



Minnesota Hospital Association

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June 2, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

Submitted electronically through www.regulations.gov.

RE: Comments on Proposed Rule CMS-1765-P: FY 2023 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Quality Reporting Program and Value-Based Purchasing Program; Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels

Dear Ms. Brooks-LaSure,

On behalf of our 127 member hospitals and health systems, the Minnesota Hospital Association (MHA) offers the following comments regarding the Centers for Medicare & Medicaid Services' (CMS) request for information to require long-term care facilities to establish mandatory minimum staffing levels.

As the entire health care system continues to navigate the COVID-19 public health emergency, long-term care facilities face a grave health care workforce crisis. A recent survey in Minnesota found there is a historic level of 23,000 open long-term caregiver positions across the state. Long-term care facilities are striving to recruit and retain staff, but 78% of nursing homes in Minnesota are limiting admissions. The dramatic decline in nursing home occupancy is primarily due to staffing vacancies and a desire to maintain high quality care. The reduced capacity in long-term care facilities limits access to many necessary services and delays hospital discharges, especially in rural areas. Given the dire financial and staffing challenges facing Minnesota long-term care facilities, CMS should not impose additional regulatory requirements for staffing levels.

Minnesota long-term care facilities vary in size and resident mix and are constantly adapting their staffing models to accommodate changes in capacity and resident acuity. A federal mandatory minimum staffing level would not consider the varying levels of expertise within the care team or adapt to the ever-evolving needs of residents. Minimum staffing requirements would not necessarily improve quality of care and may instead cause facility closures due to increased costs of compliance. Many long-term care facilities would not have the resources to implement an unfunded federal staffing mandate, especially as they try to recover from the effects of the COVID-19 pandemic. CMS should consider the timing and flexible funding needs for any workforce policy change.

This policy change also ignores the impacts SNFs are facing with the implementation of the Patient-Driven Payment Model (PDPM). Using a methodology that combines various

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approaches to account for populations whose data had been influenced by COVID-19, CMS proposes a one-time recalibration adjustment of -4.6% for FY 2023. To ensure the validity of these calculations, we believe CMS should delay implementation of the PDPM adjustment until more data is available that is not significantly influenced by COVID-19. Taken together, proposed payment reductions coupled with a potential minimum staffing requirement could exacerbate the problem nursing homes face even further.

In the same proposed rule where CMS offers a net decrease in payments, the agency is indicating their desire to hold health care providers accountable for addressing workforce shortages that permeate throughout the health care system. A federal minimum staffing requirement would not help alleviate the demand for long-term care and may only increase dependence on temporary measures such as travel nurse staffing agencies. While travel nurses were utilized before the pandemic, the additional reliance on their services has caused their staffing costs to significantly increase. These agencies have taken advantage of the emergency situation to implement significant price increases, and health care facilities are forced to pay the exorbitant rates to meet their staffing needs. There are instances in Minnesota where hourly rates for travel nurses are over three times more than pre-pandemic rates, and the staffing agencies are taking 40% or more of these charges as profit. While wage increases are expected due to the forces of labor supply and demand, the current costs are unsustainable for the U.S. health care system.

Considering the serious health care workforce challenges across the care continuum, MHA urges CMS not to move forward with proposing minimum staffing requirements for long-term care facilities. CMS should not impose the burden of solving systemic issues of workforce shortages on health care facilities, especially given the impending financial cuts being proposed. CMS should instead consider improving reimbursement levels to better support staff recruitment and retention.

As always, we appreciate the opportunity to comment on CMS' proposed rules. If you have any questions, please feel free to contact me at (651) 659-1415 or jschindler@mnhospitals.org.

Sincerely,

A handwritten signature in black ink that reads "Joseph A. Schindler". The signature is written in a cursive, flowing style.

Joseph A. Schindler
Vice President, Finance Policy & Analytics