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October 5, 2022

Chiquita Brooks-LaSure

Administrator

U.S. Centers for Medicare & Medicaid Services

7500 Security Boulevard

Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of ADvancing States, I am writing to urge you to extend the national 1135 waivers that expanded the available long-term care (LTC) workforce by providing the opportunity to utilize temporary nurse aides (TNAs) in LTC facilities. ADvancing States is a nonpartisan association of state government agencies that represents the nation's 56 state and territorial agencies on aging and disabilities. We work to support visionary state leadership, the advancement of state systems innovation, and the development of national policies that support home and community-based services for older adults and persons with disabilities. Our members administer a wide range of services and supports for older adults and people with disabilities, including overseeing a wide range of Medicaid-funded home and community-based services (HCBS). Together with our members, we work to design, improve, and sustain state systems delivering long-term services and supports (LTSS) for people who are older or have a disability and for their caregivers.

As you know, on June 6th CMS ended the section 1135 waiver that waived 42 CFR 483.35(d), which requires that all nursing aides complete a training course to become a certified nursing assistant (CNA) within four months of hire. This waiver not only reduced the flexibility of providers to address historic workforce shortages, but it also created significant backlogs in the ability of workers to access available trainings. Since the four-month period expires later this week, states and providers are scrambling to address the shortages that currently exist and are likely to be exacerbated if the waiver is not extended.

TNAs provide companionship and assistance to residents for non-clinical, everyday tasks and are essential to supporting the health and welfare of nursing home residents. With the existing workforce shortage in our nursing homes, losing any nursing assistants from the workforce poses serious risks to the health and safety of residents. Also, because nursing homes play a critical role in facilitating and ensuring timely discharges from acute care hospitals, these care settings also rely on nursing assistant staffing in nursing homes. Without full operation and staffing of the skilled nursing facility pipeline, acute care hospitals would soon fill with patients, challenging their ability to admit and attend to those who truly require hospital-level treatment. Acute hospital backlogs already exist in



many places across the country. As we enter the cold and flu seasons, and deal with various strains of COVID-19, hospitals are likely to experience increased demand. Anything that further reduces the ability of nursing homes to maintain residents will only worsen hospital capacity challenges and lead to even more challenging and negative outcomes.

We recognize that CMS provided an opportunity to pursue statewide waivers for this issue. However, the logistical and administrative complexity of states requesting and CMS approving such waivers created significant challenges with timely processing of the waivers. Our members remain extremely concerned about the looming staffing crisis despite CMS' recognition that the issue remains.

In order to address this national problem, we strongly urge CMS to reinstitute the nationwide waiver of Section 483.35(d) until at least the end of the COVID-19 Public Health Emergency. We do not believe that this would, or should, absolve states and providers from ensuring appropriate quality oversight and monitoring. We believe that TNAs should continue to pursue appropriate training and certification; however, the unprecedented nature of the COVID-19 emergency, the extreme workforce shortages, and the backlog created by a nationwide deadline for training has led to a crisis that cannot be mitigated by the end of the week. In conjunction with the blanket extension, we encourage CMS to partner with states and providers to identify achievable timelines for ensuring that all TNAs complete the required training.

We appreciate the opportunity to comment on this important topic. If you have any questions regarding this letter, please feel free to contact Damon Terzaghi at dterzaghi@advancingstates.org.

Sincerely,

A handwritten signature in blue ink that reads "Martha Roherty".

Martha Roherty
Executive Director
ADvancing States