Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule (CMS 3442-F)

On April 22, 2024, the Centers for Medicare & Medicaid Services (CMS) affirmed its commitment to hold nursing homes accountable for providing safe and high-quality care for the nearly 1.2 million residents living in Medicare- and Medicaid-certified long-term care facilities by issuing the Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting final rule.

This final rule was informed by the feedback CMS received from over 46,000 public comments submitted in response to the proposed rule. Central to this final rule are new comprehensive minimum nurse staffing requirements, which aim to significantly reduce the risk of residents receiving unsafe and low-quality care within LTC facilities. CMS is finalizing a total nurse staffing standard of 3.48 hours per resident day (HPRD), which must include at least 0.55 HPRD of direct registered nurse (RN) care and 2.45 HPRD of direct nurse aide care. Facilities may use any combination of nurse staff (RN, licensed practical nurse [LPN] and licensed vocational nurse [LVN], or nurse aide) to account for the additional 0.48 HPRD needed to comply with the total nurse staffing standard.

CMS is also finalizing enhanced facility assessment requirements and a requirement to have an RN onsite 24 hours a day, seven days a week, to provide skilled nursing care. This final rule provides a staggered implementation timeframe of the minimum nurse staffing standards and 24/7 RN requirement based on geographic location as well as possible exemptions for qualifying facilities for some parts of these requirements based on workforce unavailability and other factors. The requirements of this final rule prioritize safety and health care quality while taking into consideration the unique workforce challenges some LTC facilities may be experiencing, especially those in rural areas. CMS will closely monitor and evaluate the provisions of this final rule, including but not limited to, the minimum staffing standards, the 24/7 RN requirement, the exemption process, and the definition of rural, as they are implemented over the next several years to determine whether any updates or changes are necessary in the future.

Additionally, to increase transparency related to compensation for workers, CMS will also require states to collect and report on the percent of Medicaid payments that are spent on compensation for direct care workers, and support staff, delivering care in nursing facilities and intermediate care facilities, for individuals with intellectual disabilities.

Minimum Nurse Staffing Standards

Staffing in LTC facilities has remained a persistent concern. CMS' new minimum nurse staffing standards in this rule set a national and broadly applicable baseline that will significantly reduce the risk of unsafe and low-quality care for residents across all LTC facilities. CMS is finalizing a total nurse staffing standard, based on public comment feedback, that requires facilities to provide a minimum of 3.48 HPRD of total direct nursing care to residents, of which at least 0.55 HPRD of care must be provided by RNs

and 2.45 HPRD of care provided by nurse aides. Facilities may use any combination of nurse staff (RN, licensed practical nurse (LPN) and licensed vocational nurse (LVN), or nurse aides) to account for the additional 0.48 HPRD needed to comply with the total nurse staffing standard. A total nurse staffing standard provides for more hours of direct care to residents while also allowing facilities to utilize other direct care nurse staff, such as LPNs/LVNs — an important group of direct care nurses — in meeting the minimum standard.

While these are minimum staffing standards, CMS expects LTC facilities to use the updated and newly strengthened facility assessment to determine whether their staffing needs to be set above these minimums, based on resident acuity and individual care needs. CMS is committed to continued examination of staffing thresholds, including work to review quality and safety data resulting from initial implementation of these finalized policies, as well as robust public engagement.

Improving the RN On-Site Requirement

LTC facilities provide care for residents with increasing medical complexity and acuity of health conditions who require substantial resources and care provided or supervised by an RN. While the finalized minimum staffing standards described above seek to build on existing requirements, by creating consistent and broadly applicable standards that significantly reduce the risk of unsafe and low-quality care across LTC facilities, the RN onsite 24 hours a day, seven days a week requirement ensures that there is an RN available to help mitigate, and ultimately reduce, the likelihood of preventable safety events, particularly during evenings, nights, weekends, and holidays.

Therefore, CMS is finalizing, with revisions to its proposal, the requirement for an RN to be onsite 24 hours a day, seven days a week, and available to provide direct resident care. The 24/7 RN onsite can be the Director of Nursing (DON); however, they must be available to provide direct resident care.

Strengthening the Facility Assessment Requirement

To help improve the safety of residents, a comprehensive approach to establishing staffing standards is necessary to ensure that facilities are making thoughtful, informed staffing plans and decisions focused on meeting resident needs. As part of that approach, LTC facilities are already required to conduct, document, and review, annually and as necessary, a facility-wide assessment to determine what resources are necessary to care for residents competently during both day-to-day operations and emergencies.

