



Charles N. Kahn III  
President and CEO

November 6, 2023

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-3442-P, Mail Stop C4-26-05  
7500 Security Boulevard  
Baltimore, MD 21244-1850

**Re: Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Proposed Rule [CMS-3442-P]**

Dear Administrator Brooks-LaSure,

The Federation of American Hospitals (FAH) is the national representative of more than 1,000 leading tax-paying hospitals and health systems throughout the United States. The FAH members provide patients and communities with access to high-quality, affordable care in both urban and rural areas across 46 states, Washington, D.C., and Puerto Rico. Our members include teaching, acute, inpatient rehabilitation, behavioral health, and long-term care hospitals and provide a wide range of inpatient, ambulatory, post-acute, emergency, children's, and cancer services.

The FAH appreciates the opportunity to submit comments to the Centers for Medicare & Medicaid Services (CMS) with our views in response to the proposed rule on the *Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Transitional Payment Transparency Reporting* published in the Federal Register (88 FR 61352) on September 6, 2023.

CMS proposes minimum staffing standards that would require Medicare and Medicaid certified long-term care facilities to provide residents with a minimum of 0.55 hours of care from a registered nurse per resident per day, and 2.45 hours of care from a nurse aide per resident per day. In addition, facilities would be required to have a registered nurse on site and available to provide direct resident care 24 hours per day, 7 days a week, as well as comply with enhanced facility assessment requirements.

While the FAH strongly supports and believes in furthering approaches to ensure that residents of long-term care facilities receive safe, reliable, and quality care, **we adamantly oppose the approaches proposed by CMS that mandate specific minimum hours per resident day for registered nurses and nurse aides and require a registered nurse be on site and available to provide direct resident care 24 hours a day, 7 days per week.** Patient and workforce safety is a top priority. However, imposing nursing staff ratios and mandating the quantity of staffing is a flawed approach that will potentially impede rather than promote facilities' abilities to deliver quality care and retain a quality workforce.

An approach that mandates rigid, one-size fits all thresholds ignores that safe staffing for facilities needs to take into account dynamic and complex considerations that should focus on the needs of patients of the facility, the clinical expertise and experience of the nurses and other health care professionals serving the facility, and the technical capabilities of the facility. Each of these factors are best known and informed by the facility's leaders, nurse managers, and direct care nurses, and are not addressed by a static and uniform across-all-facilities staffing threshold. Indeed, CMS has even acknowledged in its 2022 request for information the limits of the potential benefit of a minimum staffing level standard, in which it cited a 2009 study on the topic that concluded that "mandated staffing standards affect only low-staff facilities facing potential for penalties, and effects are small."<sup>1</sup>

Mandating nurse staffing standards is an approach that is informed by outdated care models, which are based on staff roles and responsibilities of yesterday. Such thresholds are not reflective of emerging care models that take into account the dynamic integration of advanced technology and collaborative interprofessional team-based care and will prevent facilities from advancing and responding to current and emerging practices that may show alternative approaches that are more effective and safer for the patient population and workforce of the facility. Imposing an approach that impedes innovation in care delivery is an approach that will inadvertently harm, and not help advance, our collective goals to improve quality and safe patient care and a safe and sustainable care workforce.

Instead of imposing staffing minimum numbers, the more forward-thinking approach would be to holistically promote innovation, including in nursing workflow, staffing, training, and responsibilities. Evaluations of facilities should be conducted to focus on the quality of care resulting from the totality of approaches taken by facilities and not limited by the assumption that solely the quantity of staff translates to patient and workforce safety. There are several ways innovation, including technology, may be an extension of and complement to staffing, which will ultimately provide for a long-term, sustainable approach to ensuring that safe, reliable, and quality care is provided.

