



American Association on Health & Disability

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AAHD - *Dedicated to better health for people with disabilities through health promotion and wellness*



LAKE SHORE

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(<https://www.regulations.gov/document/CMS-2023-0144-0001>) - Comment

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).

CMS-2023-0144-0001

Dear Administrator Brooks-LaSure:

The American Association on Health and Disability and the Lakeshore Foundation appreciate the opportunity to provide comments.

The American Association on Health and Disability (AAHD) (www.aahd.us) is a national non-profit organization of public health professionals, both practitioners and academics, with a primary concern for persons with disabilities. The AAHD mission is to advance health promotion and wellness initiatives for persons with disabilities. AAHD is specifically dedicated to integrating public health and disability into the overall public health agenda.

The Lakeshore Foundation (www.lakeshore.org) mission is to enable people with physical disability and chronic health conditions to lead healthy, active, and independent lifestyles through physical activity, sport, recreation and research. Lakeshore is a U.S. Olympic and Paralympic Training Site; the UAB/Lakeshore Research Collaborative is a world-class research program in physical activity, health promotion and disability linking Lakeshore's programs with the University of Alabama, Birmingham's research expertise.

Our focus is on supporting people with disabilities in their homes and communities (e.g., Medicaid HCBS). We join the disability community advocating the most-integrated setting possible to meet the needs and life expectations of persons with disabilities. If people must be admitted to a nursing home, after a thorough and accurate PAS/AAR (Preadmission Screening/Annual Resident Review) they should have the strongest and appropriate comprehensive person-centered program services and supports to maximize their quality of daily life. **Our comments, while much condensed, support and are consistent with comments by the National Consumer Voice for Quality Long-Term Support and Justice in Aging, and their colleague organizations.**

We strongly support the Administration's initiative to improve the quality of care in nursing homes. For decades, health researchers, geriatricians, nurses, and other clinical 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 causal connection between staffing and quality of care in nursing homes.ⁱ As far back as 2001, the Center for Medicare & Medicaid Services (CMS) noted the "strong and compelling" evidence for having minimum staffing levels, even in an economy with a chronic workforce shortage.ⁱⁱ Moreover, a blue-ribbon panel convened by the National Academy of Science, Engineering, and Medicine (NASSEM) noted in its 2022 report that increasing overall nurse staffing has been a consistent and longstanding recommendation for improving the quality of care in nursing homes.ⁱⁱⁱ

There is a pressing need for national nursing home staffing standards for certified nursing assistants—certified nurse aides (CNAs), licensed practical nurses (LPNs), and registered nurses (RNs) who provide direct care to residents. The continued pattern of poor staffing and the significant variability in the nurse-to-resident ratios across facilities and states increases the likelihood of residents receiving unsafe and low-quality care, particularly during a public health crisis.^{iv} All residents, regardless of zip code, are entitled to appropriate professional nursing care.

This Notice of Proposed Rulemaking (NPRM) sets a minimum nursing staffing standard; it does not create a ceiling on staffing or impose a "one-size-fits-all" solution. Furthermore, the NPRM does nothing to change the moral and legal obligations to provide resident-centered care. The 1987 Nursing Home Reform Act (NHRA) required all nursing homes to provide "nursing services and specialized rehabilitative services to attain or maintain the highest practicable

physical, mental, and psychosocial well-being of each resident.”^v Facilities with a higher acuity case mix would still be required to staff at a level appropriate to meet the needs of those residents. Thus, a minimum staffing standard sets a floor for care, not a ceiling.

We commend the Administration for proposing minimum nursing staffing standards. The NPRM represents a paradigm shift in nursing home oversight to promote quality of care. At the same time, we strongly urge CMS to strengthen the proposed minimum nurse staffing standard, as detailed below. These proposed changes will increase the likelihood that facilities reach the goal laid out in the original 2001 Abt study: to meet the requirements of the NHRA by identifying “staffing thresholds below which quality of care was compromised and above which there was no further benefit of additional staffing concerning quality.”^{vi}

Recommended Changes

We strongly support a final rule that requires the presence of a direct care RN in facilities 24 hours a day, seven days a week, as proposed in the NPRM. However, we believe only RNs providing direct care to residents should be counted towards this staffing requirement; RNs who perform solely administrative duties should not be included. In addition, the Director of Nursing in facilities with more than 30 residents should not count towards this requirement. Research shows that it is actual direct care provided by RNs that improves health outcomes for residents, not their mere presence in the building.

