

November 6, 2023

*Submitted electronically via regulations.gov*

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

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 (September 6, 2023).

Dear Administrator Brooks-LaSure:

The undersigned members of the Long-Term Services and Supports (LTSS) Task Force of the Consortium of Constituents with Disabilities (CCD) appreciate the opportunity to comment on the proposed rule to establish nurse staffing standards for long-term care facilities. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society, free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

We have long advocated for equitable access to Medicaid LTSS, including Medicaid Home and Community Based Services (HCBS). Quality long-term care for people with disabilities begins with a well-staffed and supported workforce. Therefore, we greatly support the Administration's initiative to improve the quality of care for residents in nursing facilities and Intermediate Care Facilities (ICFs) with this proposed rule. However, we feel the minimum staffing levels proposed in the rule are insufficient and could result in greater harm to residents of these facilities.

### Proposed Minimum Staffing Levels

Countless studies, including the most recent 2023 Abt study prepared for CMS<sup>1</sup>, shows more staff ultimately leads to much better care outcomes including fewer hospitalizations, better infection control, and reduced mortality.<sup>2</sup> Staffing at all levels of care is particularly important to

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<sup>1</sup> Abt Associates, *Nursing Home Staffing Study: Comprehensive Report* (June 2023) at 76, <https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf> (hereafter "2023 Abt Study").

<sup>2</sup> *Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels* (CMS-1765-P, 87 Fed. Reg. 22720 (April 15, 2022)). See also Nicholas Castle, *Nursing Home Caregiver Staffing Levels and Quality of Care: A Literature Review*, 27 *J. of Applied Gerontology* 375, 375- 405 (2008); Mary

address all the care needs of residents with various disabilities. However, the proposed staffing level of .55 Hours Per Resident Day (HPRD) for Registered Nurses (RN), and 2.45 HPRD for Certified Nurse Aides (CNA) is significantly lower than the previous recommendations of 4.1 HPRD.<sup>3</sup> The proposed staffing levels also fail to address the critical work of Licensed Practical Nurses (LPN) by not providing any staffing levels for LPNs.

We recognize that many long-term care facilities are facing workforce shortages, due in part to low compensation and increased demands to care for a growing number of residents. However, hiring more staff can alleviate turnover. Other labor challenges can be solved, as evidenced by the difference in staffing between for-profit facilities and nongovernmental nonprofit facilities. Average staffing for the latter already meets or exceeds the 4.1 HPRD.<sup>4</sup> Both types of facilities receive the same reimbursement from public programs, but revenue is allocated differently. The final rule should ensure that facilities receiving high revenue are providing meaningful support to their workforce.

Relatedly, we encourage CMS to limit the number and duration of waivers to facilities, if any should be given at all. Waivers should only be granted if a facility has demonstrated a good-faith effort to recruit and hire, with documentation of those efforts to hire, reduce turnover, and offer a living wage for that community. We feel this would give well-intentioned facilities enough leeway to address staffing shortages outside their control while still holding facilities accountable to provide adequate care to residents.

Given that the proposed levels merely provide a floor, we recommend a minimum of 4.2 HPRD as follows:

- Care provided by a CNA at 2.8 HPRD
- Care provided by a licensed nurse at 1.4 HPRD, with at least .75 hours provided by an RN, and the remaining time provided by either an RN or LPN

### Additional Considerations

We strongly support the proposed requirement to have a RN in the facilities 24 hours a day, seven days a week. However, this designated RN should be available to provide direct care and supervision of care, and not perform solely administrative functions.

We also appreciate the efforts to increase transparency in the Medicaid program for nursing facilities and ICFs. Reporting requirements should include both the percentage of revenue spent

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Ellen Dellefield et al., *The relationship between registered nurses and nursing home quality: An integrative review (2008-2014)*, 33 *Nursing Economic\$* 95, 95-108, 116 (2015).  
; Nicholas G. Castle & Ruth A. Anderson, *Caregiver Staffing in Nursing Homes and Their Influence on Quality of Care*, 49 *Medical Care* 545, 545-552 (2011); Nicholas G. Castle & John Engberg, *Further Examination of the Influence of Caregiver Staffing Levels on Nursing Home Quality*, 48 *Gerontologist* 464, 464-76 (2008); John F. Schnelle, et al., *Relationship of Nursing Home Staffing to Quality Of Care*, 39 *Health Services Research* 225, 225-250 (2004).

<sup>3</sup> Centers for Medicare & Medicaid Services, Abt Associates Inc. *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes*, Report to Congress: Phase II Final. Volumes I–III. Baltimore, MD: CMS, 2001.

<sup>4</sup> Abt Associates, *Nursing Home Staffing Study Comprehensive Report*, (June 2023) available at <https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>.

on staff as well as median hourly wages for each category of employees. Further, the data should be disaggregated by job duty since wages for different types of workers are incredibly wide-ranging. Just posting broad categorical percentages or median hourly wages for a range of job classifications does not provide transparency as to how each type of worker is actually compensated. We also support the publication of the compensation data on a website that is accessible to individuals with disabilities and those with Limited English Proficiency.

We thank the Administration once again for addressing these challenging issues. People with disabilities rely on a quality and sustainable workforce to address growing care needs. If you have any questions, please feel free to contact Gelila Selassie at [gselassie@justiceinaging.org](mailto:gselassie@justiceinaging.org).

Respectfully,

American Association on Health and Disability  
Amputee Coalition  
Autism Society of America  
Caring Across Generations  
Justice in Aging  
Lakeshore Foundation  
National Association of Councils on Developmental Disabilities  
National Disability Rights Network  
National Health Law Program  
National Women's Law Center  
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