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**LONG TERM CARE
COMMUNITY COALITION**

Advancing Quality, Dignity & Justice

RESPONDING TO CMS'S REQUEST FOR INFORMATION REGARDING A MINIMUM STAFFING STANDARD

May 25, 2022

CMS Request for Information on Revising Requirements for Long Term Care Facilities to Establish Mandatory Minimum Staffing Levels

On April 15, 2022, Centers for Medicare & Medicaid Services (CMS) issued a [Request for Information \(RFI\)](#) regarding the implementation of a minimum staffing standard in nursing homes. The RFI poses seventeen questions and solicits public comment. For decades, advocates for nursing home residents have fought for a minimum staffing standard. To help facilitate and encourage responses to the RFI in support of a minimum staffing standard, advocates from National Consumer Voice for Quality Long-Term Care, Long Term Care Community Coalition, Center for Medicare Advocacy, Justice in Aging, and California Advocates for Nursing Home Reform have created this draft outline. We encourage you to comment. Please share your own experience and opinion, and use any information in this outline to help support your comments. It is not necessary for you to respond to each question. Most importantly, CMS needs to hear your voice in support of this necessary protection for nursing home residents.

We fully support the Administration's plan to set mandatory minimum staffing levels. The 1987 Nursing Home Reform Law gives the Secretary full authority to set minimum staffing standards. The Reform Law requires that the Secretary assure that facilities provide each resident with high quality care and that Medicare and Medicaid payments are spent on care and not diverted to profits, management fees, and inflated payments to self-related parties. These broad and important powers provide the Secretary with clear authority to set minimum staffing standards.

Staffing is a complex issue, with multiple interrelated factors affecting staffing levels. Setting minimum staffing levels is essential to improving quality of care for residents, but it is not sufficient. Staff, especially certified nursing assistants, need better wages and benefits, more training, better working conditions, more respect and better treatment from employers, less discrimination against women of color and immigrants, and more. Some of these staffing issues will require additional federal regulations. Other issues require actions by parties other than CMS.

The implementation of a minimum staffing standard will be the most important and significant increase in protections for nursing home residents in decades. We applaud the Secretary for taking this necessary step and provide feedback to the Request for Information questions below.

Model responses to the RFI questions can be found here:

https://theconsumervoice.org/uploads/files/actions-and-news-updates/RFI_Comment_Outline.pdf

1. Is there evidence (other than the evidence reviewed in this RFI) that establishes appropriate minimum threshold staffing requirements for both nurses and other direct care workers? To what extent do older studies remain relevant? What are the benefits of adequate staffing in LTC facilities to residents and quality of care?

2. What resident and facility factors should be considered in establishing a minimum staffing requirement for LTC facilities? How should the facility assessment for resident needs and acuity impact the minimum staffing requirement?

3. Is there evidence of the actual cost of implementing recommended thresholds, that accounts for current staffing levels as well as projected savings from reduced hospitalizations and other adverse events?

4. Is there evidence that resources that could be spent on staffing are instead being used on expenses that are not necessary to quality patient care?

5. What factors impact a facility's capability to successfully recruit and retain nursing staff? What strategies could facilities employ to increase nurse staffing levels, including successful strategies for recruiting and retaining staff? What risks are associated with these strategies, and how could nursing homes mitigate these risks?

6. What should CMS do if there are facilities that are unable to obtain adequate staffing despite good faith efforts to recruit workers? How would CMS define and assess what constitutes a good faith effort to recruit workers? How would CMS account for job quality, pay and benefits, and labor protections in assessing whether recruitment efforts were adequate and in good faith?

7. How should nursing staff turnover be considered in establishing a staffing standard? How should CMS consider the use of short-term (that is, travelling or agency) nurses?

8. What fields and professions should be considered to count towards a minimum staffing requirement? Should RNs, LPNs/LVAs, and CNAs be grouped together under a single nursing care expectation? How or when should they be separated out? Should mental health workers be counted as direct care staff?

9. How should administrative nursing time be considered in establishing a staffing standard? Should a standard account for a minimum time for administrative nursing, in addition to direct care? If so, should it be separated out?

10. What should a minimum staffing requirement look like, that is, how should it be measured? Should there be some combination of options? For example, options could include establishing minimum nurse HPRD, establishing minimum nurse to resident ratios, requiring that an RN be present in every facility either 24 hours a day or 16 hours a day, and requiring that an RN be on-call whenever an RN was not present in the facility. Should it include any non-nursing requirements? Is there data that supports a specific option?

11. How should any new quantitative direct care staffing requirement interact with existing qualitative staffing requirements? We currently require that facilities have “sufficient nursing staff” based on facility assessment and patient needs, including but not limited to the number of residents, resident acuity, range of diagnoses, and the content of care plans. We welcome comments on how facilities have implemented this qualitative requirement, including both successes and challenges and if or how this standard should work concurrently with a minimum staffing requirement. We would also welcome comments on how State laws limiting or otherwise restricting overtime for healthcare workers would interact with minimum staffing requirements.

12. Have minimum staffing requirements been effective at the State level? What were facilities' experiences transitioning to these requirements? We note that States have implemented a variety of these options, discussed in section VIII.A. of this proposed rule, and would welcome comment on experiences with State minimum staffing requirements.

