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Medicare Advocacy

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Staffing in Nursing Homes

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NURSE STAFFING

- Decades of research: Higher staffing levels means better care for residents
- True during pandemic as well
 - CT: 20 minutes more RN time/resident/day correlated with 22% fewer COVID cases and 26% fewer COVID deaths

Yue Li, Helena Temkin-Greener, Shan Gao, Xueya Cai, “COVID-19 infections and deaths among Connecticut nursing home residents: facility correlates,” *Journal of the American Geriatrics Society* (2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jgs.16689>

NURSE STAFFING

- NY Attorney General Letitia James, *Nursing Home Response to COVID-19 Pandemic* finds
 - facilities with more staff had fewer COVID-19 cases and deaths
 - most deaths in facilities with 1 or 2 stars in staffing

<https://ag.ny.gov/sites/default/files/2021-nursinghomesreport.pdf>

FEDERAL NURSE STAFFING STANDARDS

- Federal staffing standards are minimal, 42 C.F.R. §483.35
 - 8 hours RN/day, 7 days/week; licensed nurses 24 hours/day; “sufficient” staff to meet residents’ needs

LIMITED ENFORCEMENT

- Enforcement is weak link in federal regulatory system, limited, largely to harm- or jeopardy-level deficiencies (less than 5% of deficiencies)
- Usually, problems in care are cited as specific care deficiencies, not underlying staffing issue

ENFORCEMENT MATTERS

- Too many facilities ignore requirements and deficiencies, unless there is a financial consequence (a fine)
- Kelly Bagby will describe new case filed in Illinois on staffing

LIMITED ENFORCEMENT

- F725 (sufficient staff), FY 2020-2021
 - 796 of 15,515 facilities (3.8%) cited with staffing deficiency, but of these 796 facilities:
 - 27 facilities (0.03%) cited with IJ staffing
 - 16 per day CMPs averaging \$185,170.99 and totaling \$2,962,735.87; 4 per instance CMPs averaging \$7,022.57 and totaling \$28,090.28
 - 11 facilities (0.01%) cited with actual harm
 - 13 per day CMPs; 8 per instance CMPs

LIMITED ENFORCEMENT

- F725 (sufficient staff), FY 2020-2021
 - 767 (0.94%), substantial compliance or no harm

(qcor.cms.gov Nov. 4, 2022)

SAME LIMITED ENFORCEMENT PRE-PANDEMIC

- F725 (sufficient staff), FY 2018-2019,
 - 1,055 of 15,744 facilities (0.067%) cited with staffing deficiency, but of these 1,055 facilities:
 - 25 facilities (0.02%) cited with IJ staffing
 - 13 per day CMPs averaging \$295,343.59 and totaling \$3,839,466.71; 8 per instance CMPs averaging \$6,545.21 and totaling \$52,361.66
 - 17 facilities (0.02%) cited with actual harm
 - 13 per day CMPs; 6 per instance CMPs

SAME LIMITED ENFORCEMENT PRE-PANDEMIC

- F725 (sufficient staff), FY 2018-2019,
 - 1013 facilities (0.96%) cited with no harm/
substantial compliance

(qcor.cms.gov (Nov. 4, 2022))

FACILITY ASSESSMENT

- 2016 revision to Requirements of Participation, 42 C.F.R. §483.70(e), requires facilities to conduct a “facility-wide assessment” to determine “what resources are necessary to care for its residents competently during both day-to-day operations and emergencies”

FACILITY ASSESSMENT

- Facility must review and update its assessment at least annually and whenever the facility plans for a substantial modification in services/residents
- Facility assessment must consider staffing levels based on resident population and care needs; needed staff competencies; ethnic, cultural, or religious factors; and more

LIMITED ENFORCEMENT F838

- F838 (facility assessment), FY 2018-2019,
 - 321 of 15,744 facilities (0.015%) cited with facility assessment, but of these 321 facilities:
 - 4 facilities (0.016 %) cited with IJ staffing
 - 1 per day CMP (395,836.00); 0 per instance CMPs
 - 2 facilities (0.0122%) cited with actual harm
 - 2 per day CMPs averaging \$276,130.37 and totaling \$828,391.11; 0 per instance CMPs

