



October 17, 2023

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

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

Administrator Brooks-LaSure:

The NC Medical Society, the NC Health Care Facilities Association, the NC Healthcare Association, and LeadingAge North Carolina are the largest and oldest medical professional and health care facility professional associations in North Carolina. Collectively we represent more than 10,000 physicians and essentially all the hospitals, health systems, and post-acute and long-term care facilities across North Carolina.

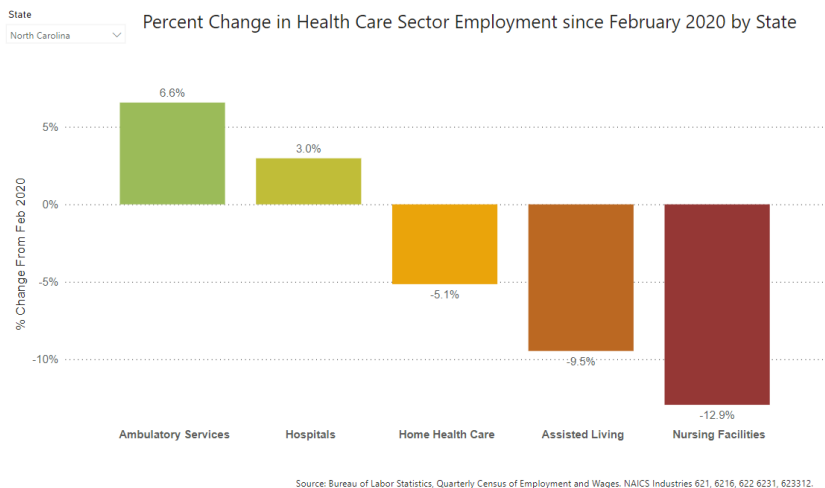
We are writing to oppose CMS's proposed rule on minimum staffing standards for long-term care facilities, issued on Sept. 1, 2023.

We share CMS's goal of improving quality throughout the healthcare system, including in nursing facilities; however, we fear this proposal will not advance that goal. Moreover, moving forward with this rule at all jeopardizes access to care at a time when North Carolina's healthcare system is still struggling to recover from the COVID-19 pandemic and demand for healthcare services is set to grow. We cannot afford to limit access to care, which this proposed rule will do, especially when it does not advance our shared goal.

Implementing this rule will have meaningful and lasting negative consequences on North Carolina residents who require skilled nursing care. It will significantly reduce access to nursing home care and force thousands of frail, elderly, and vulnerable residents to seek care elsewhere. The health care system in North Carolina does not have the capacity to adequately fill this void, placing additional pressures on healthcare providers who rely on our state's skilled nursing facilities.

Consider these factors:

- To meet the proposed minimum staffing rules, NC nursing homes would need to hire nearly 3,000 additional nurses and nurse aides. This includes the equivalent of 2,180 full-time nurse aides and 697 registered nurses.¹
- Only 15 of North Carolina's 410 nursing homes, or only 4%, currently meet the proposed staffing standards.²
- Nationally, nursing homes would need to hire more than 100,000 full-time registered nurses and nurse aides at a cost of \$6.8 billion a year. In North Carolina, the cost would total more than \$160 million annually.³ That is a cost of approximately \$392,682 per nursing home in North Carolina per year. Yet, CMS does not propose to pay for this proposed rule. Instead, it attempts to force the cost upon facilities, which already operate on razor thin margins, or state governments. The strain on skilled nursing facilities in rural areas, who must already rely more heavily on RN staffing agency use compared to urban areas, would be even greater.
- Setting aside the enormous cost associated with hiring nearly 3,000 additional staff members, there simply aren't enough nurses or nurse aides to hire.⁴ NC nursing homes are already amid a severe workforce crisis, having lost 12.9% of their workforce since the start of COVID-19.



- Hiring at long-term care facilities is a challenging process and with historic unemployment at less than 4%, there aren't enough workers to fill open positions. Many nursing homes have already been forced to utilize staffing agencies at prohibitive and unsustainable costs.

¹ Clifton Larson Allen analysis of proposed rule, North Carolina, *available at* <https://www.ahcancal.org/Data-and-Research/Pages/Staffing-Mandate-Analysis.aspx>.

