org/non-profit-vs-for-profit-nursing-homes-is-there-a-difference-in-care/>;
https://mds.marshall.edu/cgi/viewcontent.cgi?article=1155&context=mgmt_faculty;
https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/reports/mar21_medpac_report_to_the_congress_sec.pdf (p 207).

² <https://www.usa.edu/blog/nursing-shortage/>

jeopardy. These staffing provisions exacerbate rather than alleviate the challenges nursing homes confront. They have the potential to drive increasing numbers of nursing homes to bankruptcy and closure. Further, the “staffing ratio study” is predicated on the need for evidence to support staffing ratios prior to requiring them – and it covers “nursing staff,” which includes registered nurses. It is inconsistent to mandate RN staffing minimums without the evidence to support such a requirement.

LeadingAge urges the Senate to address these shortcomings in the House-passed measure in one of the following three ways:

- 1. Fully fund the new requirements and ensure that the exemption process is functional and holds provider organizations harmless when they pay competitive wages and have exhausted all options and still cannot hire staff.**
- 2. Replace the two provisions with a Technical Assistance Center for Nursing Home Staffing, which would be directed to:**
 - a. conduct the nursing staff study called for in section 30720;
 - b. evaluate how to address the severe and growing shortage of nursing (and other) staff in long-term care; and
 - c. develop a strategy that recognizes the realities of the current labor market, the impact of the pandemic, including appropriating sufficient funds to support implementation.
- 3. Eliminate both the “staffing ratio study” and the “24 hour RN” requirement and fully consider and fund them as part of a bigger nursing home modernization and reform bill consistent with the Care for Our Seniors Act endorsed by LeadingAge and AHCA.**

Any of these three solutions would demonstrate support for the full range of choices for long-term care consumers and their families. Further, each solution is consistent with the approach to the aging services workforce in other provisions of H.R. 5376.

Housing for Older Adults

Millions of older adults spend more than half of their incomes for housing, leaving precious little for food and medicine. The nation’s need for affordable housing far outstrips the supply and has been under-funded for decades. The Build Back Better Act’s historic investments in affordable housing could be further augmented by increasing funding for the only HUD program specifically designed to meet the needs of older adults aging in community.

Sec. 40005. LeadingAge urges Congress to increase the Build Back Better Act’s current \$501 million for HUD’s Section 202 Supportive Housing for the Elderly funding program to at least \$1 billion.

The critical services provided in Build Back Better—including Home and Community-Based Services and Money Follows the Person investments—cannot be realized if older Americans don’t have a safe place to live. Without more Section 202 housing, these provisions will be ineffective and low income older adults will continue to languish on growing waiting lists for service-connected, affordable housing.

Conclusion:

In conclusion, the Build Back Better Act is the most consequential legislation affecting older adults in decades. But strengthening HCBS and affordable housing while significantly hobbling nursing homes limits consumers’ ability to access the level of care provided in a nursing home.