



November 3, 2023

Chiquita Brooks-LaSure  
Administrator  
Center for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Ave, SW  
Washington, DC 20201

Subject: **(CMS-3442-P)**: Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting

Submitted Electronically via: <http://www.regulations.gov>

Dear Administrator Brooks-LaSure,

Trinity Health Senior Communities (THSC), a National Health Ministry of Trinity Health, is a faith-based organization that serves more than 730 residents in its owned skilled nursing communities across five states: Connecticut, Indiana, Iowa, Michigan, and North Carolina. These residents receive long term care, memory care, rehabilitative therapy, and other skilled services from colleagues whose focus is clinical excellence and compassionate care. Trinity Health Senior Communities collaborates under management contracts with six additional older adult communities in four states to serve another 200+ residents in need of skilled nursing services and another 7 senior communities under St. Peter's Health Partners serving another 858 residents in upstate New York. We appreciate the opportunity to comment on CMS-3442-P, Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting proposed rule. Our comments and recommendations reflect a strong interest in public policies that support better health, better care, and lower costs to ensure affordable, high quality, and people-centered care for all.

Trinity Health is one of the largest not-for-profit, Catholic health care systems in the nation. It is a family of 121,000 colleagues and nearly 36,500 physicians and clinicians caring for diverse communities across 27 states. Nationally recognized for care and experience, the Trinity Health system includes 101 hospitals, 126 continuing care locations, the second largest PACE program in the country, 136 urgent care locations and many other health and well-being services. In fiscal year 2023, the Livonia, Michigan-based health system invested \$1.5 billion in its communities in the form of charity care and other community benefit programs.

**THSC is responding to this proposed staffing ratio with a sense of urgency. The long-term-care industry is still recovering from the Covid-19 pandemic and the healthcare workforce crisis remains a challenging issue, despite our best efforts. We are deeply concerned that the proposed staffing standards would jeopardize the sustainability of the industry, reduce patient access, and have a ripple-effect across the care continuum. In addition to the conceptual flaws with numerical thresholds, implementation of the rule could severely limit access to nursing home care, particularly in rural and other underserved communities, lead to longer waits for emergency and inpatient hospital care, worsen staffing shortages across the care continuum and hinder innovative, new approaches to delivering quality care.**

**We urge CMS to abandon the proposal in its entirety.**

**Minimum Staffing Standards:** CMS proposes to require Long-term Care Facilities (LTCFs) to have a minimum staffing standard, to include 24/7 Registered Nurses (RN), and an Hour Per Resident Day (HPRD) requirement. THSC shares CMS' goal to ensure that providers, across the care continuum, including LTCFs are providing safe, high-quality care to the vulnerable population we serve. However, we are concerned that the agency's proposal reflects a lack of understanding of the true state of the workforce environment. Fewer than 1 in 5 nursing homes currently meet the proposed CMS staffing standards.

**The proposed RN staffing standards are not achievable in the midst of a health care workforce shortage crisis.** There are simply not enough RNs to meet the demand proposed in this ratio. Despite innovative and aggressive hiring, THSC currently is experiencing a licensed nursing vacancy rate of 27%. CMS' own estimates predict that LTCFs would need to hire an additional 12,639 RNs to fill the 24/7 mandate at a time when The Bureau of Labor Statistics (2023) projects 203,200 openings for RNs each year through 2031.<sup>1</sup> Currently, only 9.34% of all RNs work in long-term care.

**The proposed standards fail to account for nursing leadership and the critical role of LPNs.** In the long-term care setting, the Director of Nursing, Unit Managers, and MDS Coordinators are typically RNs. It would be important to factor their time into any HPRD ratio or change the language to ensure that an RN, "be available for consultation." Additionally, Licensed Practical Nurses (LPNs) provide the majority of nursing services. Yet, the proposed ratio excludes this vital part of the nursing workforce. Skilled nursing facilities make up the largest percent of industries employing LPNs. LPNs provide key services to seniors such as medication administration, providing treatments, communication with physicians and families, working with nursing assistants and the interdisciplinary team, among other items. At THSC, 74% of our nursing workforce is LPNs. They have been the backbone of nursing in Long-term care for decades. The exclusion of this essential licensure level is extremely concerning.

**The proposed standards fail to account for patient acuity and other support staff.** The proposal does not allow for flexibility in accommodating varying care needs, preferences, and staffing mix. The rule does not consider the roles of social service, life enrichment, therapy, and dining staff which all play a role in care of residents. A minimum staffing level of 3.48 which includes other members of the interdisciplinary team and does not specify only RN and CNA hours would be a more practical approach. **Therefore, THSC strongly urges CMS to allow hours worked by LPNs, RN Leadership, and other members of the care team to be countable towards any HPRD standard should this rule be finalized.**

**The proposed Nursing Assistant staffing standards are not achievable in the current health care workforce shortage crisis.** The proposed rule would require LTCFs to hire additional Nursing assistants to meet the HPRD standard. Yet the shortage of this critical cohort is staggering. THSC is currently experiencing a 30% vacancy rate for Certified Nursing Assistants. From 2019 to 2029, the NA job openings are expected to grow to 561,800.<sup>2</sup> CMS' own estimates state that to meet this mandate, 76,376 NAs would need to be hired. In very practical terms, this mandate would be virtually impossible for many facilities to implement. Long-term care providers can not hire nursing assistants in communities where they do not exist. In communities where this workforce might exist, hiring will be cost prohibitive. THSC estimates its annual unreimbursed expense to meet the proposed standards would be \$8.8 million. This does not account for future wage increases or adjustments.

