



November 5, 2023

The Honorable Chiquita Brooks-LaSure  
Centers for Medicare and Medicaid Services  
7500 Security Blvd.  
Baltimore, MD 21244

**RE: CMS-3442-P; Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting.**

*Submitted electronically via regulations.gov at <https://www.regulations.gov/commenton/CMS-2023-0144-0001>*

Dear Administrator Brooks-LaSure,

Louisiana Rural Health Association (LRHA) is pleased to offer comments on the Centers for Medicare and Medicaid Services' (CMS) proposed rule putting forth minimum staffing requirements for nursing facilities. We appreciate CMS' continued commitment to the needs of people that reside in rural areas.

LRHA is a membership association that is made up of Louisiana rural health care providers. This includes rural health clinics (RHCs); federally qualified health centers (FQHCs); and rural hospitals across the state. LRHA works to provide a unified voice that promotes and enhances the quality of rural health in Louisiana.

While LRHA does not have nursing home facilities as members of our association, we appreciate the opportunity to provide input on behalf of rural residents and other rural providers that could be impacted as a result of the proposed rule.

Because LRHA membership is not directly impacted by the rule, our response will be thematic, rather than a point by point discussion of each provision. However, we encourage CMS to look to the analysis provided by our national partners, National Rural Health Association, as well as consider the expertise of the nursing home industry and nursing professional organizations.

**Minimum Staffing Standards: Impact on Rural Hospitals**

LRHA is concerned that rural healthcare facilities, in particular small rural hospitals and critical access hospitals, may be inadvertently adversely impacted by the proposal to require that all nursing homes meet minimum quantitative standards of 0.55 hours per resident day (HPRD) for RNs and 2.45 HPRD for nurse aides. Nationally, estimates show that only 19% of nursing facilities would currently meet the minimum HPRD requirement and the remaining 81% would have to hire more registered nurses (RNs) or nurse aides.<sup>1</sup>

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<sup>1</sup> Burns, et al., *supra* note 5.

LRHA's mission is to promote and enhance quality of rural health in Louisiana. We understand and support that appropriate and safe nurse staffing levels at all healthcare facilities is necessary to provide safe and high-quality care to patients. However, CMS itself notes that both the 0.55 and 2.45 HPRD proposals are higher than any minimum staffing levels in place at the state level. In addition, CMS' proposals go above and beyond the staffing levels at which quality no longer increases according to the 2022 Nursing Home Staffing Study (2022 Study).<sup>2</sup>

The nursing home industry experts predict that, if finalized, this rule could lead to the closure of rural nursing homes.<sup>3</sup> While the nursing home sector will feel the direct effects of compliance, LRHA is concerned that nursing home closures would result in other rural providers and patients experiencing eventual downstream effects. When rural nursing homes close, the crisis of lack of rural post-acute care beds worsens. Rural hospitals are then unable to discharge patients, who no longer require inpatient level acute care but cannot safely return home, to a local long-term care facility. Patients, families, and their caregivers are then faced with limited options and difficult, if not impossible choices, about how to address and manage the patient's post-acute care needs.

### **Use of Licensed Practical Nurses in Staffing Standards**

As mentioned above, LRHA supports efforts to ensure safe nurse staffing levels at long-term care facilities. Therefore, we recommend that if CMS elects to move forward with the proposed staffing levels, that licensed practical nurses (LPNs) be accounted for in the calculation of staffing hours. This flexibility would help rural nursing homes comply with the nurse staffing levels requirements.

In addition to the adjusted staffing level requirements, CMS has proposed that nursing homes have an RN onsite 24/7. Much like the HPRD staffing levels, this requirement would be tremendously difficult for many rural nursing facilities to meet.

We request CMS reconsider the 24/7 RN onsite proposal. We recommend consideration of an alternate policy for rural nursing facilities to allow an RN to be "available" 24/7. In this model, CMS would allow RNs to be available virtually 24/7 rather than onsite following the precedent set in Rural Emergency Hospital (REH) and Critical Access Hospital (CAH) conditions of participation. Under these conditions of participation, physicians must be present at an REH for sufficient periods of time to provide medical direction but may be available through radio or telephone communication or electronic communication.<sup>4</sup> Physicians and non-physician practitioners at REHs and CAHs must be on call or immediately available by phone or radio within thirty minutes on a 24/7 basis.<sup>5</sup> We request that CMS review these conditions of participation as an alternative model to the 24/7 RN onsite proposal.

