ASHA
American
Speech-Language-Hearing
Association

November 2, 2023

The Honorable Chiquita Brooks-LaSure
Administrator, Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS–3442-P
P.O. Box 80167500
Security Boulevard
Baltimore, MD 21244-8016

RE: Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting

Dear Administrator Brooks-LaSure:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments on the above mentioned proposed rule, which would establish nursing staffing minimums.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 228,000 members and affiliates who are audiologists; speech-language pathologists (SLPs); speech, language, and hearing scientists; audiology and speech-language pathology assistants; and students.

ASHA recognizes that developing staffing minimums is a challenging task with multiple complicating factors, such as fluctuating patient census levels and clinical needs. We appreciate the work that the Centers for Medicare & Medicaid Services (CMS) undertook to develop this proposed rule, including the development of an extensive report that dove into questions about the need for and impact of staffing minimums. CMS also sought public feedback on numerous occasions including a request for information (RFI) in the fiscal year (FY) 2023 skilled nursing facility prospective payment system (SNF PPS) proposed rule regarding establishing staffing minimums. ASHA provided some initial feedback to this RFI in our comments submitted last year. We are fully committed to ensuring Medicare beneficiaries have access to safe, quality services in SNFs and that SLPs and other staff working in this setting have the support they need to provide these services safely and effectively.

Staffing Minimums Should be Developed Carefully to Avoid Unintended Consequences

As an overarching principle, ASHA believes that establishing any type of staffing minimum should not jeopardize the quality of or access to care received by SNF residents. Unfortunately, based on historical trends, when some SNFs face a change in payment methodology or criteria, such as the application of staffing requirements, our members' experience a corresponding decrease in hours—including layoffs—and the imposition of administrative mandates designed to maintain profitability. This is despite CMS data that shows Medicare payments to SNFs exceed their costs by as much as 45%. We are concerned that the addition of nursing or other types of staffing minimums would have the unintended consequence of driving some SNFs to reduce spending in other areas, such as therapy, to maintain profitability. **As a result, ASHA maintains that CMS will need to conduct extensive monitoring of minimum data set (MDS) and claims data to determine if other skilled services and patient quality and outcomes decline.**

Developing Speech-Language Pathology Staffing Minimums

ASHA believes CMS's interest in developing staffing minimums is supported by existing regulations at §483.35 that require long-term care (LTC) facilities to have sufficient nursing staff with the appropriate competencies and skill sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident. **Although we recognize SLPs are a critical component of multidisciplinary care teams that assure resident safety and well-being, it would be premature to establish a speech-language pathology staffing minimum until additional studies and evidence regarding the right staffing to patient ratios have been identified.**

Improving the Foundational Evidence for Establishing Staffing Minimums

We are concerned about the conclusions drawn in the Abt Associates report, *Nursing Home Staffing Study: Comprehensive Report,* that serves, in part, as the basis of this proposed rule; particularly the conclusions drawn about the connection between speech-language pathology staffing levels and quality. The report states:

> "The relationship between speech-language pathologist staffing and quality was generally inconsistent, although average QM scores were highest for nursing homes with the highest levels of speech-language pathologist staffing. The Staffing Study team does not recommend that speech-language pathologists be included in a minimum staffing requirement."

ASHA has found numerous studies that show a collaborative relationship between SLPs and nursing staff leads to improved outcomes for patients in post-acute care settings and job satisfaction for nursing staff. Effective communication with patients, regardless of diagnosis, is critical to ensure that interventions improve or maintain the function of the patient and support the patient's overall quality of life. Several studies have examined the impact of coaching nursing staff by SLPs in the treatment of dementia patients in nursing homes. In these studies, nursing staff were given education and guidance, led by SLPs, on how to 1) more effectively communicate with patients who have dementia and 2) use tools such as memory books. These studies consistently found when nursing staff received education and support, patients with dementia had improved outcomes including less aggressive behaviors (e.g., hitting, spitting, or yelling) and nurses felt they were better equipped to work with this patient population.[1] [2] [3] [4] **ASHA would appreciate the opportunity to remain engaged with CMS as additional staffing minimums evolve to reinforce the critical role SLPs play in this setting.**

Understanding the Impact of Staffing Minimums on Quality of Care and Clinician Job Satisfaction

While it is not appropriate to establish speech-language pathology staffing minimums at this time, given our members' experiences working in the SNF setting, serious consideration should be given to the development of such minimums in the future. Specifically, and as highlighted in our response to the RFI in last year's SNF proposed rule, ASHA members report challenging working conditions in SNFs and concerns about patient access to care and the quality of care received. While many SLPs work in supportive skilled nursing environments where they are allowed to utilize their clinical judgment to meet the needs of their patients, some of our members report they are leaving post-acute care for other settings or the profession entirely due to factors including

- administrative mandates circumventing clinical judgment,

- unmanageable productivity standards,
- low pay,
- lack of full-time employment opportunities, and
- lack of benefits and supports such as mentorship programs.

According to ASHA member surveys, 26% of SLPs who work in SNFs indicated they were considering a change in employment within the next five years, 25% stated they plan to leave a SNF and move to a different setting (e.g., private practice, hospital), and 13% indicated they would leave the profession entirely. Overall, 64% were contemplating leaving the sector.

