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November 6, 2023

The Honorable Chiquita Brooks-LaSure
Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services, Attention: CMS-3442-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850
Submitted Electronically: regulations.gov

Re: CMS-3442-P; Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (Sept. 9, 2023)

Dear Administrator Brooks-LaSure:

On behalf of our nearly 450 member-hospitals and health systems, including rural, urban, children's, teaching, and specialty hospitals, the Texas Hospital Association ("THA") appreciates the opportunity to provide comments on the above-referenced proposed rule, as THA and its members continue our commitment to the provision of safe, effective, and quality care for all patients, including assurances that patients are served by an adequate number of individuals throughout the healthcare continuum. THA submits these comments in line with other advocates for the healthcare industry, namely the American Hospital Association ("AHA"), and urges CMS to consider the complexity involved in staffing facilities. A one-size-fits-all approach to staffing is unlikely to achieve improved quality or patient experience outcomes.

THA members recognize the role appropriate staffing plays in the provision of quality healthcare, and must ensure their facilities are staffed appropriately to meet the needs of their patients. Individual facilities are best positioned to assess their patients' care needs, and the staffing level and mix necessary to meet these needs. For example, a specialty facility in one area of Texas may (and should) require different staffing levels and complexity than that of a general facility across the state, and certainly across the US. Rather than implement a nationwide, one-size-fits-all approach, CMS should strive to empower facilities to meet the specific needs of their patients, and as may be appropriate in their local communities. Texas is a leader in recognizing the nuances of appropriate staffing in the hospital setting. Texas law does not require a prescriptive staffing ratio. Instead, hospitals are required to develop their own staff-to-patient ratios through a staffing policy and plan with mandatory consideration of the recommendations of nurse staffing committees. *See* Tex. Health & Safety Code, Chapter 257.

Additionally, the chronic staffing shortages affecting every area of health care across the country are well documented, and these shortages have become more severe. Texas facilities have worked for years to mitigate impacts of shortages, and provide a safe and effective care environment that meets patient needs. Enacting static, rigid, and nationwide staffing requirements during this period of workforce uncertainty is simply a setup for certain failure. A recent Kaiser Family Foundation article predicts less than 20% of facilities subject to the proposed rule would be able to comply – this is especially true in Texas, where geographic and demographic diversity present additional challenges to many facilities.

Rather than improve outcomes, the proposed rule will exacerbate staffing challenges in underserved areas while leading to increased and unnecessary competition amongst facilities, across Texas and nationwide.

Finally, we again urge CMS to consider that its one-size-fits-all approach here does not account for the specific needs amongst and throughout the numerous nursing facilities across the country. THA encourages CMS to consider individualized, facility-specific staffing models like those in Texas hospitals, rather than broad, prescriptive mandates. An inflexible requirement, as CMS proposes, may lead to a reduction of available services, closure of facilities that are unable to meet the requirements (especially in already underserved areas), longer waits for care, and, almost certainly, increased staff shortages amongst all facilities. None of these outcomes will benefit patients.

THA fully incorporates the AHA's comments and encourages CMS to give them serious consideration.

THA appreciates CMS' effort to ensure safe and quality care in long-term care facilities and agrees that all providers should strive for and make every effort to achieve this on a day-to-day basis. However, the proposed rule is misguided in its one-size-fits-all approach that removes the flexibility a facility might have in meeting the needs of its patients and local community. On behalf of our members who operate long term care facilities subject to the proposed rule, THA strongly urges CMS to withdraw the rule.

We thank you for the opportunity to submit these comments and look forward to working with you on these issues to improve patient care. Please feel free to contact me at clopez@tha.org or 512-465-1000 if we may be of any further assistance.

Sincerely,



Cesar J. Lopez
Associate General Counsel
Texas Hospital Association