

Thank you for the opportunity to provide comments on the Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS 3442-P) proposed rule. The Ohio Health Care Association (OHCA) represents over three hundred of the approximately 800 residential care facilities (RCF) licensed in Ohio.

From pre-pandemic levels, Ohio RCF staffing levels remain down 14%, according to the most recent data from the Bureau of Labor Statistics (Bureau of Labor Statistics Occupational Employment and Wage Statistics, n.d.). At the same time, our average wages have increased 19%, from an average hourly wage of \$14.70 to \$17.44. Comparatively, Skilled nursing facilities in Ohio have an average hourly wage of \$18.68, putting our aides and nursing staff in direct competition for these workers. Increasing the minimum staffing requirements in nursing facilities will undoubtedly pull from the staff in the most comparable market position: Residential Care Facilities.

In the 2023 budget cycle, Ohio acquired additional reimbursement for memory care service providers to HCBS waiver beneficiaries. This unprecedented achievement will expand access to memory care to thousands of Ohioans. However, with the reimbursement also comes a requirement for increased staffing. Pulling the staff into nursing facilities will inhibit our ability to provide these services to our HCBS Ohioans who need these services.

There have been many closures of Ohio RCFs, with staffing being a factor in many of these closures. Many open facilities have voluntarily limited their admissions due to staffing limitations. The Ohio Department of Health has been working with several RCFs that have fallen below the minimum number of residents to remain licensed. The stress of nursing facilities attempting to meet the proposed minimum staffing levels will undoubtedly lead to increased closures in Ohio RCFs. This will lead to further reduced access to care for Ohioans who rely on assisted living services.

Our Association participates on many Regional Workforce Collaborative Groups in an effort to educate youth on the opportunities in long-term care. In addition to the older nurses leaving the profession, we also combat the perception of long-term care with young people due to the media coverage during COVID-19. For several years, our industry advocated for assistance with our worsening staffing crisis. We are disheartened to see this request for assistance translated into a mandate. We ask CMS to consider, how does a mandate help if the staff are not available to fill the positions? What downstream impact would a mandated staffing requirement have on long term services and supports and home and community-based service availability for older Americans? We do not feel that CMS has completed their due diligence on these impacts.

We urge CMS to reconsider placing a mandated minimum staffing level in nursing facilities, and instead turn to common sense initiatives to bolster the healthcare workforce such as child care tax incentives, loan forgiveness programs, and

regulatory changes to the nurse faculty and nursing assistant trainer programs. Specifically, we request CMS utilize their authority to revise 42 CFR 483.152 (a)(5) to state:

Meet the following requirements for instructors who train nurse aides;

(i) The training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, **OR a licensed practical nurse who possesses a minimum of 2 years nursing experience, at least 1 year of which must be in the provision of long-term care facility services;**

(ii) Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides;

(iii) In a facility-based program, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility who is prohibited from performing the actual training; and

(iv) Other personnel from the health professions may supplement the instructor, including, but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, and resident rights experts. Supplemental personnel must have at least 1 year of experience in their fields;

Making such regulatory revisions would expand the availability of nursing assistant trainers and begin to alleviate staffing shortages across the long-term care and post-acute care sectors. This is merely one example of how CMS may begin to assist our industry with our workforce challenges.

For any questions relating to these comments, please contact Erin Hart, Strategy Director for the Ohio Health Care Association at [ehart@ohca.org](mailto:ehart@ohca.org).