These staffing levels are more protective of residents and direct care staff and, consequently, are more likely to meet both the statutory goals of the NHRA and the goals of the NPRM. Additionally, the aforementioned staffing levels are consistent with the goal of establishing a minimum nursing staffing standard that avoids unacceptable levels of omitted and delayed care and reduces the likelihood of compromised care — goals articulated in the 2001 Abt study and echoed by the 2023 Abt study.

It is worth noting that the suggested RN level is taken directly from the simulation study conducted by Abt as part of the 2023 study.^{vii} The suggested CNA level is taken from the authoritative work of Professor John Schnelle^{viii} and cited approvingly by the 2023 Abt study; the 2023 Abt study did not conduct a simulation study for CNAs. In both cases, these are the staffing levels needed to keep delayed or omitted care below 10 percent; they are also staffing levels supported by qualitative analysis in the 2023 study. These staffing standards are reasonable and achievable when nongovernmental nonprofit homes average 4.19 HPRD, according to the latest CMS data.^{ix}

Waivers

Since a minimum nurse staffing requirement is necessary to keep residents and direct care staff safe, CMS should not allow for waivers or exemptions—particularly if enforcement is measured over a lengthy time period that allows for fluctuations in staffing, such as average daily staffing per quarter.

Conclusion

We heartily applaud the Administration for taking up the critical issue of nurse staffing in nursing homes. This is a critical issue as nursing homes continue to care for an increasing

number of residents with high acuity. It is also an important issue as nursing homes are also increasingly the site of post-acute care for individuals with an acute care episode that requires a brief stay in a nursing home for rehabilitative care before returning to their homes.

Sincerely,



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And
Lakeshore Foundation

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¹ *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 Castle, N. (2008). *Nursing Home Caregiver Staffing Levels and Quality of Care: A Literature Review*. *J. of Applied Gerontology*, 27: 375- 405; Dellefield, M.E., Castle, N.G., McGilton, K.S., & Spilsbury, K. (2015). *The Relationship Between Registered*

Nurses And Nursing Home Quality: An Integrative Review (2008-2014). *Nursing Economic\$*, 33 (2):95-108 and 116.; Castle, N.G. & Anderson, R.A. (2011). *Caregiver Staffing in Nursing Homes and Their Influence on Quality of Care*. *Medical Care*, 49(6):545-552.; Castle, N., & Engberg, J. (2008). *Further Examination of the Influence of Caregiver Staffing Levels on Nursing Home Quality*. *Gerontologist*, 48: 464-76.; Schnelle, J.F., Simmons, S.F., Harrington, C., Cadogan, M., Garcia, E., & Bates-Jensen, B. (2004). Relationship of Nursing Home Staffing to Quality Of Care? *Health Services Research*, 39 (2):225-250.

ⁱⁱ 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.

ⁱⁱⁱ National Academies of Sciences, Engineering, and Medicine. 2022. *The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff*. Washington, DC: The National Academies Press.

^{iv} Medicare and Medicaid Programs: Minimum Staffing Standards for Long Term Care Facilities and Medicaid Institutional Payment Transparency Reporting, 88 *Fed. Reg.* 61353 (September 6, 2023).

^v 42 U.S.C1396r, 42 U.S.C. 1395i-3, 42 CFR 483.

^{vi} 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.

^{vii} *Nursing Home Staffing Study Comprehensive Report*, Abt Associates, page 76, June 2023. Available at <https://www.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>

^{viii} Schnelle, J.F., Schroyer, L.D., Saraf, A.A., Simmons, S.F., *Determining Nurse Aide Staffing Requirements to Provide Care Based on Resident Workload: A Discrete Event Simulation Model*, *J Am Med Dir Assoc*, 2016 Nov 1;17(11):970-977. Available at <https://pubmed.ncbi.nlm.nih.gov/27780572/>.

^{ix} *Better Staffing is Achievable A Look at For-Profit versus Non-Profit Nursing Homes*, National Consumer Voice for Quality Long-Term Care, September 29, 2023. Available at https://theconsumervoice.org/uploads/files/issues/Better_Staffing_Is_Achievable.pdf.