

November 6, 2023

Chiquita Brooks-LaSure, Administrator
Center for Medicare & Medicaid Services
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Submitted electronically via <http://www.regulations.gov>.

Re: Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting [CMS-3442-P; RIN 0938-AV25], 88 Fed. Reg. 61352

Dear Administrator Brooks-LaSure:

On behalf of the Milwaukee County Area Agency on Aging – an organization with the mission to improve the health and well-being for all older adult residents of Milwaukee County by acknowledging and overcoming structural racism, promoting health equity, improving communication and collaboration, and addressing all dimensions of wellness – we welcome the opportunity to comment on the proposed rule changes for Long-Term Care Facilities.

Milwaukee County's older adult population continues to grow and, as family caregivers are in increasingly short supply, individuals seek out long-term care facilities more than ever. While we work to provide programs and services that encourage healthy aging in place, we also want to ensure that older adults in long-term care facilities are receiving medical care that goes above and beyond the bare minimum. However, we also acknowledge that conditions in long-term care facilities cannot be resolved until worker shortages are addressed. Similar to family caregivers, there are severe shortages in health care workers due to wages, education and training requirements, and more. We continue to encourage the Center for Medicare and Medicaid Services (CMS) to consider changes that can be made to address issues with worker shortages.

We strongly support the initiative to improve the quality of care in nursing homes. For decades, experts have recommended minimum nursing staffing requirements to improve the quality of care at nursing homes; a wide range of peer-reviewed literature demonstrates the connection between staffing and quality of care in nursing homes. In 2001, CMS noted the "strong and compelling" evidence for having minimum staffing levels. In 2022, a National Academy of Science, Engineering, and Medicine panel recognized that increasing overall nursing staffing has been a longstanding recommendation for improving the quality of care in nursing homes and long-term care facilities.

Because recommendations to increase nursing home staffing levels have been persistent for more than two decades, we are supportive of CMS going even further than the suggested recommendations. We urge CMS to consider the following related to the proposed rule:

- Minimum nurse staffing standards of 0.55 hours per resident day for Registered Nurses (RNs) and 2.45 hours per resident day for Nurse Aides (NAs)—we are supportive of including clear standards for how many hours per day nursing staff should spend with

residents. We encourage CMS to consider increasing the required hours per resident day for both RNs and NAs. Knowing the evidence-based connection between increased staffing and quality of care, we ask that CMS go further with their recommendations in order to improve patient outcomes. Because of the requirement that an RN be on staff 24 hours a day, seven days a week, we think this is reasonable.

- A requirement to have an RN onsite 24 hours a day, seven days a week—we support this proposed rule. CMS should include a provision that only RNs providing direct care to residents should be counted towards this staffing requirement; RNs who perform solely administrative duties should not be included.
- Enhanced facility requirements—we are supportive of the provisions CMS included in the proposal related to the use of facility assessments to improve staffing plans and staffing compensation. Facilities should exceed the minimum requirements if able and needed based on patient population, as noted by the proposed rule and CMS should encourage those facilities to continue using their assessments to plan appropriately. In addition, we support that CMS acknowledges the difficulty many health care providers have in recruiting and retaining staff and support the request by CMS that organizations proactively address the root causes of workforce shortages and undertake major planning efforts.
- Exemptions/waivers—we are supportive of the use of exemptions and waivers to these requirements if CMS abides by the standards outlined in the proposed rule. We agree that there are mitigating circumstances that could prevent a facility from conforming to these standards, including location in a rural area, limited term emergency, or some other outstanding condition, but want to ensure that the staffing standards are enacted systemwide to invoke the most impactful change. CMS notes in its proposal that there is often little transparency to the operating and pay structures of many facilities that prevent a true understanding of workforce shortage issues. Unless facilities are transparent with CMS, exemptions and waivers should be limited.

Overall, we are grateful that CMS has amplified concerns arising from long-term care facilities. We believe that these provisions will result in a higher quality of care for residents and support their overall health, wellbeing, and success.

Thank you for your consideration of our comments. Please reach out if you have any questions about this or other issues impacting older adults.

Sincerely,

Milwaukee County Area Agency on Aging