13. Are any of the existing State approaches particularly successful? Should CMS consider adopting one of the existing successful State approaches or specific parts of successful State approaches? Are there other approaches to consider in determining adequate direct care staffing? We invite information regarding research on these approaches which indicate an association of a particular approach or approaches and the quality of care and/or quality of life outcomes experienced by residents, as well as any efficiencies that might be realized through such approaches.

14. The IOM has recommended in several reports that we require the presence of at least one RN within every facility at all times. Should CMS concurrently require the presence of an RN 24 hours a day 7 days a week? We also invite comment on the costs and benefits of a mandatory 24-hour RN presence, including savings from improved resident outcomes, as well as any unintended consequences of implementing this requirement.

15. Are there unintended consequences we should consider in implementing a minimum staffing ratio? How could these be mitigated? For example, how would a minimum staffing ratio impact and/or account for the development of innovative care options, particularly in smaller, more home-like settings, for a subset of residents who might benefit from and be appropriate for such a setting? Are there concerns about shifting non-nursing tasks to nursing staff in order to offset additions to nursing staff by reducing other categories of staff?

16. Does geographic disparity in workforce numbers make a minimum staffing requirement challenging in rural and underserved areas? If yes, how can that be mitigated?

17. What constitutes “an unacceptable level of risk of harm?” What outcomes and care processes should be considered in determining the level of staffing needed?

NPRM PPS, Value-Based Purchasing; Request For Information on Revising the Requirements for LTCFs to Establish Mandatory Minimum Staffing Requirements

Federal Register, Vol. 87, No. 73, Friday,
April 15, 2022, pp.22720

<https://www.govinfo.gov/content/pkg/FR-2022-04-15/pdf/2022-07906.pdf>

Submit Comments:

<https://www.regulations.gov>

Refer to file code CMS-1765-P

22720 Federal Register / Vol. 87, No. 73 / Friday, April 15, 2022 / Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

42 CFR Part 413
[CMS-1765-P]
RIN 0938-AU78

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would update: Payment rates; forecast error adjustment; diagnosis code mappings; the Patient Driven Payment Model (PDPM) parity adjustment; the SNF Quality Reporting Program (QRP), SNF Value-Based Purchasing (VBP) Program. It also proposes to establish a permanent cap policy. This proposed rule also includes a request for information related to long-term care (LTC) facilities. CMS requests comments on these proposals as well as on related subjects and announces the application of a risk adjustment for the SNF Readmission Measure for COVID-19 beginning in FY 2023.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by June 10, 2022.

ADDRESSES: In commenting, please refer to file code CMS-1765-P. Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the "Submit a comment" instructions.
2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1765-P, P.O. Box 8016, Baltimore, MD 21244-8016. Please allow sufficient time for mailed comments to be received before the close of the comment period.
3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1765-P, Mail Stop CA-26-06, 7500 Security Boulevard, Baltimore, MD 21244-1850. For information on viewing public comments, see the beginning of the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT: PDPM@cms.hhs.gov for issues related to the SNF PPS. Heidi Magidry, (410) 786-6034, for information related to the skilled nursing facility quality reporting program. Alexandre Labege, (410) 786-8625, for information related to the skilled nursing facility value-based purchasing program.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on www.regulations.gov public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no longer published in the Federal Register. Instead, these tables are available exclusively through the internet on the CMS website. The wage index tables for this proposed rule can be accessed on the SNF PPS Wage Index home page, at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNPPPS/WageIndex.html>. Readers who experience any problems accessing any of these online SNF PPS

wage index tables should contact Kla Burwell at (410) 786-7816. To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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COMMENTS DUE: JUNE 10, 2022

Take Action

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Tell CMS to Establish a Minimum Staffing Standard in Nursing Homes

May 24, 2022

On April 15, 2022, the Center for Medicare & Medicaid Services (CMS) published a **Notice of Proposed Rule Making** (NPRM) that included requests for information regarding the implementation of a minimum staffing standard in nursing homes. CMS states it plans to propose a minimum staffing standard within one year.

Consumer Voice strongly supports the proposal for a minimum staffing standard. Inadequate staffing is the primary driver of poor health outcomes in nursing homes.

It's imperative that advocates, family members, and residents of long-term care facilities share their stories with CMS by responding to the request for information by June 10, 2022.

Follow these steps to quickly and easily submit your comment:

1.) Go to the **Federal Register's website** and click the green "Submit a Formal Comment" button. Note: It is easiest to keep this page open while submitting your comment, so you can refer back to the instructions.

2.) In the Comment box:



Copy and paste the heading: *CMS must establish a minimum staffing standard.*



Write your personal story about how inadequate staffing in a nursing home has affected you or someone you know.



Copy and paste:

It is well-established residents in nursing homes with higher staffing levels have better health outcomes. Yet far too many nursing homes fail to staff at levels that are known to prevent harm. This was true even before the COVID-19 pandemic.

The current federal requirement for "sufficient" staff is not sufficient. When there isn't enough staff, residents suffer. They decline physically, they lose weight, they fall trying to get out of bed or move around on their own, and they get pressure ulcers because there's no one there to help them move. Without adequate staff, residents may wait hours to get up in the morning, receive their meals, or go to bed at night. Call bells go unanswered and residents lose their dignity, unable to perform even the most basic tasks like showering or using the bathroom.

Quick steps to easily submit your comments:
[https://theconsumervoice.org/news/detail/latest/
comment-to-cms-on-staffing](https://theconsumervoice.org/news/detail/latest/comment-to-cms-on-staffing)