

September 21, 2023

# Review of Proposed Rule on Nursing Facility Staffing and Payment Transparency


*Summary and areas for potential comment*

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Medicaid and CHIP Payment and Access Commission

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# Overview

- Background
  - Current nursing facility staffing levels
  - Prior MACPAC work
- Proposed changes
  - New nursing facility staffing standards
  - Medicaid payment transparency
- Potential areas for comment
  - Reiterating MACPAC's prior payment transparency recommendations
  - Technical comments related to prior MACPAC work



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**Background**

# Current Nursing Facility Staffing Levels

- Nursing facility direct care staff include:
  - Registered nurses (RNs)
  - Licensed practical nurses (LPNs)
  - Certified nurse aides (CNAs)
- Higher staffing hours per resident day (HPRD) has long been associated with better health outcomes for patients
  - Facilities that serve a higher share of Medicaid-covered nursing facility residents have lower staffing levels than other facilities, contributing to health disparities
  - Staffing levels also vary widely by state
- The Centers for Medicare & Medicaid Services (CMS) currently requires nursing facilities to have RNs or LPNs available 24 hours a day, an RN available 8 hours a day, and a full-time director of nursing
  - 0.3 HPRD for a 100-bed facility

# Prior MACPAC Work

- In 2021, MACPAC reviewed state policies to improve nursing facility staffing levels, including state minimum staffing standards
  - 38 states and DC have state standards that exceed federal requirements
  - 11 states and DC have standards that are greater than 3.0 HPRD
- We also reviewed prior literature on the effects of these policies
- In March 2023, the Commission developed a set of principles for assessing Medicaid nursing facility payment policy and made two recommendations
  - More transparency of Medicaid nursing facility payments, costs, and ownership
  - State assessments of Medicaid nursing facility payments relative to costs, quality outcomes, and health disparities

# Proposed Rule

# Notice of Proposed Rulemaking Timeline

- March 2022: President Biden announced that CMS would propose new minimum staffing standards based on a new staffing study
- April 2022: CMS issued a request for information on establishing mandatory minimum staffing standards for nursing facilities
  - MACPAC provided technical comments based on prior work
- June 2023: CMS completed its new staffing study, which examined the potential effects of various new standards
- September 2023: CMS proposes new staffing regulations
  - Comments are due November 6, 2023

# Proposed Staffing Standards

- Minimum standards for all nursing facilities
  - 0.55 HPRD for RNs and at least one RN on site 24 hours a day
  - 2.45 HPRD for CNAs
  - No specific standard for LPNs
- Enhanced facility assessment
  - Facilities must conduct an annual assessment of staffing needs
  - Intended to encourage higher staffing levels for facilities with higher patient acuity
- Estimated effects according to CMS
  - Statistically significant improvements in quality and safety for residents
  - 75 percent of facilities would need to increase staffing to comply with the new requirements at an estimated cost of \$40.6 billion over 10 years
  - Medicaid share of costs estimated to be \$26.9 billion over 10 years (\$11.1 billion in state and \$15.7 billion federal)
  - \$2.5 billion in Medicare savings over 10 years from reduced hospital use



# Proposed Medicaid Payment Transparency

- Proposes new annual state reports of the share of Medicaid payments spent on compensated for direct care workers and support staff at the facility level, which would be required four years after the rule is finalized
- Requirement would apply to both nursing facilities and intermediate care facilities for individuals with intellectual disabilities (ICF/IID)
  - ICF/IID providers are not subject to new minimum staffing requirements
- Payment definition
  - Includes base payments, supplemental payments, managed care directed payments, and beneficiary contributions to their share of costs
  - Excludes payments for which Medicaid is not the primary payer
- Worker definitions
  - Direct care workers include RNs, LPNs, CNAs, therapists, social workers, personal care aides, and activities staff
  - Support staff include individuals who maintain the physical environment of the facility (e.g., janitors) and those who support other services (e.g., food service workers)

# Potential Areas for Comment

# Reiterating Prior Recommendations

- The proposed payment transparency requirements do not fully implement MACPAC's March 2023 recommendations
- MACPAC also recommended that:
  - CMS make payment rates publicly available, not just the share of payments spent on staffing
  - CMS also collect data on provider contributions to the non-federal share of Medicaid payments needed to calculate net provider payments
  - Payments should be compared to all costs of care for Medicaid-covered residents, not just staffing costs
  - Assessments of payment rates also include assessments of quality outcomes and health disparities

# Technical Comments on Staffing Standards

- Although the Commission has previously acknowledged the benefits of improving staffing levels, MACPAC has not taken a position on what minimum staffing standards should be
- However, our prior work could help inform some technical comments
  - In response to CMS’s question about whether staffing standards should be adjusted for patient acuity, we can share our prior analyses of how nursing needs for Medicaid-covered residents compare to those for residents covered by other payers
  - We can share information on which states currently use cost-based payment methods to pay nursing facilities and would likely be most affected by increases in staffing costs
  - We can discuss the challenges of determining staffing costs for Medicaid-covered residents based on our prior analyses of Medicaid payments relative to costs

## Next Steps

- Comments are due November 6, 2023
- If Commissioners are interested in commenting, staff will draft a letter reflecting the Commissioner discussion

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