LIMITED ENFORCEMENT F838

- 15,738 facilities (0.99%) cited with no harm/substantial compliance

(qcor.cms.gov (Nov. 3, 2022))

PRESIDENT BIDEN'S NURSING HOME REFORM AGENDA

- Includes commitment to propose enforceable staffing ratios within one year
 - White House, “FACT SHEET: Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes” (Feb. 28, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>

PRESIDENT'S REFORM AGENDA: STAFFING

- CMS did Request for Information on staffing as part of annual update to Medicare Part A reimbursement for skilled nursing facilities
- CMS held call for comments
- CMS is conducting staffing study now

NURSING HOME INDUSTRY RESPONSE TO STAFFING RATIOS

- No one to hire
- Unfunded mandate; pay us more for any staffing ratio requirement

RE: NO ONE TO HIRE

- Facilities can, and do, find appropriate staff when they pay higher wages, meaningful benefits (including health care), have career ladders, have enough staff, treat staff well

NO ONE TO HIRE

- ConsumerVoice, “High Staff Turnover: A Job Quality Crisis in Nursing Homes” (Sep. 2022), https://theconsumervoice.org/uploads/files/issues/High_Staff_Turnover-A_Job_Quality_Crisis_in_Nursing_Homes.pdf
- Weller, C. Almeida, B., Cohen, M., and Stone, R. *Making care work pay* (LeadingAge LTSS Center at UMass Boston) (2020)(paying a “living wage” could pay for itself by improving care), <https://leadingage.org/sites/default/files/Making%20Care%20Work%20Pay%20Report.pdf>

NO ONE TO HIRE

- Humorous take on the issue: Eleanor Feldman Barbera, “If you give the staff a livable wage . . . ,” *McKnight’s Long-Term Care News* (Dec. 7, 2021), <https://www.mcknights.com/blogs/the-world-according-to-dr-el/if-you-give-the-staff-a-livable-wage/>, which ends “And if the staff is stable, the care is improved, rehospitalizations are averted, leaks are caught before floods, and penalties are avoided, organizations will have the funds to pay a livable wage.”

RE: PAY US MORE

- Here's where our themes of staffing and transparency/accountability come together
- There's a lot of money in the system that is squandered, diverted to related parties and profits
- Ernie Tosh will talk about cost reports and what they show

NEW YORK LAWSUIT

- Brings staffing and transparency/accountability/reimbursement issues together, shows their connection

NEW YORK LAW

- NY Budget Law requires facilities to spend 70% of their revenue on care (including 40% on direct resident care) and limits profits to 5%.

New York State Budget for State Fiscal Year 2021-22, §2828, Residential health care facilities; minimum direct resident care spending)

<https://www.nysenate.gov/legislation/laws/PBH/2828>

HOME FOR THE AGED V. BASSETT

- Days before law was to go into effect, 200+ nursing facilities filed lawsuit in federal court saying if the law had been in effect in 2019, facilities would have had to return \$824 million to the state (\$511 due to spending issues, \$313 due to profit limits)

No. 1:21-cv-01384 (BKS/CFH) (N.D.N.Y., filed Dec. 29, 2021), <https://medicareadvocacy.org/wp-content/uploads/2022/01/Nursing-homes-NY-nh-case-21-cv-1384-BKS-CFH-complaint-U.S.-District-Court-NYND-2.pdf>

FACILITY LAWSUIT

- Each plaintiff facility had a paragraph in the Complaint, reporting how much it would have had to return to the state if the budget law had been in effect in 2019

PLAINTIFFS INCLUDE SPECIAL FOCUS FACILITY CANDIDATE

- Buffalo nursing facility cited for immediate jeopardy staffing deficiency, following complaint survey (May 2021)
 - Short-staffed on multiple shifts
 - 53 residents living on dementia unit: 1 LPN, 1 CNA

WHAT WE NEED TO IMPROVE CARE

- Better staffing standard, specific staffing ratios that are enforceable and enforced
- Better transparency about ownership and finances
- Better accountability for reimbursement



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