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June 3, 2022

**The Honorable Chiquita Brooks-LaSure**

Administrator, Centers for Medicare and Medicaid Services

Attention: CMS-1765-P

P.O. Box 8016

Baltimore, MD 21244-8016

Dear Administrator Brooks-LaSure:

On behalf of Lutheran Services in America, I appreciate the opportunity to submit comments on docket number CMS-1765-P, a rule proposed by the Centers for Medicare and Medicaid Services (CMS) related to the Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Request for Information on Revising the Requirements for Long-Term Care Facilities To Establish Mandatory Minimum Staffing Levels.

As one of the largest non-profit networks caring for older adults, we have been providing faith-based long-term care for people to age with dignity, respect, and abundance in the United States for well over a century. Our 200 providers operate 20% of the senior residential living beds among the top 200 nonprofit providers in the country. The nursing home residents we care for are frail, cannot live independently, require round the clock care, and have extremely limited resources. The longstanding public-private partnerships that our health care providers have with the Administration are rooted in a common goal—to ensure that older Americans receive the high-quality care they need. Serving older adults and those who are chronically ill is an essential part of our faith-based mission, as is achieving greater levels of health equity and serving traditionally unreached communities.

**Comment on Proposed Rule re: Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023**

First, we would like to address our concerns over the reimbursement cuts included in the Fiscal Year 2023 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) proposed rule.

Skilled Nursing Facilities have faced unprecedented challenges due to the COVID-19 pandemic. The crisis has exacerbated workforce shortages that long pre-dated COVID-19 and contributed to pre-existing financial challenges caused by years of inadequate reimbursements. These challenges have led directly to reduced access to care for older adults across the country.

The proposed rule includes changes to the payment system that result in a net reduction of \$320 million in funding. These cuts are being proposed at a time when CMS has also begun to phase out certain Public Health Emergency (PHE) waivers that, among other things, have both directly and indirectly helped address workforce shortages.



The recent CMS Nursing Home Initiative proposes changes to the delivery and financing of skilled nursing that will impact availability and access to quality nursing home care. Addressing critical workforce shortages cannot be accomplished amid more funding cuts. Now is not the time to cut funding to Skilled Nursing Facilities. We urge you not to make any Medicare payment cuts in the FY2023 SNF PPS rule, which will only place additional strain on our long-term care system.

Given these recent and ongoing challenges during the COVID-19 PHE and with the ongoing financial and workforce crisis, we urge CMS instead to phase in the proposed PDPM parity adjustment over 3 years to reduce the current financial crisis that Skilled Nursing Facilities are facing as well as to reduce the potential for additional closures that will create significant access issues for older adults needing care and services. Nursing homes are a critical component of our long-term care continuum, and they must be properly reimbursed for older adults to have access to the quality care they require.

### **Response to Request for Information on Revising the Requirements for Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels**

We are concerned about the impact the establishment of mandatory minimum staffing levels for Skilled Nursing Facilities (SNFs) would have on the ability of older adults to access skilled nursing care nationwide. This issue is already a crisis, with providers reducing occupancy and not meeting existing needs in their communities. Today as a result of workforce shortages, an increasing number of vulnerable older adults are on waitlists for SNF admissions and spending time in the hospital waiting for an open bed. CMS's proposed requirements will only make this worse with fewer older adults able to access needed care.

The dedicated workers who provide that care have enormously challenging jobs—these are special people who want to care for the most vulnerable and they are truly the “frontline heroes” of the COVID-19 pandemic and direct care.

As we prepare for the anticipated end of the COVID-19 Public Health Emergency and the implications that will have on both providers and residents alike, our providers continue to navigate the pandemic courageously. We are ensuring a safe environment for our residents despite major shortages of healthcare personnel. We strive to provide the reliable, high-quality care outlined in the President’s State of the Union address and call on CMS to work with our providers as partners in promoting quality.

### **Workforce Crisis and Unintended Consequences**

Unfortunately, the proposals regarding minimum staffing requirements and punitive enforcement for SNFs with no additional funding support will exacerbate the current workforce crisis and make it even more difficult to hire the staff needed to provide care. This will directly lead to fewer older adults being able to receive skilled nursing care and additional nursing home closures in rural areas where there are already limited available healthcare options.

Even before COVID, faith-based long-term care providers were in the midst of a critical workforce shortage that led to long waiting lists for skilled nursing, older adults languishing in hospitals because of the lack of skilled nursing beds, and vulnerable older adults without any quality care options. According to The Peterson Center on Healthcare and The Kaiser Family Foundation, prior to COVID, the number of workers at SNFs had already been going down at an average rate of 0.09%



per month, with the pandemic accelerating this trend. While other areas of the healthcare industry have nearly recovered their employment numbers to pre-pandemic levels, the number of workers accepting jobs at nursing homes has continued to decline at the same time that demand for Certified Nursing Assistants (CNAs) and other staff in nursing homes has increased exponentially. Nursing care facilities have seen a 15.0% drop in employment since February of 2020, from 1.59 million then to 1.35 million in November 2021. This is despite the fact that nursing home employees had, on average, a 14.7% increase in wages over the same period, the highest average wage increase among healthcare workers during this time.

The workforce shortage is acute across the board (nurses, behavioral health, food service) but is most serious in positions like CNAs and Direct Service Professionals (DSPs.) In a survey of our providers who provide skilled nursing care, 80% of respondents report staffing vacancies of 11% or more, with over 16% having vacancies greater than 31%. Because of this, 90% of respondents say that since March 2020, they have had to reduce services, close a location, or reduce the number of people served because they don't have enough staff—or they anticipate doing so by the end of the year.

