



Centers for Medicare & Medicaid Services
Submitted electronically, <https://www.regulations.gov>

June 10, 2022

Re: CMS-1765-P, Medicare Program; Request for Information on Revising the Requirements for Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels,
87 Fed. Reg. 22720 (Apr. 15, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-04-15/pdf/2022-07906.pdf>

Dear CMS Administrator and Brooks-LaSure and CMS Colleagues:

The Florida Health Justice Project (FHJP) submits the following comments on proposed rules to revise the requirements for long-term care facilities to establish minimum staffing levels, published on April 15, 2022 at 71 Reg. 19954.

FHJP is a nonprofit health advocacy organization whose mission is expanding access to healthcare with a focus on Florida's most vulnerable populations. Accordingly, we have prioritized work on behalf of low-income frail and disabled seniors who require a nursing home level of care.

We fully support the Administration's plan to set mandatory minimum staffing levels. The 1987 Nursing Home Reform Law gives the Secretary full authority to set minimum staffing standards. The Reform Law requires that the Secretary assure that facilities provide each resident with high quality care and that Medicare and Medicaid payments are spent on care and not diverted to profits, management fees, and inflated payments to self-related parties. These broad and important powers provide the Secretary with clear authority to set minimum staffing standards.

The implementation of a minimum staffing standard will be the most important and significant increase in protections for nursing home residents in decades. It is especially important in states like Florida for the reasons described in this comment letter. We applaud the Secretary for taking this necessary step and provide feedback to the Request for Information below.

Need for Adequate Staffing Levels in Long-Term Care Facilities

As noted in the comment letter from Center for Medicare Advocacy (and others), it is well established that there is a strong relationship between nursing staffing levels and improved quality of care in terms of both process and outcome measures.¹ To recap: a 2001 study from the Centers for Medicare & Medicaid Services (CMS) found a

¹ Castle, N. (2008). Nursing Home Caregiver Staffing Levels And Quality Of Care: A Literature Review. *Journal of Applied Gerontology*, 27: 375-405. See also: Dellefield, M.E., Castle, N.G., McGilton, K.S., & Spilsbury, K. (2015). The relationship between registered nurses and nursing home quality: An integrative review (2008-2014). *Nursing Economic*, 33 (2):95-108 and 116; Castle, N.G. & Anderson, R.A (2011).

clear association between nurse staffing ratios and nursing home quality of care. It established the importance of having a minimum of 0.75 Registered Nurse (RN) hours per resident day (hprd), 0.55 Licensed Vocational Nurse (LVN)/Licensed Practical Nurse (LPN) hprd, and 2.8 (to 3.0) Certified Nursing Assistant (CNA) hprd, for a total of 4.1 nursing hprd to prevent resident harm and jeopardy.² A 2004 observational study verified the minimum standard, and it was also confirmed in a simulation study finding that between 2.8 and 3.6 CNA hprd were needed to ensure adequate care to residents with varying staffing care needs.³ Some experts have also recommended higher minimum staffing standards with a total of 4.55 hprd.⁴

The benefits of adequate staffing levels have also been demonstrated in many studies over the years. Studies have shown that higher nursing staffing levels are associated with improved resident outcomes, including: better functional improvement, and reductions in things such as: urinary tract infections and catheterizations, pain, weight loss, dehydration, infections, falls, rehospitalizations and emergency department use, adverse outcomes, and mortality rates.⁵

Low staffing levels are associated with COVID-19 infections and deaths. Florida nursing homes led the country for much of the last 2.5 years in both COVID-19 infections and deaths.⁶ Insufficient staffing leads to greater infection control violations and issues, which lead to greater risk of spread and death. Infection control

Caregiver staffing in nursing homes and their influence of quality of care. *MedicalCare*, 49(6):545-552; Castle, N., & Engberg, J. (2008). Further examination of the influence of caregiver staffing levels on nursing home quality. *Gerontologist*, 48:464-76; Schnelle, J.F., Simmons, S.F., Harrington, C., Cadogan, M., Garcia, E., & Bates-Jensen, B. (2004). Relationship of nursing home staffing to quality of care? *Health Services Research*, 39 (2):225- 250.

² Centers for Medicare & Medicaid Services, Abt Associates Inc. *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes. Report to Congress: Phase II Final*. Volumes I–III. Baltimore, MD: CMS, 2001.

³ Schnelle, J.F., Schroyer, L.D., Saraf, A.A., Simmons, S.F. Determining nurse aide staffing requirements to provide care based on resident workload: A discrete event simulation model. *JAMDA*. 2016; 17:970-977; Schnelle, JF, Simmons, SF, Harrington, C, Cadogan, M, Garcia, E, Bates-Jensen, B. Relationship of nursing home staffing to quality of care? *Health Serv Res*, 2004; 39 (2):225-250.

⁴ Harrington, C, Kovner, C, Kayser-Jones, J, Berger, S, Mohler, M, Burke R. et al. Experts recommend minimum nurse staffing standards for nursing facilities in the United States. *Gerontologist*, 2000; 40 (1):1-12.