### **Shared Workforce**

Many factors play into the challenges of keeping rural nursing homes open and viable, many of which stem from workforce shortages. We want to stress that implementing federal staffing mandates will likely not increase availability of interested and qualified nursing staff where they do not exist. For

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<sup>2</sup> Alan J. White & Lauren E.W. Oslo, *Nursing Home Staffing Study: Comprehensive Report*, ABT ASSOCIATES (June 2023) <https://edit.cms.gov/files/document/nursing-home-staffing-study-final-report-appendix-june-2023.pdf>.

<sup>3</sup> Parkinson says proposed staffing mandate a 'death sentence' for rural nursing homes, offers answers, McKinights Long Term Care News (October 2023) <https://www.mcknights.com/news/parkinson-says-proposed-staffing-mandate-a-death-sentence-for-rural-nursing-homes-offers-answers/>

<sup>4</sup> 42 C.F.R. § 485.528(c).

<sup>5</sup> 42 C.F.R. § 485.618(d).

example, in Louisiana, the state's ongoing nursing shortage is expected to widen in coming years.<sup>6</sup> Nationally, long-term care is experiencing the worst labor shortage, making now an inopportune time to propose staffing standards.<sup>7</sup> We believe that CMS should focus on curing the root cause – the supply and retention of nurses – before implementation of new nursing standards.

## Definition of Rural Health

LRHA thanks CMS for providing rural nursing facilities with longer compliance period, but we raise two concerns with the timelines. First, the majority of rural facilities will likely be unable to comply with the proposed standards, even with a longer period of time to do so due to historical staffing shortages previously discussed. Second, many rural nursing facilities will not qualify for the extended compliance timeline under the definition of “rural” utilized in the proposed rule. In 2022, the Census Bureau made significant changes to the definition of rural, which now considers only areas with a population of 5,000 or less to be rural. This definition of rural is extremely exclusive and does not truly represent rural areas nationwide or in Louisiana.

While there is no perfect definition of rural, we recommend that CMS use the Office of Management and Budget (OMB) definition of rural which has a more accurate portrayal of rural America. This would include areas with a population of less than 50,000, which aligns with the retired Census definition and the definition used in other health-related statutes and regulations. Specifically, this definition was recently identified in a March 31, 2023 memo<sup>8</sup> from CMS as a criteria to be used when making rural location determinations. The current Census definition excludes many areas and communities that fall under other federal or state definitions of rural and that otherwise face the same challenges that other rural providers face. If CMS uses the current Census definition of rural, many deserving rural facilities will have to comply within a shorter and untenable timeframe. We urge CMS against finalizing the use of this definition and to instead adopt the OMB definition.

## Conclusion

LRHA is thankful for the opportunity to provide input on this request for information. If you would like additional information, please contact Denaé Hebert at [dhebert@lrha.org](mailto:dhebert@lrha.org) or 337.366.5915.

Sincerely,



Denaé M. Hebert  
Executive Director  
Louisiana Rural Health Association

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<sup>6</sup> In grip of national nursing shortage, new LSU program seeks to help reverse the trend, The Times-Picayune (June 2022) [https://www.nola.com/news/healthcare\\_hospitals/in-grip-of-national-nursing-shortage-new-lsu-program-seeks-to-help-reverse-the-trend/article\\_b1645e02-4654-11ed-8a07-076431ebe2ac.html](https://www.nola.com/news/healthcare_hospitals/in-grip-of-national-nursing-shortage-new-lsu-program-seeks-to-help-reverse-the-trend/article_b1645e02-4654-11ed-8a07-076431ebe2ac.html)

<sup>7</sup> Alice Burns, et al., *What Share of Nursing Facilities Might Meet Proposed New Requirements for Nursing Staff Hours?*, KAISER FAMILY FOUNDATION (Sept. 18, 2023) <https://www.kff.org/medicaid/issue-brief/what-share-of-nursing-facilities-might-meet-proposed-new-requirements-for-nursing-staff-hours/#:~:text=Among%20all%20nursing%20facilities%2C%20fewer%20need%20to%20hire%20nursing%20staff> (“As of June 2023, employment levels were still more than 11% below pre-pandemic levels for workers in skilled nursing care facilities); AMERICAN HEALTH CARE ASSOCIATION, *supra* note 1.

<sup>8</sup> [QSO-23-12-RHC](#)