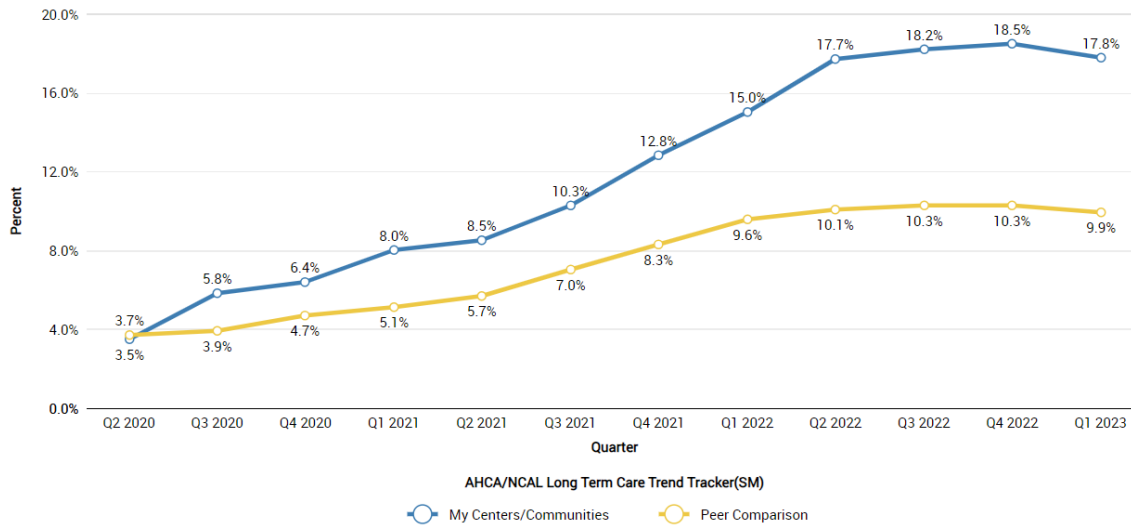
² *Id.*

³ *Id.*

⁴ Inexplicably, the proposed rule also fails to include the essential contributions of Licensed Practical Nurses (LPNs), who, if this rule were to move forward, should count toward either the RN or CNA mandated ratios. To be clear, we urge CMS not to move forward with the rule.

**SNF Staffing Measures Report: Report Summary - Five-Star PBJ Staffing - Total Nursing Percent
Agency Use - 1 - Quarter View**

My Buildings: NORTH CAROLINA HEALTH CARE FACILITIES (421 Currently Active Buildings). Peers: Peers in Entire Nation; No peer type restriction; Centers from My Org are not included in peer group (14669 Currently Active Buildings).



Alarming, because of their current staffing challenges, NC nursing homes already have limited capacity to meet demand for skilled nursing care. Nearly half of NC nursing homes currently have a waiting list, some as long as several months.

If CMS finalizes this proposed rule, NC nursing homes' ability to meet the needs of the health care system will be even further eroded. According to Clifton Larson Allen, NC nursing homes would have to **discharge more than 8,000 patients and keep those beds offline** to meet the requirements of this rule if the workforce does not grow. There is **no ability** to care for these individuals safely elsewhere.

The pressures on North Carolina's health system are only expected to get worse, as the number of adults in North Carolina 85 years and older is projected to increase by 114% by 2041.⁵

Impact on Hospitals and Health Systems

To serve North Carolinians' health care needs, physicians and hospitals strive to ensure that patients get the right care, at the right place, at the right time. This means patients who are in the hospital but who no longer need that level of care are discharged to an appropriate post-acute setting on time. This is important for that patient's continued recovery from an acute health event, and it is also important to the capacity of the healthcare system. Clinically inappropriate delays in these discharges can delay or permanently hamper a patient's recovery.

Any reduction in the ability of NC nursing homes to admit patients 1) who need facility-based post-acute care for their continued recovery or 2) who need facility-based long-term care when any other setting is no longer safe poses significant risks to those patients and anyone needing acute care. That scenario can create a backlog of patients in NC hospitals waiting to be discharged to a nursing home, which in turn reduces hospitals' ability to care for new patients needing acute care

⁵ North Carolina Division of Aging and Adult Services, 2021 NC Aging Profile, available at <https://www.ncdhhs.gov/north-carolina-aging-profiles-2021pdf/open>

because fewer ED or inpatient beds are available. New minimum staffing levels for nursing homes will hamper the entire healthcare system's ability to provide access to high-quality acute care.

For the foregoing reasons, we urge CMS to withdraw this rule and instead focus its attention on helping nursing homes and the entire healthcare system with meaningful initiatives that grow the healthcare workforce and increase access to care.

Sincerely,



Adam Sholar
President & CEO, NC Health Care Facilities Association



Chip Baggett,
Executive Vice President & CEO, NC Medical Society



Stephen J. Lawler
President & CEO, NC Healthcare Association



Tom Akins
President & CEO, LeadingAge North Carolina

cc: U.S. Sen. Thom Tillis
U.S. Sen. Ted Budd
U.S. Rep. Donald G. Davis
U.S. Rep. Deborah K. Ross
U.S. Rep. Greg Murphy
U.S. Rep. Valerie Foushee
U.S. Rep. Virginia Foxx
U.S. Rep. Kathy Manning
U.S. Rep. David Rouzer
U.S. Rep. Dan Bishop
U.S. Rep. Richard Hudson
U.S. Rep. Patrick McHenry
U.S. Rep. Chuck Edwards
U.S. Rep. Alma Adams
U.S. Rep. Wiley Nickel
U.S. Rep. Jeff Jackson