



November 6, 2023

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attn: CMS-3342-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

Re: CMS Proposed Rule 2023-0144-0001 - Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting

Dear Administrator Brooks-LaSure:

Please accept the following comments on behalf of the Pennsylvania Health Care Association (PHCA) and the Hospital and Healthsystem Association of Pennsylvania (HAP), as well as the members we serve, regarding the Centers for Medicare and Medicaid Services (CMS) proposed rule: Minimum Staffing Standards for Long-Term Facilities and Medicaid Institutional Payment Transparency Reporting (CMS-2023-0144-0001).

Collectively, PHCA and HAP represent 685 health care facilities and health systems throughout the Commonwealth of Pennsylvania, including hospitals, nursing facilities, assisted living communities, and personal care homes. Our member providers include for-profit, non-profit, and government-run (state and county) organizations. And together, we're tasked with caring for tens of thousands of Pennsylvanians each and every day.

On behalf of our members — and to protect the sustainability of Pennsylvania's health care continuum — we write to **strongly oppose the CMS national minimum staffing standard for nursing facilities.**

To be clear, our members are committed to delivering quality care to every individual in need of acute and post-acute care. However, regulators and lawmakers must recognize the reality that health care providers face every day: there is a workforce crisis raging in Pennsylvania and throughout the United States that is threatening the stability of the care continuum. Further complicating the availability of care is a rapidly aging population — especially in Pennsylvania — causing an increase in higher acuity care needs.

We are less than two years removed from the alarming statewide hospital capacity crisis that took place in Pennsylvania, in which patient backlogs and bottlenecks became commonplace in hospitals as a result of the Omicron COVID-19 variant. Hospitals had nowhere to discharge

patients because nursing facilities didn't have enough staff to accept more residents. The strain of finding appropriate post hospital care — post-acute and behavioral health — is an ongoing challenge. This federal staffing proposal will only lead us further down a path of catastrophe, all in an effort to achieve arbitrary, numerical goals that don't translate to high quality care.

During the capacity crisis, [PHCA surveyed members](#) to understand the magnitude of the situation. Nearly 60 percent of nursing home providers who participated in the survey revealed that they declined hospital and non-hospital referrals as a result of not having enough staff. Each of those nursing facilities declined, on average, 20 referrals a month during a three-month period. Where are these patients supposed to go?

Our members take exception to the notion rooted in CMS' proposed rule that providers are leaving thousands of open positions for nurse aides (CNA), licensed practical nurses (LPN) and registered nurses (RN) unfilled. As health care professionals, our caregivers uphold a responsibility to maintain the integrity of providing care to those in need.

The reality is that despite efforts to recruit a new generation of health care professionals and retain the highly-skilled caregivers valiantly serving our communities, employment trends in health care have rapidly decreased while the need for care has dramatically increased. Pennsylvania is one of the oldest states in the nation, and it has also become a state in which access to care is in jeopardy as providers struggle with workforce shortages.

In 2022, Pennsylvania addressed its own minimum staffing standard for nursing homes. Providers worked with regulators, lawmakers, labor unions and patient advocate groups to find a consensus on how to raise staffing requirements in nursing homes to attainable levels — and how to appropriate funds to cover the cost of the new mandate.

Despite identifying a minimum staffing regulation based on the availability of Pennsylvania's health care workforce and the cost to the commonwealth's Medicaid program, efforts to fully-fund these new regulations have fallen short. This federal staffing proposal will only further create financial harm for providers who are already being shorted on the reimbursement for the care they provide — which left Pennsylvania nursing home providers with an [average operating margin of -12% in 2022](#).

Complicating this further is Pennsylvania's interest to now set staffing minimums for hospitals. Where will we find these new caregivers? If a staffing minimum is implemented for hospitals, caregivers will be lured away from nursing homes. All of these mounting mandates will devastate access to care.

We are alarmed by CMS' decision to continue down a path of establishing a minimum staffing standard in nursing homes after its own 2001, 2016 and 2023 studies indicated that a federal standard does not always correlate with higher quality care. In fact, the study CMS commissioned in 2023 stated, "Ultimately, the realized improvements in quality and safety will

depend on nursing home success in increasing staffing levels to comply with minimum staffing requirements.”

Thus far, the federal government does not appear to be a willing partner in assisting providers with increased staffing.

Pennsylvania nursing home providers would need to hire an additional 900 RNs and 2,600 CNAs to meet this proposed mandate — that is in addition to 4,000 CNAs that nursing facilities must hire in order to meet the increased state staffing ratios effective July 1, 2024. With an existing shortage of RNs for the entire health care continuum, how is this mandate supportive in delivering care? And to make matters even more dire, Pennsylvania hospitals report a 30% vacancy rate. These employment metrics are daunting for not just nursing facilities. Any increases in staffing requirements on nursing facilities will be met with additional workforce shortages felt by hospitals, both rural and urban.

The COVID-19 pandemic demonstrated that when one end of the health care continuum experiences staffing shortages, the entire continuum is impacted. When Pennsylvania nursing homes were forced to deny admissions and reduce census in order to safely care for residents with limited staff, hospitals were unable to discharge patients to nursing homes, leading to clogged emergency rooms while patients waited for beds to become available.

Simply put, CMS cannot increase minimum staffing requirements without giving health care providers the tools necessary to implement them. CMS is setting nursing facilities and the entire health care continuum up for failure, and patient care will ultimately suffer.

We urge CMS to rescind its proposed minimum staffing rule. At the very least, CMS and the federal government should take a more active role in supporting health care providers and states to address the health care workforce crisis.

Thank you for the opportunity to provide comments.

Sincerely,



Zach Shamberg  
President & CEO  
Pennsylvania Health Care Association



Nicole Stallings  
President & CEO  
Hospital and Healthsystem Association of Pennsylvania