

November 3, 2023

Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services,  
Department of Health and Human Services,  
P.O. Box 8016  
Baltimore, MD 21244-8016

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

Dear Administrator Brooks-LaSure:

The undersigned organizations represent thousands of senior living providers offering long-term care (LTC) services and supports to seniors around the country. These services, offered in settings such as independent living, assisted living, memory care, and continuing care communities, support more than one million of the nation's seniors and are delivered by hundreds of thousands of dedicated, compassionate, and qualified team members. We are writing to provide comments on the proposed rule, Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS-3442-P) that was published in the Federal Register on Sept. 1, 2023.

The health and well-being of residents and the staff who serve them is the top priority for owners and operators of senior living communities across the country. It takes a dedicated team of compassionate, smart, and innovative people to create a caring and engaging environment where residents in this stage of their lives can live their best lives possible. Although we understand the intent of this proposed rule is to ensure that residents in nursing facilities receive the best care possible, we are concerned about the unintended adverse impacts that will flow from this rule to the broader health care and LTC sectors, including senior living.

It is well documented that there is a workforce shortage in this country and in the health care and LTC sectors specifically. Imposing a minimum staffing standard will not create more caregivers; it will simply further exacerbate the current shortage. Today, LTC facilities, including nursing homes, assisted living, hospitals, and other health care providers are all competing for many of the same workers from a limited pool of caregivers and nurses. There are simply not enough available workers today to meet the current and, importantly, the future demand for these services.

The vast majority of senior living providers continue to deal with labor shortages and have not returned to pre-pandemic workforce levels. Regardless of an assisted living community's workforce situation, a federal minimum staffing mandate for nursing homes threatens to reduce the available pool of essential caregivers that assisted living and other senior living communities also depend on to serve over one million residents.

Our collective senior living members who operate assisted living and similar communities have shared many examples of how CMS-3442-P would affect them. Notably, in rural areas where staffing shortages

are most acute, the main competitor for care staff is the nursing home in the same community. Similarly, in urban settings, health care providers and LTC providers are also competing for the same pool of nurses and direct care staff with evident shortages of available workforce to meet the needs.

It is no secret that the United States is projected to experience an aging population surge in the coming years, significantly increasing the demand for health care services. LTC employers will need to fill 7.9 million job openings in direct care from 2020 to 2030, including 1.2 million new jobs to meet rising demand, and another 6.7 million job openings to replace workers who leave the labor force or transfer to new occupations. The senior living workforce alone lost almost 110,000 positions between February 2020 and November 2021, leaving it far below pre-pandemic employment levels. In total, the senior living industry will need to fill more than 3 million job openings by 2040.

Senior living, including independent and assisted living, provides residential settings that address important social determinants of health for many seniors and helps to keep them out of institutional, higher acuity healthcare settings. In independent living, residents often access home health care to assist with periodic health care needs. And in assisted living, pursuant to state regulation, community staff can provide personal care and management of residents' chronic care needs. Both independent and assisted living are part of the long-term solution to providing quality care at the level of need while promoting resident independence. All of these settings need nurses and direct care staff. Building the workforce to serve these residential settings is imperative to meeting the challenges of our country's aging population and should not be further hindered by a prescriptive mandate on nursing homes that will substantially increase the demand for staffing resources that do not exist.

Instead of implementing CMS-3442-P, CMS needs to focus on efforts to strengthen our respective LTC and senior living workforces. We need policies to assist in training, recruiting and retaining staff that includes:

- Addressing the nationwide nursing and caregiver shortages, as well as attracting both to the profession;
- Investing in developing full-time, dedicated caregivers instead of costly agency or temporary staff that are forced upon facilities to meet a mandate ; and
- Recruiting and retaining LTC and senior living professionals by offering loan forgiveness, tax credits, apprenticeship opportunities, immigration reform and other incentives.

The aging demographic of this country is quickly contributing to the existing workforce shortage in LTC space. Any policy that adds to this problem should be broadly understood for its fuller implications. Now is not the time for a staffing mandate. Our organizations encourage CMS to reconsider implementing CMS-3442-P and focus on building our nation's LTC and senior living workforce instead.

Sincerely,

AMDA – The Society for Post-Acute and Long-Term Care Medicine  
American Assisted Living Nurses Association (AALNA)  
American Seniors Housing Association (ASHA)  
Argentum  
Association of Jewish Aging Services (AJAS)  
LeadingAge  
Lutheran Services in America  
National Center for Assisted Living (NCAL)