September 28, 2023

The Honorable Kevin McCarthy
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
Minority Leader
U.S. Senate
Washington, DC 20510

RE: LeadingAge State-by-State Analysis of CMS's Proposed Staffing Rule (CMS-3442-P)

Dear Speaker McCarthy, Leader Schumer, Leader McConnell, and Leader Jeffries,

I am writing on behalf of LeadingAge members to express our concerns regarding the proposed rule on Minimum Staffing Standards for Long-Term Care Facilities (CMS-3442-P) that was released by the Centers for Medicare and Medicaid Services (CMS) on September 1, 2023. Nursing homes that serve and employ your constituents are facing the possibility of closing because they will not be able to comply with the government's proposed minimum staffing mandate.

As the association representing nonprofit and mission-driven providers of aging services, LeadingAge shares the Administration's goal of ensuring access to the highest quality care in our nation's 15,000 nursing homes. However, the proposed rule works against this shared goal and puts residents at risk by failing to address the chronic reimbursement challenges and workforce shortages plaguing the long-term care continuum.

As you will see in the enclosed state-by-state analysis of the anticipated costs to meet these staffing requirements, it would be impossible to implement this proposed rule for three main reasons.

- **There is no funding to hire and retain the 90,000 new staff CMS estimates will be needed.** CMS estimates the cost of meeting the proposed rule's staffing levels is $40.6 billion over 10 years with an average annual cost of $4.06 billion. Independent estimates of the cost impacts are even greater, including the analysis performed by LeadingAge below estimating the annual cost at $7.1 billion. The costs of delivering quality care already far exceed Medicaid reimbursement levels[1], and this unfunded mandate will force nursing homes to consider limiting admissions or even closing their doors for good, depriving older adults and their families care in their communities. While CMS has announced $75 million in funding to boost the long-term care workforce, CMS does not identify funding to assist long-term care providers in meeting the new staffing requirements.

[1] According to a January 2023 report from the Medicaid and CHIP Payment and Access Commission (MACPAC), average Medicaid base rates across the states covered 86% of nursing home costs in 2019 (prior to the increased spending demands of the pandemic). Almost half the states Medicaid base rates are lower than 86% of costs.

- **There simply aren't enough people to hire.** As is true for most retail, food service, and hospitality businesses, a mandate will not solve the long-standing workforce shortages impacting nursing homes and the rest of long-term care continuum, particularly in rural and underserved areas. CMS estimates that approximately 75% of nursing homes will need to hire additional registered nurses (RNs) and certified nurse aides (CNAs) to meet the proposed staffing requirements. Additionally, the proposed rule fails to include the essential contributions of Licensed Practical Nurses (LPNs), who should count toward either the RN or CNA mandated ratios. Hiring in long-term care has long been a challenging process, but with historic unemployment at less than 4%, there simply aren't enough workers to fill open positions. Many nursing homes have already been forced to utilize staffing agencies at prohibitive and unsustainable costs. Congress and the Administration must commit to providing the resources necessary to build domestic and international workforce pipelines that will allow providers to attract and retain qualified workers.

- **Mandating staffing requirements could decrease access to care across the continuum.** Both the acute and post-acute care sectors are seeing workers exit the profession, leaving a void that cannot be filled without bold action. Nursing homes have already reported the increasing demands on their staffing resources. The existing workforce shortages are resulting in backlogs at acute care hospitals, which are unable to discharge patients due to reduced capacity in post-acute, long-term care facilities. Further, home care and hospice providers – already navigating workforce challenges – will be short even more workers if they move to nursing homes. Shuffling the relatively small number of care workers available between settings won't solve the problem. And holding nursing homes to a standard that is impossible to meet because there are not enough workers in the country, then fining them for not meeting that standard, is going to force quality of care down—not improve it.

Federal action on staffing mandates must be realistic to achieve its intended effect and should be paired with historic workforce investments and fair reimbursement rates. The current and highly fragmented approach to long-term care financing no longer serves the millions of residents across the continuum who require compassionate and highly skilled care. Medicaid, the dominant payer of long-term care services, doesn't fully cover nursing homes' cost of quality care. Regulations and enforcement, even with the best intentions, just can't change that math.

We, therefore, urge Congress to work with the Administration and long-term care stakeholders to develop and invest in a robust workforce development strategy and delay the proposed rule until there are enough qualified applicants and adequate funding to address staffing levels realistically throughout the long-term care continuum. We look forward to following up with you on this important matter. If you have any questions, please contact Todd Adams, Director of Health Legislative Affairs, at TAdams@LeadingAge.org, or Nicole Howell, Director of Workforce Policy, at NHowell@LeadingAge.org.

