November 6, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services (HHS)
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically to www.regulations.gov

Re: Medicare and Medicaid Programs; Minimum Staffing Standards for Long Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting [CMS–3442–P]

Dear Secretary Becerra:

The American Nurses Association (ANA) and the undersigned constituent organizations applaud the Centers for Medicare & Medicaid Services (CMS) for recognizing the need to ensure safe and adequate staffing in LTC facilities across the country through the proposed rulemaking that will establish minimum staffing standards for nurses and other care personnel. Nurse staffing standards are paramount in guaranteeing the safety of nurses and health care personnel and the provision of high-quality care to patients. We appreciate this critical first step in addressing staffing challenges in our nation's nursing homes. We support CMS' approach to achieve safe nurse staffing in LTC facilities through the use of minimum standards and recognize the use of standards, including ratios, as one approach to address chronic staffing challenges in all care settings. While we support CMS and urge the agency to finalize the rule, we also appreciate thoughtful consideration of concerns as detailed in this comment letter.

In the above-captioned rule, CMS proposes to establish minimum staffing standards of 0.55 hours per resident day (HPRD) for RNs and 2.45 HPRD for nurse aides (NAs). Facilities would be required to meet these minimums regardless of their individual patient case mix. In addition, CMS seeks comment on whether a minimum total nurse staffing standard should also be required. The total minimum discussed in the rule would be 3.48 HPRD, with other alternatives. However, we remain concerned that the proposed standards omit the important contributions of Licensed Practical Nurses/Licensed Vocational Nurses (LPNs/LVNs). Even in the alternate proposal of moving toward a standard based on total HPRD, the focus remains on registered nurses (RNs) and nurse aides (NAs). CMS reasons that it pursued this approach in recognition of the increased quality of care correlated with increased RN hours and over concerns with LPNs possibly practicing above their state-determined license. **We appreciate CMS for recognizing the critical role and leadership of RNs in the delivery of high-quality care in LTC facilities.**

However, increasingly, LPNs/LVNs are finding employment opportunities in nursing homes—the Bureau of Labor Statistics estimates 35 percent of LPNs/LVNs are practicing in LTC facilities.[1] Because of this increase, LPNs/LVNs are an increasingly critical part of the care team in these facilities, especially in light of workforce shortages and challenges. Moreover, insufficient staffing levels of LPNs might result in RNs having to absorb duties assigned to LPNs, potentially straining their already considerable workload. CMS is remiss to exclude them from the proposed HPRD rates. CMS should move toward adoption of a total staffing standard that reflects the entire care team of nurses—RNs, LPNs/LVNs, and NAs—to better reflect how care is provided to patients in LTC facilities. **As such, we urge CMS to create a total staffing standard that retains the proposed HPRD ratios for RNs and NAs with an additional HPRD standard specific to LPNs.**

CMS proposes to require all facilities have an RN onsite 24/7. This requirement would be independent of the RN and NA staffing requirements discussed above. ANA and others have long advocated for CMS to require LTC facilities to have a 24/7 RN and we are pleased that the agency is proposing this requirement. This recommendation was most recently identified by the National Academies of Sciences, Engineering, and Medicine, who called for 24/7 direct care RN coverage—in addition to the director of nursing—with additional RN coverage as part of a larger recommendation to enhance staffing standards in nursing homes.[2] **We know that having an RN onsite 24/7 in LTC facilities is important for patient care quality and safety. As such, we urge CMS to finalize its proposal to require 24/7 RN presence in LTC facilities.**

CMS proposes to modify existing Facility Assessment requirements to allow facilities to have a process to consistently assess and document the necessary staff and resources needed to provide quality care to their residents. We strongly believe that RNs at all levels within a healthcare system must have a substantive and active role in staffing decisions to assure availability of the necessary time with patients to meet care needs and overall nursing responsibilities.[3] As CMS monitors facilities and reviews facility assessments, we urge the agency to make this part of compliance determinations. Safe staffing standards are critical in creating a floor to ensure enough nurses are available to provide quality care to patients but cannot be set absent considerations for patient acuity. **Registered nurses are best positioned to determine staffing needs based on acuity and their input is vital in determining safe staffing levels.**

Moreover, nurses must be protected if and when they raise concerns about staffing levels and work environment challenges. All too often, nurses fear the potential of repercussions from coming forward and vocalizing concerns about facility staffing levels. This is not conducive to a safe working environment for health care personnel and the patients they serve. CMS must ensure that the nurse's voice is captured in Facility Assessments and protected—the agency can look to existing

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[1] U.S. Bureau of Labor Statistics. Occupational Outlook Handbook—Licensed Practical and Licensed Vocational Nurses, Work Environment. Last modified September 6, 2023. https://www.bls.gov/ooh/healthcare/licensed-practical-and-licensed-vocational-nurses.htm#tab-3. Accessed October 2023.