To ensure that facilities are utilizing the assessment as intended by making thoughtful, person-centered staffing plans, and decisions focused on meeting resident needs, including staffing at levels above the finalized minimums as indicated by resident acuity, CMS is finalizing the following:

- Facilities must use evidence-based methods when care planning for their residents, including consideration for those residents with behavioral health needs.

- Facilities must use the facility assessment to assess the specific needs of each resident in the facility and to adjust as necessary based on any significant changes in the resident population.
- Facilities must include the input of the nursing home leadership, including but not limited to, a member of the governing body and the medical director; management, including but not limited to, an administrator and the director of nursing; and direct care staff, including but not limited to, RNs, LPNs/LVNs, and NAs, and representatives of direct care staff as applicable. The LTC facility must also solicit and consider input received from residents, resident representatives, and family members.
- Facilities are required to develop a staffing plan to maximize recruitment and retention of staff consistent with what was described in the President's April Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers.

Permitting Regulatory Flexibility

CMS holds nursing homes accountable for ensuring that residents receive safe and high-quality care. While we fully expect that LTC facilities will be able to meet our final minimum staffing standards, we recognize that in some instances, external circumstances may temporarily prevent a facility from achieving compliance despite the facility's demonstrated best efforts. Moreover, we know that some LTC facilities may still be experiencing challenges in hiring and retaining certain nursing staff because of local workforce unavailability. Therefore, in addition to the existing statutory waiver of requirement to provide licensed nurses on a 24-hour basis, CMS is finalizing our proposal for hardship exemptions, with some modifications, to apply in limited circumstances, to the HPRD and 24/7 onsite RN requirements.

LTC facilities may qualify for a temporary hardship exemption from the minimum nurse staffing HPRD standards and the 24/7 RN requirement only if they meet the following criterion for geographic staffing unavailability, financial commitment to staffing, and good faith efforts to hire:

- The facility is located in an area where the supply of RN, NA, or total nurse staff is not sufficient to meet area needs as evidenced by the applicable provider-to-population ratio for nursing workforce (RN, NA, or combined licensed nurse and nurse aide), which is a minimum of 20% below the national average, as calculated by CMS using data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau.
    - The facility may receive an exemption from the total nurse staffing requirement of 3.48 HPRD if the combined licensed nurse and nurse aide to population ratio in its area is a minimum of 20% below the national average.
    - The facility may receive an exemption from the 0.55 RN HPRD requirement, and an exemption of eight hours a day from the RN on-site 24 hours per day for seven days a week requirement, if the RN to population ratio in its area is a minimum of 20% below the national average.

    - The facility may receive an exemption from the 2.45 NA HPRD requirement if the NA to population ratio in its area is a minimum of 20% below the national average.

Eligible LTC facilities that meet the criteria will receive a temporary hardship exemption by completing the following:

- The facility provides documentation of good faith efforts to hire and retain staff, such as through job postings, the number and duration of vacancies, job offers made, and competitive wage offerings.
- The facility provides documentation of the facility's financial commitment to staffing, including the amount the facility expends on nurse staffing relative to revenue.

Prior to being considered, the LTC facility must be surveyed for compliance with the LTC participation requirements. CMS will coordinate with state survey agencies to determine if the facility meets the criteria for a hardship exemption noted above. Facilities that are granted an exemption will be required to: 1) post a notice of its exemption status in a prominent and publicly viewable location in each resident facility; 2) provide notice of its exemption status, and the degree to which it is not in compliance with the HPRD requirements, to each current and prospective resident; and 3) send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman. CMS will indicate if a facility has obtained an exemption on the Medicare.gov Care Compare website.

Facilities are not eligible for an exemption if any one of the following is true:

- They have failed to submit their data to the Payroll Based Journal System.
- They have been identified as a special focus facility (SFF).
- They have been identified within the preceding 12 months as having: widespread, or a pattern of, insufficient staffing that resulted in actual harm to a resident; or an incident of insufficient staffing that caused or is likely to cause serious harm or death to a resident.

Facilities that meet the hardship exemption criteria are eligible from the time at which the exemption is granted until the next standard recertification survey, unless the facility meets any of the above-mentioned criteria for not being eligible for the exemption during that time. The hardship exemption may be extended on each standard recertification survey, after the initial period, if the facility continues to meet the exemption criteria.

Staggered Implementation

To give LTC facilities time to achieve compliance with the proposed minimum staffing requirements, CMS is implementing the minimum nurse staffing requirements to occur in three phases over a three-year period for all non-rural facilities. Specifically, we are finalizing the following for non-rural facilities:

- Phase 1 — Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.

