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


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, shows more staff ultimately leads to much better care outcomes including fewer hospitalizations, better infection control, and reduced mortality. Staffing at all levels of care is particularly important to

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2 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. 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. 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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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.

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
SAGE