



Wisconsin Health Care Association

Wisconsin Center for Assisted Living

May 16, 2022

Re: CMS SNF Proposed Rule – FY 2023 Skilled Nursing Facility (SNFs) Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Quality Reporting Program and Value-Based Purchasing Program; Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels (CMS-1765-P)

To Whom It May Concern:

The Wisconsin Health Care Association/Wisconsin Center for Assisted Living (WHCA/WiCAL) is a non-profit organization dedicated to representing, protecting, and advancing the interests of Wisconsin's long-term care provider community and the residents they serve. Included in WHCA/WiCAL's membership are 175 nursing facilities, all of which strive every day to provide the excellent care and services that their residents need and deserve.

Through conversations with nursing facility providers across Wisconsin, we strongly believe that the proposed rule CMS-1765 will have detrimental effects on providers' ability to continue providing quality care.

Parity Adjustment. The proposed parity adjustment, equating to a payment decrease for facilities, could not come at a worse time. Facilities are still doing their best to tread water after more than two years of doing everything possible to protect and care for their vulnerable residents during a pandemic that was especially devastating to our elderly, frail populations. While the wellbeing of residents was foremost on their minds, it is also important to recognize the skyrocketing operational costs that accompanied their efforts to combat COVID.

Imposing a Medicare payment reduction at this time would put facilities in a more precarious position during a time when providers need support and deserve our adulation, rather than what equates to a payment cut which would permeate the entire facility and the local community. It would affect providers' ability to be competitive as employers and as recruiters in a very challenging workforce environment. If the current long-term care workforce shortage is not improved or becomes worse due to a payment reduction, it could negatively impact quality of care for residents, and facilities may have to continue a current common practice of not admitting new residents if they do not have adequate staff for additional residents. This can create a health care access issue for the entire community and can cause disruptions in transitions of care from local hospitals to a post-acute setting.

We urge CMS to reconsider this parity adjustment proposal. Alternatively, if CMS determines the parity adjustment must be implemented, we request CMS phase the adjustment in over a 3-year period to ease the financial hardship in gradually rather than all at once.

Minimum Staffing Requirement. Any conceptual consideration of a minimum staffing requirement must take into account the practical consequences of such a regulation, and the implications are clear: a proscriptive, rigid minimum staffing requirement will create burdens for providers that will not improve quality of care, and may very well result in a counterproductive outcome of diminishing quality of care.

To address staffing issues in long-term care settings, there is much the federal government could do to assist providers, including increasing reimbursement or providing emergency funding so providers can be more competitive in the workforce market; addressing staffing agency price gouging that has grown acutely worse over the pandemic; and reevaluating the punitive nature of regulatory enforcement, which often leaves providers

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with five- or six-figure monetary fines that takes operational dollars away from a facility's budget - resources which could otherwise be used for wages or internal initiatives targeted toward improving care quality.

The current staffing shortage is not due to a lack of a CMS minimum staffing requirement, it is due to the challenging labor market and the lowered flexibility of long-term care facilities to offer more competitive wages due to inadequate public payor reimbursement.

What will not solve or positively impact the workforce shortage is a nationwide, one-size-fits-all minimum staffing requirement.

The last two years have demonstrated to us just how committed nursing facility staff are to their residents, many often risking their own health to ensure residents receive the care they need and deserve. Providers will not admit a new resident unless they are certain they have the staff capacity to ensure proper care and services for that individual and for all current residents. Look no further than current census data for evidence – in January 2020 prior to the pandemic, the average nationwide nursing home occupancy was 80.2 percent. Today, average nationwide nursing home occupancy is 73.7 percent.

WHCA/WiCAL hears from members often who have low occupancy and would like to admit more residents, but due to staffing shortages, must turn away admissions because they do not currently have the staff to ensure quality care for the new admission and for all current residents. Ask any provider, and their ideal goal would be to have as close to 100 percent occupancy as possible. Demand still exists, but workforce levels inform every admission decision, and providers responsibly will not admit without the proper staff capacity – to protect residents and staff alike.

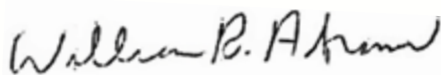
Additionally, a one-size-fits-all approach does not take into account the unique case mix of residents at every facility across Wisconsin and across the country. With wide-ranging acuity levels from resident to resident, it is not possible or feasible – nor is it fair to residents or staff – to impose a cookie-cutter approach that does not consider the exact needs of each resident and the abilities and relevant training of each facility staff member. Those best positioned to determine adequate staffing levels to ensure quality of care and services for each resident are facility staff leadership, who can put in place a staffing plan that meets the needs of residents rather than relying on an impersonal nationwide policy.

No objective staffing standard is going to magically make it more likely that a provider will be better able to deliver on their sacred duty of providing quality care and services to each and every resident. A one-size-fits-all staffing standard deviates from CMS's rightful focus on a patient-centered approach to care.

We request CMS not impose a rigid, one-size-fits-all minimum staffing requirement which will do nothing to address workforce challenges. Instead, we request CMS empower providers to make responsible decisions based on the unique circumstances of the facility, including case mix, resident needs, and current staffing capacity.

WHCA/WiCAL appreciates your attention to our concerns and would welcome an opportunity to discuss Wisconsin nursing facility providers' concerns with CMS staff.

Respectfully,



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CEO

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