

Submitted Electronically

June 10, 2022

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Medicare Program: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels

Dear Administrator Brooks-LaSure:

The Florida Hospital Association, on behalf of its more than 200 member hospitals and health systems, welcomes the opportunity to comment on the Medicare proposed rule entitled “Medicare Program: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels” published in the *Federal Register* on April 15, 2022.

In this letter, we are submitting comments on the request for information, specifically from those states that have established mandated staffing ratios, on the unintended consequences this could have on patients needing skilled nursing services and the hospitals that serve them.

Florida passed significant legislation in 2017 regarding mandatory staffing levels for nursing homes. As part of those regulations, nursing homes are prohibited from accepting new residents if they fail to meet the statutorily set staffing requirements for 48 hours. This moratorium on new admissions is lifted once the nursing home can meet the minimum staffing requirements for a six-day period.

Delays in Care

Frequently, Florida hospitals struggle with discharge delays to skilled nursing facilities (SNFs) for a variety of reasons, including prior authorization delays from health plans, limited bed availability for certain payers and general availability skilled nursing beds. These issues became particularly problematic during the COVID-19 surges as skilled nursing facilities were facing staffing shortages due to infection and limited availability of isolation beds. On January 18 of this year, 70 hospitals reported having 835 patients waiting placement in skilled nursing facilities. This accounted for an average of six percent of the beds filled with patients waiting placement in a skilled nursing facility. Two thirds of those patients were not waiting due to COVID testing issues but only delayed because of the ability to find a skilled nursing bed.

Staffing shortages, while impacting hospitals and all post-acute care settings, placed additional barriers for hospitals discharging patients to a skilled nursing setting, because of the mandatory staffing ratios in Florida law. Our member hospitals reported significant delays in discharging patients to SNFs because they did not have the required number of staff and could not accept new patients until they met the required minimum staffing ratios for six consecutive days. **These delays resulted in a significant backlog in the hospitals, with patients no longer requiring inpatient services taking up beds while others needing inpatient services were being boarded in the emergency department.**

Nurse Staffing Shortages

The United States is currently in the middle of a health care workforce crisis. This issue predates the COVID-19 pandemic, which has intensified the issue. In a study commissioned by FHA, IHS Markit, using 2019 [pre-COVID] data, projects a nursing shortfall in Florida of 59,100 RNs and LPNs by 2035. The actual number is almost certainly higher as the PHE has resulted in an increase percentage of nurses leaving the workforce either through early retirement or change in careers.

We cannot solve this issue simply by create more nurses, indeed there are a number of challenges in the nursing workforce pipeline. While applications to nursing programs remain strong, nursing schools do not have sufficient faculty or training sites to accommodate the thousands of new students that would be annually required to fill the shortfall. Instead **providers must have the ability to use medical judgment and rely on the expertise of clinical leaders and teams at the bedside who are prepared to constantly adapt their staffing model to respond to the everchanging patient needs and the skills and experience of the bedside teams.**

A minimum staffing requirement for SNFs will ultimately impact the ability of hospitals to higher nurses as demand increases for qualified staff. As different facilities compete for a finite number of staff workforce costs are sure to increase, resulting in at minimum an increase in the cost of care, and potential an exodus of providers from their markets. **CMS must consider the healthcare continuum holistically and not implement minimum staffing requirements that will impact the ability of other providers to treat their patient population.**

Innovation

An alternative to minimum staffing ratios is innovation in care delivery. Severe staffing shortages experienced during the pandemic led to health care facilities implementing new models of care, establishing partnerships with schools to enhance training, employing personnel such as paramedics, and fully utilizing existing staff within their scope of practice.

If CMS were to implement minimum staffing requirements, health care facilities would be disincentivized to adopt new care models, such as widespread use of telemedicine and the acute hospital at home program. The models could result in better care, better patient quality of life, and reduced costs.

Conclusion

As CMS considers mandating staffing ratios for skilled nursing facilities, we ask that you consider the impact this might have on quality of care, the ability of all providers to appropriately staff their facilities, and care innovation.

Thank you for your consideration of these comments. FHA is committed to engaging with CMS to find the solution that is in the best interest of patients. Should you have any questions or comments, please do not hesitate to contact Michael Williams at Michaelw@fha.org.

Sincerely,



Mary C. Mayhew
President & CEO
Florida Hospital Association