Sincerely,

Katie Smith Sloan
President and CEO
LeadingAge

Cc: Senate Finance Committee Members and Staff
Senate HELP Committee Members and Staff
Senate Aging Committee Members and Staff
House Energy and Commerce Committee Members and Staff
House Ways and Means Committee Members and Staff

LeadingAge Financial Impact Analysis: Proposed SNF Minimum Staffing Regulation 2023

LeadingAge Estimated Additional Yearly Costs to Meet Proposed Staffing Rule (Adjusted for Missing SNFs)							
State	SNF Count	Missing Data SNF Count	RN = 0.55	Aide = 2.45	RN 24/7 after RN = 0.55	Total Cost	Cost per SNF
USA	14,993	325	$2,683,798,331	$ 4,333,526,637	$ 120,842,417	$ 7,138,167,385	$ 476,100
AK	20	7	$ 39,984	$ 135,512	$ 91,622	$ 267,118	$ 13,356
AL	225	5	$ 38,418,670	$ 45,978,352	$ 191,012	$ 84,588,033	$ 375,947
AR	218	3	$ 50,496,015	$ 21,423,851	$ 1,104,375	$ 73,024,240	$ 334,974
AZ	142	1	$ 20,995,584	$ 38,944,523	$ 716,910	$ 60,657,017	$ 427,162
CA	1,170	26	$ 347,165,314	$ 144,303,494	$ 12,249,679	$ 503,718,487	$ 430,529
CO	217	6	$ 14,495,322	$ 60,051,841	$ 1,218,656	$ 75,765,820	$ 349,151
CT	203	1	$ 29,468,759	$ 71,214,621	$ 308,078	$ 100,991,458	$ 497,495
DC	17	-	$ 252,038	$ 4,839,806	$ 20,458	$ 5,112,301	$ 300,724
DE	44	2	$ 2,182,759	$ 13,945,040	$ 410,089	$ 16,537,888	$ 375,861
FL	697	10	$ 105,983,012	$ 138,026,290	$ 892,143	$ 244,901,445	$ 351,365
GA	357	5	$ 99,599,298	$ 128,772,810	$ 1,533,115	$ 229,905,222	$ 643,992
GU	1	-	$ -	$ -	$ -	$ -	$ -
HI	43	3	$ 1,360,341	$ 6,511,732	$ 16,262	$ 7,888,335	$ 183,450
IA	411	10	$ 22,463,162	$ 51,631,264	$ 8,076,976	$ 82,171,401	$ 199,930
ID	81	2	$ 4,272,759	$ 9,964,676	$ 1,249,863	$ 15,487,298	$ 191,201
IL	693	4	$ 101,838,867	$ 331,248,327	$ 4,617,838	$ 437,705,033	$ 631,609
IN	521	8	$ 68,095,443	$ 117,654,472	$ 4,417,086	$ 190,167,002	$ 365,004
KS	313	14	$ 21,637,933	$ 29,683,774	$ 6,730,570	$ 58,052,278	$ 185,471
KY	274	6	$ 28,385,691	$ 58,791,872	$ 710,410	$ 87,887,974	$ 320,759
LA	269	14	$ 125,081,810	$ 58,363,777	$ 1,142,286	$ 184,587,873	$ 686,200
MA	353	7	$ 55,211,427	$ 147,836,014	$ 1,902,428	$ 204,949,869	$ 580,595
MD	225	6	$ 26,071,184	$ 110,631,746	$ 744,368	$ 137,447,297	$ 610,877
ME	87	2	$ 2,582,810	$ 4,371,571	$ 497,686	$ 7,452,067	$ 85,656
MI	430	7	$ 57,420,799	$ 120,784,928	$ 1,935,027	$ 180,140,754	$ 418,932
MN	349	4	$ 14,879,598	$ 64,053,501	$ 4,870,684	$ 83,803,783	$ 240,125
MO	509	26	$ 120,428,598	$ 120,107,712	$ 4,778,091	$ 245,314,401	$ 481,954
MS	202	3	$ 30,043,190	$ 34,338,341	$ 480,456	$ 64,861,987	$ 321,099
MT	62	3	$ 4,199,636	$ 14,657,917	$ 1,609,108	$ 20,466,662	$ 330,107
NC	420	11	$ 81,599,694	$ 122,612,070	$ 3,091,662	$ 207,303,426	$ 493,580
ND	76	1	$ 3,261,099	$ 4,660,464	$ 1,661,322	$ 9,582,885	$ 126,091
NE	186	7	$ 13,988,535	$ 17,883,942	$ 4,821,281	$ 36,693,759	$ 197,278
NH	73	-	$ 6,999,014	$ 26,864,656	$ 448,363	$ 34,312,033	$ 470,028
NJ	348	1	$ 72,898,739	$ 185,053,429	$ 1,185,035	$ 259,137,204	$ 744,647
NM	68	2	$ 10,441,787	$ 18,760,072	$ 396,399	$ 29,598,258	$ 435,269
NV	67	6	$ 9,986,803	$ 25,597,828	$ 866,377	$ 36,451,007	$ 544,045
NY	606	6	$ 207,802,373	$ 435,043,469	$ 1,177,935	$ 644,023,777	$ 1,062,746
OH	946	18	$ 123,781,189	$ 300,662,227	$ 6,540,256	$ 430,983,673	$ 455,585
OK	292	16	$ 62,257,695	$ 27,438,121	$ 6,186,376	$ 95,882,192	$ 328,364
OR	129	4	$ 13,449,576	$ 3,436,698	$ 3,298,641	$ 20,184,914	$ 156,472
PA	672	4	$ 100,416,894	$ 361,923,839	$ 1,052,579	$ 463,393,312	$ 689,573
PR	6	1	$ -	$ 2,858,484	$ 5,082	$ 2,863,565	$ 477,261
RI	75	-	$ 6,928,457	$ 16,937,846	$ 14,791	$ 23,881,093	$ 318,415
SC	188	2	$ 37,305,013	$ 54,903,675	$ 1,735,625	$ 93,944,312	$ 499,704
SD	98	4	$ 4,369,460	$ 12,703,806	$ 1,604,453	$ 18,677,719	$ 190,589
TN	311	8	$ 54,810,296	$ 105,772,493	$ 1,756,204	$ 162,338,993	$ 521,990
TX	1,193	27	$ 354,955,655	$ 353,825,470	$ 12,999,260	$ 721,780,385	$ 605,013
UT	98	-	$ 1,630,160	$ 12,846,925	$ 599,112	$ 15,076,197	$ 153,839
VA	289	7	$ 73,873,882	$ 155,955,579	$ 994,702	$ 230,824,163	$ 798,700
VT	34	1	$ 3,502,301	$ 7,361,158	$ 403,511	$ 11,266,970	$ 331,381
WA	197	6	$ 15,635,342	$ 29,779,147	$ 1,280,688	$ 46,695,176	$ 237,031
WI	331	6	$ 14,149,819	$ 54,774,491	$ 4,662,543	$ 73,586,853	$ 222,317
WV	122	1	$ 15,187,250	$ 40,488,103	$ 961,218	$ 56,636,571	$ 464,234
WY	35	1	$ 1,497,296	$ 7,114,884	$ 583,726	$ 9,195,906	$ 262,740