**The proposed rule will result in fewer patients having access to nursing home care.** The financial burden associated with proposed ratios is not viable for the long-run and will jeopardize the financial sustainability of facilities. Skilled nursing facilities will only operate in the red for so long before closure. Closure means fewer patient access points. THSC has already reduced its services in response to the

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1. US Bureau of Labor Statistics. *Occupational and wage statistics*. (2023). [Registered Nurses \(bls.gov\)](https://www.bls.gov)

2. PHI. (2021). *Future demand for nursing assistants in the United States. Key facts*. [Direct-Care-Workers-in-the-US-2021-PHI.pdf \(phinational.org\)](https://www.phinational.org)

current workforce crisis. Mandated nurse staffing standards remove real time, clinical judgment, and flexibility from the practice of medicine, particularly the practice of nursing. Typically, numerical staffing thresholds are informed by older care models that do not consider advanced capabilities in technology or the interprofessional team care model that supports data-driven decision-making and collaborative practice. Emerging care models incorporate not only nurses at various levels of licensure, but also respiratory therapists, occupational therapists, speech-language pathologists, physical therapists, and case managers. A simple mandate of a base number of RN and NA hours per resident day emphasizes staff roles and responsibilities of yesterday rather than what current and emerging practices may show is most effective and safe for the patient and best aligned with the capabilities of the care team.

### **Proposed Standards Would Exacerbate Dire Workforce Shortages Across the Continuum:**

Mandating staffing levels is not only a simplistic response to the complex problem of meeting the needs of LTC residents and patients, but also would exacerbate severe long-term shortages of nursing staff across the care continuum. Indeed, even prior to the COVID-19 pandemic, health care providers were already facing significant challenges making it difficult to sustain, build and retain the health care workforce. In 2017, the majority of the nursing workforce was close to retirement, with more than half aged 50 and older, and almost 30% aged 60 and older. These shortages only accelerated due to the profound disruptive impacts of the COVID-19 pandemic. Indeed, according to a 2022 study in Health Affairs, the total supply of RNs decreased by more than 100,000 from 2020 to 2021 — the largest drop observed over the past four decades.<sup>3</sup> An even more comprehensive analysis from a large-scale biennial survey conducted by the National Council of State Boards of Nursing (NCSBN) and National Forum of State Nursing Workforce Centers (NFSNWC) found a similar number of registered nurses had left the workforce. It also showed that nearly 900,000 — or one-fifth of the 4.5 million total registered nurses — expressed an intention to leave the workforce due to stress, burnout, and retirement. The NCSBN and NFSNWC study also noted that over 33,800 licensed practical nurses (LPNs) and vocational nurses left the field since 2020, disproportionately impacted nursing homes and LTCs.<sup>4</sup>

With staffing shortages affecting all parts of the health care sector, the reality is that all parts of the health care continuum are redoubling their efforts to recruit, retain and support the well-being of health care workers. However, recruitment efforts also are drawing on a finite number of RNs, LPNs, and other skilled health care professionals. By implementing mandatory staffing levels in nursing homes, it is possible CMS will achieve its stated goal of increasing LTC-setting staffing. However, given the shortages we described above, it is inconceivable that LTC facilities will be able to meet these standards without detrimental effects to workforce availability throughout the care continuum.

This would have a ripple effect across the entire continuum of care, as general acute care hospitals, inpatient rehabilitation facilities and other health care facilities already struggle to find appropriate placement for their patients. Indeed, hospitals and health systems already are experiencing significant challenges in moving patients through the health care continuum generally, and into skilled nursing facility care specifically. The average length-of-stay (ALOS) in hospitals for all patients increased 19.2% in 2022 compared to 2019 levels; for patient being discharged to post-acute care providers, the ALOS increased nearly 24% in the same period. Case-mix index-adjusted ALOS increased for patients being discharged from acute care hospitals to skilled nursing facilities by 20.2%.<sup>5</sup> These longer stays in hospitals are not a

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3. Auerbach, David, et al. "A Worrisome Drop in the Number of Young Nurses," Health Affairs Forefront, April 13, 2022. <https://www.healthaffairs.org/content/forefront/worrisome-drop-number-young-nurses>

4. <https://www.healthaffairs.org/content/forefront/worrisome-drop-number-young-nurses> 6 [https://www.journalofnursingregulation.com/article/S2155-8256\(23\)00047-9/fulltext](https://www.journalofnursingregulation.com/article/S2155-8256(23)00047-9/fulltext)

5. AHA Issue Brief, December 2022.

mere inconvenience. They result in delays in patients receiving the next level of medically necessary care. They also lead to longer wait times in hospital emergency departments because hospitals are unable to move current patients out of inpatient beds. In other words, constrained access to LTCFs is a quality-of-care issue affecting all types of patients across the care continuum.