The reasons for leaving SNFs included:

- Not feeling valued by other types of professionals or by administrators (32%)
- Unsatisfactory salary/benefits (30%)
- High productivity demands (32%)
- Unstable work hours (24%)
- Direct or indirect effect of COVID-19 (20%)
- Low/unsustainable caseload (17%)

These data indicate that ethical and physical burnout extends beyond nursing. Fewer SLPs working in this setting further jeopardizes patient access to and quality of care. Action must be taken to prevent the further loss of speech-language pathology employment in SNFs.[5] Although they are not the only solution, staffing minimums could relieve some of the pressure clinicians working in this setting experience and ensure safe environments for both staff and residents.

Defining Direct Care Staff and Developing an Overarching Staffing Minimum

CMS proposes a new requirement, §442.43, which would specify requirements for States to report on compensation for direct care workers and support staff as a percentage of Medicaid payments for nursing facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) services. It defines direct care workers broadly to include nurses (registered nurses, licensed practical nurses, nurse practitioners, or clinical nurse specialists) who provide nursing services to Medicaid-eligible individuals receiving nursing facility and ICF/IID services; certified nurse aides who provide such services under the supervision of one of the foregoing nurse provider types; licensed physical therapists, occupational therapists, speech-language pathologists, and respiratory therapists; certified physical therapy assistants, occupational therapy assistants, speech-language therapy assistants, and respiratory therapy assistants or technicians; social workers; personal care aides; medication assistants, aides, and technicians; feeding assistants; activities staff; and other individuals who are paid to provide clinical services, behavioral supports, active treatment (as defined at §483.440148), or address activities of daily living (such as those described in §483.24(b), which includes activities related to mobility, personal hygiene, eating, elimination, and communication), for individuals receiving Medicaid-covered nursing facility and ICF/IID services.

As noted in ASHA's comments to the FY 2023 SNF PPS proposed rule, defining direct care workers so broadly might lead to negative unintended consequences that affect patient quality of care and increase staffing shortages due to poor working conditions that lead to burnout and staffing turnover. It is not outside the realm of possibility that some SNFs might ask skilled clinicians, such as SLPs, to perform unskilled services such as meal delivery, personal hygiene

services, or other such services to minimize staffing costs. It is also possible that some SNFs might inappropriately substitute one type of clinical specialty for another if a broad staffing minimum or direct care worker definition fails to recognize the unique clinical skills of each member of the multidisciplinary care team. ASHA members consistently report that some SNF employers tell them that certain patients cannot be treated by an SLP because the occupational therapist (OT) is qualified to perform the service or conversely, that the SLP must perform a service that is within the scope of practice of an OT because it's "close enough" to a speech-language pathology service.

It is not appropriate to incorporate direct care support services (e.g., delivering meals, bathing patients) provided by SLPs into broad staffing minimum requirements. While SLPs recognize the need to assist with these types of activities during times of crisis—such as a pandemic—to expect clinicians with the level of clinical training SLPs possess to routinely perform these activities is not appropriate. It would detract from the SLPs' ability to provide important, skilled speech-language pathology services to SNF patients and further complicate their ability to meet the productivity standards typically imposed by their employer. In addition, developing broad staffing minimums could jeopardize patient outcomes by leading to administrative mandates that fail to appropriately differentiate between clinical specialties. For example, it would not be appropriate to develop a broad therapy staffing minimum inclusive of physical, occupational, and speech therapy because these clinical specialties are distinct and are not interchangeable. **ASHA recommends that CMS develop the definition of direct care workers and broad or overarching staffing minimums in a way that mitigates these risks; thereby, maintaining patient access to quality of care and ensuring optimal working conditions for all members of the multidisciplinary care team.**

Thank you for considering our comments. ASHA stands ready to assist CMS as it considers additional staffing minimums in the future. If you or your staff have any questions, please contact Sarah Warren, MA, ASHA's director for health care policy for Medicare, at swarren@asha.org.

Sincerely,

Robert M. Augustine, PhD, CCC-SLP
2023 ASHA President

---

[1] Douglas NF, MacPherson MK. Positive Changes in Certified Nursing Assistants' Communication Behaviors With People With Dementia: Feasibility of a Coaching Strategy. Am J Speech Lang Pathology. 2021 Jan 27;30(1):239-252. doi: 10.1044/2020_AJSLP-20-00065. Epub 2021 Jan 20. PMID: 33472008.

[2] Dijkstra, Katinka & Bourgeois, Michelle & Burgio, Louis & Allen, Rebecca. (2002). *Effects of a Communication Intervention on the Discourse of Nursing Home Residents with Dementia and Their Nursing Assistant*. Journal of Medical Speech Language Pathology. 10. 143-157.

[3] Karin Eriksson, Emma Forsgren, Lena Hartelius & Charlotta Saldert (2016) *Communication Partner Training of Enrolled Nurses Working in Nursing Homes with People with Communication Disorders Caused by Stroke or Parkinson's Disease*. Disability and Rehabilitation. 38:12, 1187-1203, DOI: 10.3109/09638288.2015.1089952

[4] Sprangers S, Dijkstra K, Romijn-Luijten A. Communication skills training in a nursing home: effects of a brief intervention on residents and nursing aides. Clin Interv Aging. 2015 Jan 20;10:311-9. doi: 10.2147/CIA.S73053. PMID: 25653513; PMCID: PMC4309793.

[5] American Speech-Language-Hearing Association. (2021). SLP Health Care 2021 Survey Summary Report. https://www.asha.org/siteassets/surveys/2021-slp-health-care-survey-summary-report.pdf.