



June 10, 2022
Chiquita Brooks-LaSure
Administrator
The Center for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure,

On behalf of the nation's Medicaid Directors, NAMD is offering comments in response to CMS's Request for Information (RFI) regarding minimum staff ratios in long-term care facilities included in the broader FY 2023 Medicare Skilled Nursing Facility proposed rule [CMS-1765-P]. While NAMD supports CMS's goals of enhancing quality of care provided in long-term care facilities, we are concerned that a minimum staff ratio policy will create an unfunded mandate for state Medicaid programs, impede state efforts to rebalance their long-term services and supports (LTSS) systems towards community-based options, and be very difficult to comply with given the nation's nursing workforce crisis. Any steps towards such a requirement must be taken only after careful consultation with state Medicaid agencies and the provider community to mitigate these challenges, and be clearly set within a broader policy framework to strengthen quality of care provided in nursing facilities.

NAMD is a bipartisan, nonprofit, professional organization representing leaders of all Medicaid agencies across the country. NAMD represents, elevates, and supports state and territorial Medicaid leaders to deliver high value services to the millions of people served by Medicaid and CHIP so they can achieve their best health and thrive in their communities.

The COVID-19 pandemic significantly impacted long-term care facilities, revealing gaps in infection control capabilities and highlighting opportunities for overall quality improvement and strengthening accountability. As the nation's primary payer of LTSS, including institutional care, state Medicaid programs are at the forefront of addressing these issues. Quality improvement initiatives across all Medicaid-funded LTSS, both institutional services and within Medicaid-funded home- and community-based services (HCBS), significantly predate the onset of COVID, though the pandemic has renewed the sense of urgency around such efforts. It is imperative that federal policymakers work with states to continue this critical work and develop bold policies that address cost, quality, and accountability within institutional LTSS.

That being said, Medicaid resources available to dedicate to LTSS quality improvement are limited and must be balanced with other aspects of ongoing pandemic response and other Medicaid agency priorities. As a jointly financed state-federal program, state budget realities significantly impact the types of strategic priorities that can be meaningfully advanced in a given budget cycle. A shift in federal priorities or

requirements that do not take this dynamic into account can create unintended consequences within Medicaid.

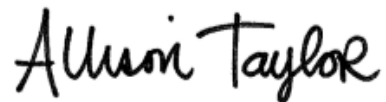
NAMD believes that unintended consequences are highly likely should a minimum staff ratio requirement be imposed within Medicare's skilled nursing facility regulations, particularly if such a requirement is not situated within a broader quality and accountability framework. Because Medicare's coverage obligations for institutional services are time-limited, the longer-term costs to sustain minimum staff ratios are likely to fall on state Medicaid programs. This represents an unfunded mandate accruing to state Medicaid budgets, which may crowd out existing state quality improvement initiatives within their LTSS programs or other program priorities entirely. While minimum staff ratios may be well intentioned and could be a strategy a state would choose to employ on its own initiative, mandating such policies absent dedicated federal funding for state Medicaid programs will result in unnecessary state budget challenges. NAMD cautions CMS against pursuing such a policy unless and until CMS identifies strategies for states to attain such funding, which may require an act of Congress.

An additional challenge that could emerge from mandating minimum staff ratios for institutional care settings is drawing resources away from state efforts to rebalance their LTSS systems towards HCBS. State Medicaid agencies and their sister state agency partners have, with CMS encouragement, worked diligently over the years to shift LTSS spending towards HCBS, which is generally preferred by members, is less expensive to the states and federal government, and promotes positive outcomes. [In FY 2013, national Medicaid LTSS spending on HCBS passed the 50 percent mark and has remained at or above 50 percent since.](#) This momentum is encouraging and should be maintained. However, a minimum staff ratio policy for institutions, which would require additional Medicaid institutional spending to effectuate, could see this progress stall or even reverse. The goal of quality improvement within institutional settings must be carefully balanced with the equally worthy goal of HCBS rebalancing.

Finally, the realities of the national nursing workforce shortage calls into question the viability of a minimum staff ratio policy in the near term. The COVID-19 pandemic has decimated the long-term care workforce. As of March 2022, [28 percent of nursing facilities reported staffing shortages.](#) In eight states, [over 50 percent of nursing facilities reported staffing shortages.](#) illustrating the severity of the crisis. These shortages have real impacts on access, [with many nursing facilities closing.](#) Enacting minimum staffing requirements now, when many facilities are struggling to keep their doors open, represents a fundamental misunderstanding of the on-the-ground realities faced by state Medicaid programs. Addressing these challenges will take years, with thoughtful federal and state workforce development and retention strategies. Further, the rates necessary to attract the already insufficient nursing workforce to nursing facilities instead of other health care sectors would have a distorting effect on rates in those other sectors, likely increasing system-wide costs for states and the federal government.

NAMD supports CMS's overall objective of improving the quality of care provided in institutional settings. But careful consideration must be given to the challenges identified here. We stand ready to engage with CMS to identify the most effective path forward that advances our shared objectives.

Sincerely,



Allison Taylor
NAMD Board President
Director of Medicaid
Indiana Family and Social
Services Administration



Cindy Beane
NAMD Board President-Elect
Commissioner
West Virginia Department of Health
and Human Resources