

Congress of the United States
Washington, DC 20515

September 15, 2023

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, Maryland 21244

Administrator Brooks-LaSure:

We write today on behalf of our constituents providing long-term care to their communities, and the families who benefit from access to this care, regarding your agency's recent proposed rule.

On September 6, 2023, the Centers for Medicare & Medicaid Services (CMS) released a proposed rule (RIN: 0938-AV25) to phase in new long-term care (LTC) facility requirements for minimum staffing standards which include:

1. Specifying the hours per resident per day minimum standard for Registered Nurses (RNs) and Nurse Aides;
2. Increasing the requirement for on-site RNs from 8 hours to 24 hours a day, seven days a week;
3. Increasing facility assessment requirements; and
4. Additional Medicaid price transparency requirements.

It is our concern that the proposed rule presents unique compliance challenges to rural states like Nebraska. Nationally, the long-term care industry is facing historic staffing shortages, which are forecasted to increase.¹ These shortages are particularly acute in rural areas. In Nebraska, 80% of counties' RNs and Licensed Practical Nurses (LPNs) per capita are lower than the national average, and nine counties do not have any practicing RNs available.² The unique needs and challenges present in regional and local workforces show us that one-size-fits-all mandatory minimum staffing standards are not appropriate policy, a concern your agency has previously shared.³

We are also concerned by the proposed rule's phase-in of these requirements. According to the proposed rule's definitions, towns with more than 5,000 people fall under the definition of "urban." This categorization effectively prohibits many rural, non-metropolitan areas from receiving the benefit of the extended implementation timeline meant to benefit rural LTC facilities.

It is because of these concerns, and an abundance of caution for the sustainability of access to long-term care in Nebraska, that we request your timely response to the following questions:

¹ [American Health Care Association, "Long Term Care Jobs Report," \(2023\).](#)

² [Nebraska Center for Nursing, "2022 Biennial Report," \(2022\).](#)

³ [Department of Health and Human Services, Final Rule.](#) "Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities," *Federal Register* 81, no. 192 (October 4, 2016): 68754.

1. What findings or internal discussions led CMS to reverse course on its previous statement of concern regarding a one-size-fits-all mandatory minimum staffing standard?
2. On August 29th, 2023, it was [reported](#) by KFF Health News that CMS' chief operating officer stated a study commissioned by Abt Associates regarding options for minimum staffing standards for CMS' consideration was posted in error. Was CMS intending to provide the findings of this study in any form before the end of the proposed rule's public comment period?
3. How did the results of the Abt Associates study, particularly its findings of "no obvious plateau at which quality and safety are maximized or 'cliff' below which quality and safety steeply decline" in relation to minimum staffing levels, impact the staffing requirements in the proposed rule?
4. As LTC facilities rely on LPNs to provide care for residents, what is the reason for the exclusion of LPNs from the staffing ratio?
5. How was the population threshold for the proposed rule's definition of "urban" determined, and were there any alternative definitions considered by CMS?
6. In a breakdown accounting for the past five years, what is the total number of RN waivers requested and approved per year for LTC facilities' current RN staffing standards?
7. Using the standards detailed in the proposed rule, how many LTC facilities does CMS project will be eligible for the "hardship waiver" regarding local workforce shortages?
8. What processes will CMS have in place to process applications for hardship waivers, and how timely will the agency be able to grant waivers after applications are submitted?
9. How long will hardship waivers be effective upon receipt by an LTC facility, or how long will the facilities operate under a waiver before their compliance under the proposed rule is expected?
10. Does CMS expect an increase of closures for LTC facilities as a result of the proposed rule, and what data or evidence does CMS have to support this view?
11. Does CMS have a plan to re-evaluate its minimum staffing requirements in the event more LTC facilities shut down as a result of the proposed rule?

Due to the importance of the requirements under this rule, we look forward to your answers to ensure residents' access to quality long-term care.

Sincerely,



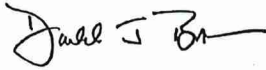
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