The nurse workforce shortage is a prevailing concern. The U.S. Bureau of Labor Statistics projects that more than 275,000 additional nurses are needed from 2020 to 2030, and that employment opportunities for nurses will grow at 9 percent, faster than all other occupations

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<sup>1</sup> Park J, Stearns SC. Effects of state minimum staffing standards on nursing home staffing and quality of care. *Health Serv Res.* 2009 Feb;44(1):56-78. doi: 10.1111/j.1475-6773.2008.00906.x. Epub 2008 Sep 17. PMID: 18823448; PMCID: PMC2669632.

from 2016 through 2026.<sup>2</sup> The reasons for nursing staff shortages are numerous, including a lack of potential faculty to train nursing applicants, high turnover, and inequitable workforce distribution. An aging population is combined with an environment of an aging nursing workforce and increasing nursing burnout. The report of the American Association of Colleges of Nursing (AACN) on 2021-2022 Enrollment and Graduations in Baccalaureate and Graduate Programs in Nursing found that U.S. nursing schools turned away 91,938 qualified applications from baccalaureate and graduate nursing programs in 2021 for reasons including an insufficient number of faculty, clinical sites, and classroom space as well as budget constraints.<sup>3</sup> Mandating minimum nurse staffing numbers is simply not reasonable or sustainable, especially given the current and projected nursing workforce shortage and nurse educator shortage as well as given the estimate of over 80 percent of facilities that would need to hire new nurses to satisfy the proposed thresholds.<sup>4</sup> The proposal fails to address the root causes of these shortages.

Rethinking nurse staffing through the lens of innovation is essential. This entails evaluating who can best perform necessary tasks and how best to utilize the available resources to ensure high-quality care while ensuring staff well-being. Mandated minimum nurse staffing standards of hours per resident day (HPRD) for Registered Nurses (RNs) and for Nurse Aides (NAs) removes the ability of a facility to achieve the goals of patient and workforce safety through long-term innovative and holistic means. Appropriately distributing responsibilities is one way to alleviate causes for burnout. All duties that an RN or NA perform may not be appropriately assigned to an RN or NA. Not counting licensed practical nurses (LPNs) and licensed vocational nurses (LVNs) toward the required staffing minimums prohibits facilities from being able to appropriately include the range of nursing staff and effectively focus the appropriate and efficient distribution of tasks and duties.

Solutions that encourage workforce efficiencies and minimize administrative tasks allow the nursing staff to focus on direct patient care and quality care. These solutions do not necessitate more staffing, which may just encourage filling positions to satisfy numerical thresholds, but would aim to better use, complement, and extend the available nursing staff. Technology innovations in health care could improve patient outcomes, enhance nursing staff retention by relieving burden, and ultimately optimize the nursing workforce available to provide direct patient quality care.

One such innovative approach is the Virtually Integrated Care (VIC) model carried out by the Catholic Health Initiatives, which is a person-centered model that uses virtual nurses as part of the health care delivery team.<sup>5</sup> Under that model, the virtual nurse is an expert advanced practice nurse who, from a command center, can perform the functions of patient education, staff mentoring, patient safety surveillance, physician rounding, admissions, and discharge. The virtual nurse monitors and interacts with patients and communicates with the families of patients through technology, allowing the in-person nursing staff to attend to more patients with fewer

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<sup>2</sup> <https://www.dol.gov/newsroom/releases/eta/eta20221003>.

<sup>3</sup> <https://www.aacnnursing.org/Portals/0/PDFs/Fact-Sheets/Faculty-Shortage-Factsheet.pdf>.

<sup>4</sup> [https://www.kff.org/medicaid/issue-brief/what-share-of-nursing-facilities-might-meet-proposed-new-requirements-for-nursing-staff-hours/#:~:text=KFF%20estimates%20that%2019%25%20of,nurse%20aides%20\(Figure%201\)](https://www.kff.org/medicaid/issue-brief/what-share-of-nursing-facilities-might-meet-proposed-new-requirements-for-nursing-staff-hours/#:~:text=KFF%20estimates%20that%2019%25%20of,nurse%20aides%20(Figure%201)).

<sup>5</sup> [Virtually Integrated Care: A New Paradigm in Patient Care Delivery - PubMed \(nih.gov\)](#).

interruptions. Allowing for fewer nurse interruptions reduces error and improves care.<sup>6</sup> The VIC model has been assessed for outcomes related to patient satisfaction, quality metrics, financial metrics, safety, and other measures. After the implementation of the model, Top Box scores in the quarterly Hospital Consumer Assessment of Healthcare Providers and Systems report cards improved. Scores rating healthcare communications improved from 6.2 percent to 17.4 percent depending on the measure.<sup>7</sup> Additional research on the impact of virtual registered nurse (ViRN) model on the impact of care and safety on general medical units at the Mayo Clinic found that ViRN led to similar outcomes in care and safety as in non-ViRN medical units.<sup>8</sup>

Innovation and investment in technology would also simplify the administrative work nurses do, such as electronic or manual data gathering or sorting, thus relieving burden and reducing burnout. Again, promoting innovation could focus on how to better, more appropriately, and more efficiently utilize the time of nurses at a facility rather than imposing numerical staffing thresholds.

