Washington State
Hospital Association

November 6, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS–3442–P
P.O. Box 8016
Baltimore, MD 21244–8016

Delivered electronically

RE: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Proposed Rules (88 FR 61352)

Dear Administrator Brooks-LaSure:

On behalf of the Washington State Hospital Association (WSHA), thank you for the opportunity to provide comments on the notice of proposed rulemaking for minimum staffing standards in long-term care facilities. All 114 hospitals in Washington state are members of WSHA. Some of our members also operate skilled nursing facilities (SNFs) and nursing homes (herein referred to as long-term care facilities). Our hospital members range from large statewide health care delivery systems to small rural hospitals that are the only health care safety net serving remote communities.

The proposed requirements will impact the broader care continuum. WSHA believes patient safety and access to care are paramount; however CMS' approach to the proposed rule will result in diminished access to not only post-acute and long-term care, but also the broader care continuum, including acute care hospital services. If finalized, this rule will result in a multitude of unintended consequences. A brief outline of WSHA's recommendations to CMS is below, followed by a complete summary:

1. **The proposed rule has a misguided, one-size-fits-all approach to a dynamic and localized issue that will jeopardize access to care across communities. The agency must reevaluate the proposals in a way that maintains access to high quality health care services.**
2. **CMS should consider a framework similar in concept to hospital conditions of participation for staffing.**
3. **Licensed practical nurses (LPNs) are valuable members of the care team in long-term care facilities. CMS must consider alternatives that include them and promote collaboration across the clinical team.**
4. **CMS should utilize the Office of Management and Budget (OMB) definition for "rural" rather than rely on US Census designations.**

CMS should consider a framework similar in concept to hospital conditions of participation for staffing.

Clinical staffing is dynamic and varies from one facility to the next, often from one day to the next. Implementing a one-size-fits-all staffing standard fails to account for the unique needs and resources of each community, facility and resident. CMS' underlying research referenced throughout the rule utilizes a case-mix grouping model, yet the rule provisions do not apply in a method that accounts for variation

in case-mix. Even the CMS-commissioned study[1] referenced throughout the notice concludes that there is no single staffing level that guarantees quality. This proposed rule fails to allow for innovative staffing models and is not consistent with clinical practice. CMS should consider a framework similar in concept to hospital conditions of participation for staffing. Such a framework grants facilities the flexibility to adjust to the needs of residents while maintaining safety and quality.

Both within Washington and across the country there are widespread nursing shortages that have only intensified since the COVID-19 pandemic. This is also exacerbated by our aging population. In Washington specifically, there were nearly 8,000 nursing job vacancies, including RN, LPN/LVN, and CNA positions, across health care settings in the fourth quarter of 2022. CMS estimates that this rule would require nearly 90,000 additional RNs and nurse aides to meet the proposed minimum staffing standard nationwide. While the rule proposes a phased implementation, it is still not nearly enough time to train and educate the registered nurses that would be required to satisfy the proposed staffing standards. Ultimately all health care settings will be competing for the same small pool of nurses, further driving up labor costs and leading long-term care facilities that cannot compete – likely rural and Medicaid-dependent facilities – to halt admissions.

When long-term care facilities are unable to satisfy minimum staffing standards, delayed discharges from acute-care hospitals will intensify. These delays in patients progressing through the care continuum have far-reaching consequences from patient recovery to avoidable costs to CMS and other payers. While this proposed rule may seek to improve patient safety and provider burden in one setting, it is transferring those concerns to another care setting. In other words, when long-term care facilities cannot staff to these requirements, especially if LPNs aren't recognized, admissions will be reduced. These admissions often come from , acute-care hospitals where they will be forced to board more patients while waiting for an available long-term care bed. Every bed a patient ready for acute-care discharge is occupying is a bed that a new acute-care patient is waiting for. For those patients waiting for acute-care services, delayed care can have profound patient safety consequences. Those patient safety consequences also result in avoidable costs to payers.

LPNs are valuable members of the care team in long-term care facilities. CMS must consider alternatives that include them and promote collaboration across the clinical team.
As CMS notes in the proposed rule, many states already have variations of staffing requirements for long-term care facilities – Washington included. Washington requires 3.24 hours of care per resident day (HRPD) total and includes licensed practical nurses (LPNs) in the care hours. LPNs play a critical role in caring for residents across Washington's long-term care facilities and this proposed rule would displace them at a time when there are current nursing shortages. One member of WSHA that operates both an acute-care hospital and nursing home reported that they would be forced to redeploy LPNs to a lower-level CNA position in order to meet CMS' proposed requirements. Requiring LPNs to take lower paid employment will only cause further turnover in the nursing workforce. Instead of discounting the value of LPNs in caring for long-term care residents, the agency should consider alternatives that promote collaboration with all clinical staff and improves quality.

CMS should utilize the OMB definition for "rural" rather than rely on US Census designations.
CMS should also reconsider how urban and rural areas are classified within this rule given the longer

[1] https://kffhealthnews.org/wp-content/uploads/sites/2/2023/08/Abt-Associates-CMS-NH-Staffing-Study_Final-Report_-Apndx_June_2023.pdf

implementation timeframe for rural areas. As the Health Resources and Services Administration states[2], the US Census Bureau does not define rural. The federal Office of Management and Budget (OMB), however, defines rural as areas with fewer than 50,000 people. The US Census 2020 data classifies sixty-one areas across Washington as urban, yet by OMB standards only twelve of those areas would qualify. By utilizing the US Census data, communities widely considered rural will be further disadvantaged by this rule. CMS should utilize OMB's definition of rural when making compliance determinations.

***

Thank you for the opportunity to engage with the agency on this proposed rule that will impact access to care at every level of the health care delivery system. WSHA looks forward to ongoing collaboration that seeks to promote high quality care and patient safety while maintaining access to services across our communities. Should you have additional questions on WSHA's recommendations, please contact Chelene Whiteaker, WSHA Senior Vice President at CheleneW@wsha.org / 206. 216.2545 or Remy Kerr, WSHA Policy Director RemyK@WSHA.org / 206.216.2514.

Sincerely,

Remy Kerr, MPH
Policy Director, Government Affairs
Washington State Hospital Association

Chelene Whiteaker, MHA
Senior Vice President, Government Affairs
Washington State Hospital Association

[2] https://www.hrsa.gov/rural-health/about-us/what-is-rural#:~:text=The%20Census%20does%20not%20define,of%2050%2C000%20or%20more%20people