[2] National Academies of Sciences, Engineering, and Medicine. "The National Imperative to Improve Nursing Home Quality." Consensus Study Report. 2022. https://nap.nationalacademies.org/catalog/26526/the-national-imperative-to-improve-nursing-home-quality-honoring-our. Accessed October 2022.

[3] American Nurses Association. Principles for Nurse Staffing, 3rd Edition. 2020. Available online at https://www.nursingworld.org/PrinciplesForNurseStaffing.

federal whistleblower protections as models. **We urge CMS to encourage facilities to seek nurse input in completing Facility Assessments and setting staffing levels appropriate for patient acuity.**

Further, we urge CMS to institute a more systematic, periodic review of the minimum standards. CMS should revisit the standards, at minimum, within a year or two of full implementation of provisions in the final rule to ascertain if the agency's approach is yielding its intended outcomes and their impact on quality, safety, and access--followed by periodic reevaluations and redeterminations. We also encourage the agency to shorten the proposed implementation timeline, which would take place over three to five years depending on the facility's location. **We are concerned that such a long implementation timeline could lead to unnecessary, further delays in ensuring facilities are staffed appropriately and safely.** A shorter timeline would push facilities to begin attracting and retaining additional staff to meet any finalized requirements as soon as possible.

As the agency determines compliance and enforcement of the nurse staffing standards, we recognize the critical nature of safe staffing levels warrants CMS to act substantively and work closely with facilities to bring them into compliance with requirements, such as through corrective action plans. We also encourage the agency to use the utmost care and discretion in how it determines which facilities are granted exemptions. **We also encourage the agency to work closely with exempted facilities and conduct comprehensive reviews to move facilities toward full compliance in a timely manner.** We are concerned about the possibility of facilities being granted endless exemptions without making real progress on nurse staffing levels.

While we appreciate the agency for issuing the above-captioned proposed rule to ensure safe staffing in LTC facilities, we are all too aware that this is just one aspect of a larger issue—a nursing workforce in crisis. **ANA and its constituent organizations continue to call on HHS and CMS to take robust and immediate action to address the unsustainable nurse staffing crisis facing our country.** Underlying, chronic staffing challenges have persisted for years, not only in LTC facilities but throughout the health care delivery system.

It is imperative that the Administration acknowledge and take concrete steps to address nurse staffing shortages across the care continuum that puts our ability to care for patients in jeopardy. Nurses stand ready to work closely with federal agencies to identify workforce needs and challenges, including:

1. addressing the fatigue and mental wellbeing of nurses,
2. developing strategies to retain the current nursing workforce through workplace environment improvements,
3. working with CMS to adopt new payment methodologies that recognize the value that nurses bring to patient care and health outcomes,
4. investing in the education and training of the next generation of nurses,
5. removing barriers to nurses practicing at the top of their license, and
6. building and maintaining a resilient workforce to meet our country's current and future health care needs.

Moreover, the current nursing shortage is not one that nurses alone can solve. As such, it is crucial that the Administration convenes nurses, hospitals, physicians, other health care personnel, state and federal government officials, and key stakeholders to examine, identify, and then implement

real solutions to nursing shortages in LTC facilities and in all care settings. **Our nurses stand ready to work with the federal agencies to holistically address nursing workforce challenges across the care continuum.**

We appreciate the opportunity to submit these comments and look forward to continued engagement with HHS. Please contact Tim Nanof, Vice President, Policy and Government Affairs at ANA, at (301) 628-5166 or Tim.Nanof@ana.org, with any questions.

Sincerely,

Alabama State Nurses Association
American Association of Neuroscience Nurses
American Nephrology Nurses Association
American Nurses Association
American Nurses Association-Illinois
American Nurses Association Massachusetts, Inc.
American Nurses Association-New York
Arizona Nurses Association
Arkansas Nurses Association
Association of Nurses in AIDS Care
Colorado Nurses Association
Dermatology Nurses' Association
Florida Nurses Association
Hawaiʻi-American Nurses Association
Louisiana State Nurses Association
Oregon Nurses Association
Orthodox Jewish Nurses Association
Pennsylvania State Nurses Association
Preventive Cardiovascular Nurses Association
Rhode Island State Nurses Association
South Carolina Nurses Association
Tennessee Nurses Association
Washington State Nurses Association
Wound, Ostomy, and Continence Nurses Society
Wyoming Nurses Association