Further research is needed around the role of innovation in retaining nursing staff, rehiring nursing staff, redistribution of nurse staffing duties, and training the future nurse workforce in order to promote high quality of care in long-term care facilities. For example, one possibility may be to track quality of care and measures with the nurse's unique ID from the National Council State Boards of Nursing as a means of gathering information on optimal nurse skill sets for specific tasks and roles and corresponding outcomes.<sup>9</sup>

The FAH is concerned that mandated thresholds will result in facilities needing to focus efforts on numerical requirements to avoid the potential steep penalties and exclusion from participation in Medicare. We are concerned that such push to focus on numerical thresholds will be to the detriment of care delivery advancement and will hinder facilities' ability to test, evaluate, and incorporate (as supported by evidence) innovative care delivery models that more appropriately and comprehensively respond to the needs of the patients of the facility. We are also concerned that implementation of the proposed standards would ultimately hurt access to care. In order to satisfy the staffing levels, facilities may have no choice but to reduce their capacity or even close their doors. Organizations considering opening facilities may decide not to do so, knowing the difficulties of recruiting enough staff to meet the thresholds. We are, therefore, extremely concerned that the proposed staffing standards will ultimately result in harming the future of patient care and access to care.

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<sup>6</sup> See Santomauro C, Powell M, Davis C, Liu D, Aitken LM, Sanderson P. Interruptions to intensive care nurses and clinical errors and procedural failures: a controlled study of causal connection. *J Patient Saf.* 2021;17(8):e1433-e1440. doi:10.1097/PTS.0000000000000528. This study on the impact of interruption on medical error found that more workplace interruptions during medication preparation and administration lead to more clinical errors and therefore reducing the frequency of interruptions could reduce errors and promote safety.

<sup>7</sup> See Schuelke S, Aurit S, Connot N, Denney S. Virtual nursing: the new reality in quality care. *Nurs Adm Q.* 2019;43(4):322-328. doi:10.1097/NAQ.0000000000000376.

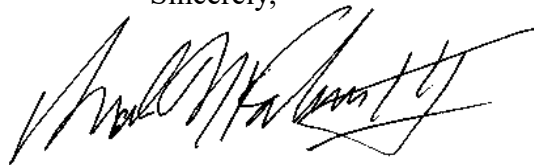
<sup>8</sup> See Savitz ST, Frederick RK, Sangaralingham LR, Lampman MA, Anderson SS, Habermann EB, and Bell SJ. Evaluation of safety and care outcomes after the introduction of a virtual registered nurse model. *Health Serv Res.* 2023 Oct; 58(5):999-1013. doi: 10.1111/1475-6773.14208. Epub 2023 Jul 31. PMID: 37525521; PMCID: PMC10480082.

<sup>9</sup> See [Demonstrating the Value of Nursing Care Through Use of a Unique Nurse Identifier | HIMSS](#).

Innovation is an extension of and complement to nurse staffing. In an environment of persistent nurse staffing shortages and shortages of nurse educators, it is short-sighted to mandate minimum nurse staffing hours per resident day at the expense of facilities being able to efficiently and effectively advance patient safety and workforce safety and retention through long-term innovative approaches. A focus on numerical thresholds ignores the realities of the current and projected challenges to training, hiring, and retaining a nursing workforce that would be required to satisfy the proposed levels; impedes more forward-thinking, holistic, and sustainable approaches; and consequently, threatens access to nursing home care. **The FAH, therefore, urges CMS not to finalize its proposed minimum staffing standards.**

Thank you for the opportunity to comment on this proposed rule. If you have any questions, please contact me or a member of my staff at 202-624-1534.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew M. ...". The signature is fluid and cursive, with a large initial "A" and a long horizontal stroke at the end.