In part, the above trends reflect the significant shortages of health care workers experienced in skilled nursing and other long-term care facilities. But they also reflect an alarming increase in LTC facility closures across the country, a trend that could be accelerated if CMS' proposed rule is adopted.

Since the beginning of 2020, at least 600 LTC facilities have closed while only three have opened so far in 2023 (compared to an average of 64 opening each year from 2020 to 2022).<sup>6</sup> Access is already diminished and will further erode if this standard is finalized.

**The proposed rule is not critical to achieving high quality patient care.** THSC is a top performer in quality metrics, resident and family satisfaction, and colleague engagement. Our average quality rating on Care Compare is 4.45 out of 5. In the five states in which THSC has owned LTCFs, the average number of citations received during annual survey by all LTCFs is 10.5. However, our LTCFs on average received only 3.2 citations, well below any state average, with 5 of them receiving 2 citations or fewer. One of them is deficiency-free. To that point, quality is already measured, and high-standards attained, without the proposed staffing ratio.

In addition, many states already have staffing ratios in place. While the proposed rule designates that the most stringent should be used, this still creates confusion for providers. For example, Illinois currently mandates 3.8 hours per patient day for skilled care and 2.5 hours per patient day for intermediate care, with 25% of that care being provided by licensed nurses (Cornell Law, 2023).<sup>7</sup> The additional federal ratio standard makes staffing calculations highly confusing. Our LTCFs in New York already have minimum staffing ratios put in place by the New York State Department of Health in 2023. The CMS proposed rule differs from those of New York. The combination of the CMS and New York standards will be crippling to those facilities. The proposed approach is flawed and does not account for any state variation. Given vastly different state dynamics, such as Medicaid rates, size of facilities, and current staffing ratios, it is unreasonable to have the same requirement in every state.

CMS is encouraged to look at its commissioned study with Abt Associates to identify a minimum staffing requirement. The report concluded there was “no obvious plateau at which quality and safety are maximized or ‘cliff’ below which quality and safety steeply decline.” In other words, a one-size-fits all staffing ratio will not work. The study did not make a recommendation for a specific standard and was unable to draw conclusive evidence in favor of a specific standard to guarantee quality care. Finalizing this rule, with no data to prove its effectiveness, in fact data to the contrary, would be reckless as access will be limited for families needing to place a loved one or hospitals needing to discharge patients, resulting in extreme negative impact.

Staffing ratios are not the answer; CMS needs a new approach to achieving consistent, quality care in nursing homes—and it must begin with meaningful solutions to the workforce crisis.

### **Again, We urge CMS to abandon the proposal in its entirety.**

**Enhanced Facility Assessment Requirements:** The changes to the facility assessment requirement are unnecessary. The current requirement is comprehensive in nature and already considers the care required by the population and overall acuity of the residents, staff competencies needed, and the

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6. “The Upheaval at America’s Disappearing Nursing Homes, in Charts,” Wall Street Journal, August 23, 2023. <https://www.wsj.com/health/healthcare/the-upheaval-at-americas-disappearing-nursing-homes-in-charts-9aa8d2f>

7. Cornell Law. (2023). *Administrative code-direct care staffing. III. Admin. Code tit. 77, § 300.1230 - Direct Care Staffing | State Regulations | US Law | LII / Legal Information Institute (cornell.edu)*

physical environment. The current requirement already calls for facilities to assess personnel and resources needed. Additional language and changes to the requirement are unnecessary and burdensome.

**Medicaid Payment Transparency:** The proposed Medicaid transparency reporting will create a large administrative burden on LTCFs. The proposed rule is complicated and difficult to manage and would likely vary broadly across states. While this is not a provider requirement, this provision could directly impact LTCFs through increased administrative and reporting burden. The extent of burden would be dependent on the state Medicaid agency in obtaining the necessary data.

### **Conclusion**

Trinity Health Senior Communities remains committed to top quality performance, high resident, and family satisfaction, and engaged and empowered staff. We appreciate the opportunity to submit our comments. If you have any questions, please feel free to contact me at [Jackie.Harris@Trinity-Health.org](mailto:Jackie.Harris@Trinity-Health.org) or Donna Wilhelm, our VP of Advocacy and Government Relations at [donnaw@trinity-health.org](mailto:donnaw@trinity-health.org).

Sincerely,

/s/

Jackie Harris President and CEO  
Trinity Health Senior Communities