October 18, 2023

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-3442-P
P.O. Box 8016
Baltimore, MD 21244-8016

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

The Honorable Secretary Xavier Becerra:

LeadingAge Iowa is a statewide association, representing not-for-profit aging services providers, including Long-Term Care, throughout Iowa. Our mission-focused members strive to provide high quality care and services to older adults based on their needs and preferences. Nearly all of our members provide Long-Term Care as part of the services that they offer.

LeadingAge Iowa applauds the stated goal of ensuring access to safe, high-quality care for the residents of nursing homes across the country. However, as outlined in our comments, the proposed rule to establish a minimum staffing standard not only will be impossible to implement given the current workforce crisis and insufficient reimbursement levels but also will reduce access to care because most providers will need to reduce admissions to achieve compliance with the rule and some may be forced to close due to the resulting financial situation. While we share the overall goal, this proposed rule is the wrong policy in the current environment, and we urge HHS through CMS to withdraw the proposal.

24/7 RN Requirement

This requirement is the most challenging for providers to comply with and ignores the demographic data about the availability of RNs across the country and the role of LPNs on the care team. Based upon a survey of our membership and data from LeadingAge New York's analysis on PBJ reporting from Quarter 1 2023, we discovered the following information about the proposed 24/7 RN requirement:

- Less than 20% of our members meet the 24/7 RN requirement today.
- 100% of LeadingAge Iowa members reported difficulty hiring RNs in the last 12 months and despite efforts to recruit, several reported that they barely receive applications from RNs to hire (1-2 applications received over the last 12 months) and have to rely on temporary agency staff.

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- Only 38% of applications submitted resulted in hire. (See comments below on difficulty hiring staff.)
- Most importantly, there are not enough nurses in Iowa to meet the requirements being proposed. According to the Iowa Board of Nursing, the overall number of RNs in the state decreased in FY 2023 from FY 2022 by 3,413 nurses (-5.5%). As of October 1, 2023, the state of Iowa reports that there are 3,262 active RN job openings. An increase of approximately 335 full-time RNs needed to comply with this proposed rule only increases the number of job openings when there is simply not enough supply to meet the demand. The proposed rule ignores the demographic realities and workforce crisis; the math simply doesn't work. We need to focus on developing the pipeline first especially since the outlook is not improving with 41% of Iowa's RNs are over the age of 50 with more than 20% eligible to retire now. For reference, only 1,786 RNs passed the Licensure Examination in Iowa in 2022; even if they all stay and work in Iowa, we are not remotely adding enough to supply to fill the need and backfill the retirements.
- If implemented and IF our members could find the staff, it would cost LeadingAge Iowa members almost $1 million per year in additional wages and fringe benefits. This estimate is likely low since the competition for RNs to comply with this rule will spike wages and temporary agency costs further exacerbating inequities in the system.
- The 24/7 RN coverage ignores the role that LPNs currently provide on the care team. According to the Iowa Board of Nursing, nearly half of Iowa's LPNs work in the Long-Term Care setting. LPNs provide excellent care and work in partnership with RNs under their supervision and delegation allowing everyone to practice at the top of their scope. This allows health care to maximize the available workforce and creates meaningful roles for nurses at all levels whether the nurse is moving along the career ladder or choosing to continue their career in one practice level.

LeadingAge Iowa urges CMS to withdrawal the 24/7 RN proposal and to instead:

- Enhance LPN education nationwide. The Iowa Board of Nursing convened a workgroup with both education and long-term care nurses to develop a curriculum for LPNs to enhance their assessment skills and identify when intervention from an RN or Physician would be necessary. This will strengthen the skills of LPNs and enhance quality of care to residents within the long-term care industry. This is solution underway in Iowa in recognition of the demographics and workforce challenges that exist today, and the important role of LPNs on the care team.
- In the Abt Associates study a projected cost savings was attributed to reduced ER visits and hospitalizations. Often times nurses report abnormal assessment findings to primary physicians and on-call providers who provide an order for the resident to be transferred to the ER. ER visits could also be reduced by educating physicians and their extenders on services available in the nursing home setting such as portable x-rays, laboratory testing/diagnostics, and

treatments such as IV antibiotics in skilled nursing settings so that fewer transfers are ordered.

RN HPRD

Statistically, not-for-profit and governmental nursing homes staff at higher levels than for-profit nursing homes. Despite higher staffing levels, our not-for-profit nursing home members will still need to hire significantly more RNs to meet a 0.55 minimum RN threshold per resident day. According to LeadingAge New York's analysis of Quarter 1 2023 staffing data, LeadingAge Iowa members' costs will increase $2.34 million annually to meet this RN HPRD staffing measure.

Like our comments on the the 24/7 RN proposal, this RN HPRD proposal which will require additional RNs ignores the demographic realities, workforce crisis, and the role of LPNs on the care team.