⁵ Horn, S.D., Buerhaus, P., Bergstrom, N., Smout, R.J. (2005). RN staffing time and outcomes of long-stay nursing home residents: pressure ulcers and other adverse outcomes are less likely as RNs spend more time on direct patient care. *Am J Nurs*. 105(11):58-70; Dorr, D.A., Horn, S.D., & Smout, R.J. (2005). Cost analysis of nursing home registered nurse staffing times. *J. of Amer Geriatrics Society*, 53: 840-845; Castle, N.G. & Anderson, R.A. (2011). Caregiver staffing in nursing homes and their influence on quality of care. *Medical Care*, 49(6):545-552; Horn, S.D., Buerhaus, P., Bergstrom, N., Smout, R.J. (2005). RN staffing time and outcomes of long-stay nursing home residents: pressure ulcers and other adverse outcomes are less likely as RNs spend more time on direct patient care. *Am J Nurs*. 105(11):58-70; Dorr, D.A., Horn, S.D., & Smout, R.J. (2005). Cost analysis of nursing home registered nurse staffing times. *J. of Amer Geriatrics Society*, 53: 840-845.

⁶<https://www.tampabay.com/news/health/2021/09/15/florida-leads-nation-in-nursing-home-resident-and-staff-covid-19-deaths/>

deficiencies are more common at homes that have fewer nurses and aides than at facilities with higher staffing levels, based on an analysis of data from the past two regular inspection periods.⁷

We are grateful that the Florida Legislature has increased the minimum wage for all nursing home workers to \$15 an hour which will help address the dire workforce shortage. However, legislation was also passed reducing the requirement of hours of certified nursing assistant care per resident per day from 2.5 hours to 2 hours and changing the requirement that 3.6 hours of “nursing” care be provided to each resident. Now, the 3.6 hour requirement includes any type of “direct care.” Thus, instead of nursing care, the 3.6 hours can be provided by pharmacy, dietary, therapeutic, dental, podiatry, or mental health service workers and paid feeding assistants.⁸

Anecdotally, from both residents and nursing home workers, we have already heard that these lowered staffing requirements are already leading to adverse health outcomes for residents and “burnout” for workers.⁹ Of the 300 nursing homes in the state of Florida, 110 have “much below average” or “below average” ratings for staffing.¹⁰ CNAs are getting assigned more residents and have less time with them. Despite the fact that research has established the importance of having a minimum of 2.8 CNA hprd for each resident, Florida has now decreased our standard from 2.5 to 2 hprd.

It is well-established that residents in nursing homes with higher staffing levels have better health outcomes. However, the current requirement for nursing staff in the state of Florida is insufficient to meet the needs of its residents.

Residents suffer in understaffed nursing facilities. Their health declines, they lose weight, and there are more frequent falls. When residents cannot get out of bed or move on their own, they get pressure ulcers because no one is there to help them. They might wait hours to get out of bed in the morning, eat, or go to bed at night. When nurse staffing levels are inadequate, residents are unable to perform even the most basic tasks like showering or using the bathroom. Overall, residents lose their dignity.

Recent studies have shown that “[t]he benefits of higher staffing levels, especially RNs, include lower mortality rates; improved physical functions; less antibiotic use; fewer pressure ulcers; catheterized residents, and urinary tract infections; lower hospitalization rates; and less weight loss and dehydration. Moreover, in states that have introduced higher minimum staffing standards for nursing facilities, nurse staffing levels and quality outcomes have improved.”¹¹

Nursing home staff are underpaid, overworked, and there is an incredibly high turnover rate. A minimum staffing standard would improve the quality of life for nursing staff, leading to an improved standard of care for residents.

Several studies have shown that when a state implements minimum staffing standards it leads to increased nursing hours, better health outcomes, and a reduction of deficiencies. It also improves quality of care because

⁷ <https://khn.org/news/coronavirus-preparedness-infection-control-lapses-at-top-rated-nursing-homes/>

⁸ Fla. HB 1239, 2022

⁹ <https://www.fox4now.com/news/local-news/lee-county/southwest-florida-caregivers-say-state-law-is-creating-deadly-situations-in-nursing-homes>

¹⁰ [https://www.medicare.gov/care-](https://www.medicare.gov/care-compare/results?searchType=NursingHome&page=1&state=FL&providerRating_staffing=2,1&sort=alpha)

[compare/results?searchType=NursingHome&page=1&state=FL&providerRating_staffing=2,1&sort=alpha](https://www.medicare.gov/care-compare/results?searchType=NursingHome&page=1&state=FL&providerRating_staffing=2,1&sort=alpha)

¹¹ <https://files.kff.org/attachment/REPORT-Nursing-Facilities-Staffing-Residents-and-Facility-Deficiencies-2009-2016>

residents experience few adverse outcomes, such as pressure sores, restraints, and less mortality overall, while also experiencing more positive outcomes such as restoration of functioning and increased nutrition intake.

We urge CMS to establish minimum staffing requirements, with standards for each type of staff, without delay. Residents have suffered long enough.

Thank you for the opportunity to submit comments.

Sincerely,

Melissa Lipnick
Equal Justice Works Fellow Sponsored by the Florida Bar Foundation
Florida Health Justice Project
240-328-2368
lipncik@floridahealthjustice.org

Lara Kimmel
Law Clerk, Florida Health Justice Project
Juris Doctor Candidate 2024, University of Miami School of Law
(561) 706-0211
LaraKimmel@law.miami.edu

Florida Health Justice Project
www.floridahealthjustice.org
2427 Tequesta Ln
Miami, FL 33133