#### Factors Impacting Ability to Recruit and Retain Workers

Many factors have affected our providers' ability to recruit workers: the demand for healthcare professionals in other settings; competition with for-profit businesses; the long-standing inadequacy of Medicaid reimbursements; and the drastically diminishing labor pool caused by the departure of Baby Boomers from the workforce and too few new workers to take their places. Overall, the most significant factor is that it is hard to attract workers because of the low wages that Medicaid provides. For example, a SNF in Kansas received \$230.52 per resident per day in Medicaid reimbursement for the first half of this year, while it cost them \$321 a day to provide services. This means that this provider lost over \$90 a day on each Medicaid resident—60% of the people in their facility—which is unsustainable and leaves them unable to offer competitive wages. Put simply, there are fewer and fewer people entering the healthcare field, and our providers cannot recruit against other employers given current funding levels.

Providers are taking extraordinary measures to retain staff and cover staffing shortages, including paying exorbitant fees to temporary staffing agencies, multiple rounds of bonuses and wage increases, and executive and administrative staff covering shifts. Despite these efforts, workforce vacancies remain at historically high levels forcing many providers to close or consolidate facilities, which results in decreased access to care for some of our country's most vulnerable at a time when available SNF beds are already being reduced. Workforce costs are skyrocketing as compensation is increased to compete for workers and exorbitant fees are paid to staffing agencies for temporary personnel to fill positions. In our member survey, half of providers have increased permanent staffing expenditures by 11% or more and 40% have increased temporary staffing expenditures by 30% or more. To cite just one example, a small independent SNF in Texas with a bed capacity of about 115 spent \$233,000 on fees to temporary staffing agencies in 2020, and \$376,000 in 2021—representing a total increase in their budget for nursing costs of 27% in two years on temporary staff needed simply to remain open and serve existing residents.

#### Insufficient Financial Resources and Geographic Disparities

Given these factors, we urge you to find ways to increase reimbursement rates for nursing home care. As the primary payer of long-term care, Medicaid has not fully met the costs of care for years, much less the significantly increased costs of care today with rising workforce and operating costs.



This new initiative will only add to the unfunded costs of long-term care and lead to older adults experiencing longer waiting lists for services and additional closures of local facilities. Rural communities which have more limited options for older adults today will be disproportionately affected: for example, many SNF providers are the only healthcare option in their geographic area, as other services such as critical access hospitals or home- and community-based services aren't available. Major medical centers are often several hours away, so access to any form of care is very limited and becoming more so as additional providers close. In addition to overall workforce shortage concerns, providers in rural areas are also impacted in their ability to recruit and retain staff given low COVID vaccination rates and significant hesitancy in receiving the vaccine. A critical question for rural providers will be whether there can be some level of flexibility in implementing any staffing mandates based on geographic factors and community vaccination rates.

#### Actions to Begin to Address the Workforce Crisis

We are committed to working with the Administration on meaningful solutions to expand the long-term care workforce, provide training and career advancement opportunities, and retain workers. The initiatives outlined that provide technical assistance through Quality Improvement Organizations and that expand and develop the nursing workforce through collaborations with the U.S. Department of Labor are strong next steps in nurturing the caregiving workforce of the future. However, without additional funding, the minimum staffing requirement along with increased surveys and enforcement will only exacerbate the current workforce crisis, leading to more SNF closures and reduced access to high quality care for older adults across the nation for years to come.

One immediate option to help address the workforce crisis would be to ease the pathway to securing work visas for incoming immigrants/refugees. Allowing special visas to fill Certified Nurse Aide positions and instituting a waiver process for immigrants and refugees in the United States who want to work in direct care and already have foreign licenses/degrees could ease some of the workforce challenges we see across the country. Allowing greater flexibility for SNFs to provide onsite training for new hires and existing employees, especially CNAs, would also help with recruitment and retention, since it would help SNFs grow their own workforce.

#### "Good Faith Efforts" and Survey Process Reform

Regarding the survey process, CMS recently added consideration of "good faith efforts" made by providers when judging compliance with the COVID-19 worker vaccination mandate. Incorporating similar consideration within the SNF survey process would help reform the system to establish a cooperative process between CMS and providers that focuses on collaborative improvement rather than disciplinary enforcement. Eliminating or reducing large punitive fines that are currently redirecting much needed funds from direct resident care would also better enable providers to focus on improvement and resident care.

#### Request for Action

We urge the Administration to strongly reconsider the minimum staffing requirements in light of the ongoing workforce crisis and reimbursement challenges for SNFs that are already resulting in reduced access to care for older adults across the country, and especially in rural areas. Working toward increasing Medicaid reimbursement rates, addressing exorbitant temporary staffing fees, and increasing the workforce through expanding the immigration pipeline and training opportunities would all be good first steps to ensure that older adults will have access to the services and supports they need to age with dignity and respect. A "one size fits all" approach is not



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the answer to this workforce crisis and our shared goal of providing quality services to all older adults who need them. We ask that as CMS embarks on this work that the views and experiences of our network of providers be included. We welcome any additional opportunities to share our insights and ideas towards our common goal of improving the quality of care for older adults.

Sincerely,

Charlotte Haberaecker  
President and CEO