We encourage CMS to withdrawal the proposal and focus on the workforce supply and financing challenges in the system. However, if CMS moves forward with some type of minimum threshold like 0.55 RN HPRD, this must minimally include the use of all nurse managers (including the Director of Nursing) hours as part of the HPRD calculation. These individuals all contribute to the care team by stepping in to assist the nurse on duty with emergencies, answer questions, implement best practices, provide education and monitor charting entries and reports for subtle changes in condition and ensuring they are recognized and addressed timely.

Nurse Aide HPRD

Nurse aides are critical to the care delivered to nursing home residents and are often with the resident more on a daily basis than anyone else.

- According to the LeadingAge New York staffing analysis, the proposed requirement of 2.45 nurse aide HPRD would cost LeadingAge Iowa members $2.16 million annually.
- The same staffing analysis predicted nearly 1,000 additional full-time nurse aides would be needed in Iowa to be in compliance. The State of Iowa has an economy where there are approximately 15,000 more jobs available across the state currently than there are unemployed individuals. We are in a workforce crisis, and staffing mandates do not create additional people. There simply are not enough individuals to hire to be in compliance with the requirements; the math doesn't work!
- In a survey completed by LeadingAge Iowa, 100% of the members reported difficulty hiring nurse aides over the last 12 months.

If CMS chooses to move forward with a Nurse Aide HPRD requirement, the requirement should utilize all job codes submitted in PBJ reporting to count the minimum threshold towards compliance with the nurse aide HPRD. Specifically, any staff member with a CNA background including minimally medication aides and restorative aides should be included in the nurse aide HPRD. Further, we believe that a more accurate assessment

of staffing includes all aspects of the care team including activities, social work, and dietary.

We also implore CMS to consider alternative options for improving quality of care and maximizing staff flexibility to care for residents such as:

- Creation of transportation aide which would allow staff who have been trained in transferring residents to transport residents around the community (to and from meals, activities, etc.) This is a role that hospitals utilize but LTC communities cannot as a team member must be a CNA to transfer residents. Not all team members want to provide personal care, but many like working with residents and would be very helpful with transportation. This new role would create flexibility and allow more people to help get residents where they want to go which improves quality of life.
- Expansion of paid feeding assistant training such as inclusion of Basic Life Support certification and assistance with feeding residents who have complex swallowing difficulties. This would allow for nurse aides to provide care to the residents in different capacities, such as providing additional time in completion of ADLs, shower/bathing needs, restorative cares, and more that would enhance the quality of care provided in accordance with CMS' goals. We encourage use of paid feeding assistant hours to count towards the minimum nurse aide HPRD requirement.

Again, if authorized, these new members of the care team also should have their hours counted towards any Nurse Aide HPRD staffing minimums.

Survey, Certification, and Enforcement:

According to the proposed rule, CMS will use a process of enforcement through the Payroll Based Journal (PBJ) System as well as on-site surveys. We have concerns about the limitations of the PBJ System data for this purpose because the PBJ reporting guidelines are very technical and do not always reflect the actual staffing levels. For example, rural providers with a smaller census of residents often staff one nurse per shift and pay the nurse to stay onsite for the entirety of his/her shift, including through the lunch break. This practice ensures that the nurse is available for any emergency that arises among residents for the entirety of the workday. However, the PBJ System reporting guidelines always exclude a 30-minute rest period, regardless of whether the nurse actually took a 30-minute uninterrupted break. Pursuant to the PBJ reporting guidelines and data, 30 minutes per shift would seem uncovered by a nurse, but the nurse is onsite and prepared to respond to residents for the entirety of their workday including the 30-minute "rest period." Practically speaking, the nurse is more able to respond during their paid onsite lunch than they would during a moment when they excuse themselves for a restroom break which no one contests that they are working and available.

In addition, the survey agency doesn't necessarily understand the nuances of PBJ reporting. This leaves interpretation of accuracy and staffing coverage to the survey agency, despite both sufficient staffing and PBJ reporting accuracy requirements being

met. We ask that CMS revise the process and guidelines to ensure accuracy of the information collected on the PBJ reports and to educate the survey agencies on PBJ reporting requirements and guidelines to allow for fair and accurate issuance of deficiencies. It is not accurate or fair to providers to have data reporting guidelines that implement hardline rules about automatic break deductions which do not reflect actual staffing patterns and to then try to utilize that data as an enforcement mechanism on staffing patterns.

Regarding enforcement action, there will be instances when a nursing home does not meet criteria outlined in the proposed rule to request a waiver of the hours per day but is still unable to staff the required hours (both RN on duty 24 hours per day 7 days per week and the hours per resident day requirement) due to the workforce crisis. A rule that does not adequately factor in the demographic challenges and significant workforce crisis, particularly for RNs, should not implement progressive enforcement action on providers regardless of any other factors. Simply put, the availability of the workforce in the area should be the guiding factor regarding whether minimum staffing levels are applied. Progressive disciplinary action in these scenarios will only lead to additional nursing home closures and fewer options for older adults to receive care.