Financial Impact Analysis Methodology

Overview

This analysis lists estimates of costs needed to meet the 3 staffing minimums in the proposed 2023 regulation for skilled nursing facilities (SNF). Like CMS's calculations, this analysis leaves staff types static, other than RNs and Aides. The provider data is calculated if the provider has data in the Payroll Based Journal (PBJ) data for 2023Q1. The state level aggregates roll up the provider numbers to the state and national levels. These are estimates based on the data that is available as of late August 2023. Since the PBJ data does not include shift-level information, there are some assumptions that need to be made to calculate estimates. This analysis estimates the additional annual cost to meet the minimum of the 3 proposed staffing minimums to be $7.1 billion, which is higher than CMS's estimate of $4.23 billion. Since the proposed minimums are the "floor", not where CMS wants staffing levels, the results are potentially an under-estimate of actual costs with all other assumptions in place.

State Data

For state level aggregates, most of the numbers are simply totals or counts aggregated by state or aggregated at the national level, but due to missing values for some providers, each field is adjusted for these missing values (see below).

Adjustments for Missing Data Fields

Some providers did not have records in the PBJ data, and some providers had PBJ data but did not have data for each of the nurse types in the PBJ employee detail data. Due to the missing data, the state and national level aggregates were adjusted for missing data using the following general strategy:

Field to be adjusted * (1 + (Count of providers missing field / Count of providers))

Per SNF Calculations

For the total cost per SNF, this is total cost divided by the number of providers in each state or nationally to give an estimated per provider impact. This is a high-level estimate that assumes every provider has the same number of missing hours, which is not the case. This per SNF calculation can be used as a general high perspective view of the impact for the state.