- Phase 2 — Within two years of the final rule publication, facilities must meet the 3.48 HPRD total nurse staffing requirement and the 24/7 RN requirement.
- Phase 3 — Within three years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

CMS acknowledges the unique challenges that rural LTC facilities may face, especially as it relates to staffing. We intend to promote safe, high-quality care for all residents regardless of location. We also recognize the need to strike an appropriate balance that considers the current challenges some LTC facilities are experiencing, particularly in rural areas. Therefore, we are finalizing a later implementation date for rural facilities. Specifically, we are finalizing the following for facilities located in rural areas (as defined by the Office of Management and Budget):

- Phase 1 — Within 90 days of the final rule publication, facilities must meet the facility assessment requirements.
- Phase 2 — Within three years of the final rule publication, facilities must meet the 3.48 HPRD total nurse staffing requirement and the 24/7 RN requirement.
- Phase 3 — Within five years of the final rule publication, facilities must meet the 0.55 RN and 2.45 NA HPRD requirements.

Medicaid Institutional Payment Transparency

Millions of Americans, including children and adults of all ages, need long-term services and supports (LTSS), because of disabilities, chronic illness, and other factors. Today, most people who receive Medicaid-funded LTSS are served in the community. However, each year about 1.5 million people receive Medicaid-funded LTSS in nursing facilities and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID). Chronic understaffing and high rates of worker turnover in nursing facilities and ICFs/IID make it difficult for people with disabilities and older adults to have access to high-quality services.

The Medicaid Institutional Payment Transparency Reporting provisions, finalized in this rule, are designed to promote public transparency related to the percentage of Medicaid payments for services in nursing facilities and ICFs/IID that is spent on compensation to direct care workers and support staff. These requirements complement similar requirements in the *Ensuring Access to Medicaid Services* final rule requiring, among other things, that states report to CMS and publicly on the percentage of Medicaid payments, for certain home- and community-based services, that is spent on compensation for direct care workers. Taken together, these requirements will provide a comprehensive look at Medicaid spending on the direct care workforce across institutional and community-based settings.

Highlights from the Medicaid Institutional Payment Transparency Reporting provisions include:

- **New institutional payment reporting requirements** requiring states to report to CMS on the percentage of Medicaid payments for services in nursing facilities and ICFs/IID that is spent on compensation for direct care workers (such as nursing and therapy staff) and support staff (such as housekeepers and drivers

providing transportation for residents). These requirements apply regardless of whether a state's LTSS delivery system is fee-for-service or managed care.

- **Support for quality care and worker safety** by excluding costs of travel, training, and personal protective equipment (PPE) from the calculation of the percent of Medicaid payments going to compensation. Excluding the costs of training, travel, and PPE from the calculation will help ensure that nursing facilities and ICFs/IID continue to invest in these critical activities and items, without providers being concerned that these costs will count against their spending on compensation to direct care workers and support staff.
- **Providing an exemption** for the Indian Health Service and Tribal health programs subject to 25 U.S.C. 1641 from the reporting requirements.
- **Promoting the public availability of Medicaid institutional payment information,** by requiring that both states and CMS make the institutional payment information reported by states available on public-facing websites.

Nursing Home Staffing Campaign
In September 2023, CMS announced that the agency would be investing over $75 million to launch a national nursing home staffing campaign to increase the number of nurses in nursing homes, thereby enhancing residents' health and safety. Through this campaign, CMS will be providing financial incentives for nurses to work in the nursing home environment. For example, nurses could receive tuition reimbursement for a specific commitment to work in a qualifying nursing home or in an oversight capacity with a state inspection agency. We will also be making it easier for individuals to become nurse aides by streamlining the process for enrolling in training programs and finding placement in a nursing home. Finally, we will be using the campaign to promote awareness of the many career pathways in the nursing field that are available to help recruit all types of individuals, from NAs to LPNs/LVNs and RNs. To help accomplish these tasks, we will launch an awareness campaign for these programs and the benefits of working in nursing homes.

Additionally, CMS will partner with states to bolster nurse recruitment. For example, states will be able to invest funds to improve their nurse aide training information and increase the number of financial incentives available. CMS will also work with other partners to amplify impact.

We are currently conducting comprehensive research to inform the structure of the program and look forward to releasing additional information and a resource hub later this year. We anticipate financial incentives will begin to be distributed in 2025. These investments will accelerate and supplement nursing homes' necessary efforts to increase staffing and maintain compliance with the final staffing rule to ultimately improve safety and quality of care for nursing home residents.