If a provider's performance related to staffing levels is posted publicly, we encourage CMS to continue to report in the same manner that it currently is on the Care Compare website. Utilizing the star rating system along with the actual reported hours provides transparency. This may be beneficial to nursing home providers, especially those who may be close to the HPRD requirement but fail to meet the minimum threshold, which would allow the public to see their good faith efforts to comply.

General Comments on the Proposed Rule

Cost: The overall impact on LeadingAge Iowa members will be more than $5.39 million annually. According to the CliftonLarsonAllen LLP 38th SNF Cost Comparison and Industry Trends Report, Iowa nursing homes reported a -5% operating margin in 2022. Simply put, these providers are not making money which will impact where the $5.39 million cost will come from. Private pay residents will likely bear the burden of the increased expense, which will only accelerate these individuals need to rely on Medicaid to cover nursing home services. Since Iowa Medicaid does not cover the cost of care, this further threatens the financial viability of providers.

Hiring: The LeadingAge Iowa staffing survey indicated that all members are having trouble hiring both nurse aides and registered nurses, despite increasing wages, providing additional benefits, and implementing organizational culture change to attract and retain qualified individuals. In addition, members commented in relation to hiring:

- Several applications are received from non-qualified individuals and those who will not return calls to set up interviews.
- Long-term care is frequently not the practice setting many graduating RNs want to work in.

- Many nursing homes are fighting for the same pool of RNs and nurse aides, there are simply not enough individuals to meet compliance with this proposed rule.
- It is impossible to compete with staffing agencies' wages. Despite several wage increases over the last few years, staff are still leaving to work for staffing agencies, many returning to our building to work while making more money.
- If the proposed rule is finalized it will force nursing homes to hire “bodies” that are not quality applicants which will have a negative impact on the quality of care to those we serve.

In addition, the U.S. Bureau of Labor Statistics reported that the number of healthcare jobs increased by 41,000 jobs in September. This same report determined that there are approximately 1.5 jobs for every one person seeking employment in the US. Simply put, there are not enough individuals looking for employment to make this proposed rule feasible. From a policy perspective, we need to first focus on developing the workforce through a multi-pronged approach before we implement new requirements to hire people that don’t exist.

Compliance: Despite the best intentions, many nursing homes experience staff call-offs nearly every day. Nursing home providers are concerned about how call-offs will impact their compliance and will likely have to schedule at an even higher threshold to account for this potential. In addition, nursing homes experience ebbs and flows related to staffing. While they may be compliant today, doesn’t mean they will be in a few months and with the difficulty in hiring staff, they fear remaining compliant will be nearly impossible.

Closures and Healthcare Impacts: In Iowa, 29 nursing homes have closed since the beginning of 2022, all related to staffing challenges and financial distress. In addition, half of LeadingAge Iowa members have limited admissions because of staffing challenges which resulted in approximately 167 residents being denied admission. Placing higher staffing expectations on these individuals will only increase this number and will place the entire healthcare system at risk. What will the hospitals do with patients who need long-term care or skilled services and there isn’t a provider that is taking admissions? Will these individuals be forced into their home without adequate services as home health providers are also having difficulty with staffing. Those providers who can staff adequately will have an increase in staffing costs which may impact their ability to effectively manage business operations as providers are already experiencing a negative operating margin, which will further lead to closures of nursing home providers.

Medicaid Transparency

LeadingAge Iowa agrees with the intention of providing transparency such as providing the amount of the nursing home’s Medicaid payment that relates to direct compensation of direct care workers. However, the Medicaid rate is well below what actual expenses are. For example, Iowa Medicaid reported one of our members paid total direct care expenses for their fiscal year of $1,865,223 over 10,608 resident days which equals

$175.83 per day for direct care costs alone. The amount that Iowa Medicaid is paying for direct care costs is $119.24 per resident day, which is a loss of $56.59 per resident day. Even with the much-appreciated investment of additional funds that the state of Iowa made to increase Medicaid reimbursement for nursing homes effective July 1, 2023, rates are still 8-11% below 2022 costs.

Inadequacy of Waiver Process Proposed

While we appreciate the opportunity for a waiver of the requirements in the proposed rule, there are not many nursing homes that will meet the criteria for a waiver. According to Iowa Health Occupation Licenses by the Iowa Student Outcomes website, Johnson County Iowa, which is an urban area, has a demand that exceeds RN license in the county by 4,345. Nursing homes in this county would not be eligible to apply for a waiver based on their urban provider status alone if facing challenges to meet the requirements.

It is inherently unfair to implement a proposal when the workforce does not exist to meet it. The waiver process must recognize the demographics of the area related to workforce availability or the system will crumble. If CMS moves forward to a final rule for minimum staffing levels in long-term care, they must consider alternative options for a waiver, including removal of the rural designation status and recognition of the availability of the workforce.

Thank you for the opportunity to submit commits on the proposed rule.

Sincerely,

Shannon Strickler

Shannon Strickler, President/CEO
LeadingAge Iowa