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June 17, 2024

Ms. Chiquita Brooks-LaSure, Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Blvd.  
Baltimore, MD 21244-1850

***Re: CMS-10573 Reform of Requirements for Long-Term Care Facilities, Information Collection Request***

Dear Ms. Brooks-LaSure:

The Association for Professionals in Infection Control and Epidemiology (APIC) wishes to thank the Centers for Medicare & Medicaid Services (CMS) for the opportunity to provide input on the revision of approved information collection to include new requirements at 42 CFR 483.35, Requirements for Long-Term Care Facilities, Nursing Services. While APIC agrees with the need to increase required nursing hours in nursing homes, we believe that CMS is underestimating the burden to nursing homes resulting from the Minimum Staffing Standards final rule (89 FR 40876, May 10, 2024) by failing to include infection prevention specialists in its assessment of patient/resident needs. The focus on nurse and nurse aide staffing alone does not address significant infection prevention and control (IPC) deficiencies that have long been identified in those care settings.

CMS itself recognized this problem and responded by including in the 2016 update to the Medicare Requirements for Long-Term Care (LTC) Facilities the requirement that “each facility must designate one or more individual(s) as the infection preventionist(s) (IPs) who are responsible for the facility’s IPCP. The IP must ... have completed specialized training in infection prevention and control.”<sup>1</sup> APIC agrees, and further advocates for this person to have dedicated time to fulfill these responsibilities.

Subsequent U.S. government reports have continued to demonstrate the need for improvements in infection prevention and control in LTC. In its May 20, 2020 report, “Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic,” the U.S. Government Accountability Office (GAO) showed that even before the COVID-19 pandemic, IPC deficiencies were the most common type of deficiency cited in surveyed nursing homes, with 82 percent of all surveyed nursing homes having an IPC deficiency cited in one or more years from 2013 through 2017. The report further noted that 48 percent of nursing homes with an IPC deficiency were cited in multiple consecutive years during the study period, indicating a persistent problem.<sup>2</sup>

A follow-up GAO report in September 2022, “COVID-19 in Nursing Homes: CMS Needs to Continue to Strengthen Oversight of Infection Prevention and Control,” found that prior to the pandemic in 2018 and 2019 only one percent of IPC deficiencies were classified as high severity; however, this number increased eight-fold during 2020 and 2021 surveys. The 2022 GAO report identified actions CMS could take to strengthen oversight of IPC in nursing homes. These included:

- establishing minimum infection preventionist training standards,



- collecting infection preventionist staffing data and use these data to determine whether the current IP staffing requirement is sufficient, and
- providing additional interpretive guidance on making scope and severity determinations for IPC-related deficiencies.<sup>3</sup>

But perhaps the most alarming evaluation came from the January 2023 Data Brief from the U.S. Department of Health and Human Services Office of the Inspector General (OIG) (OEI-02-20-00491), which found that, “Nursing homes had a surge of COVID-19 cases during the spring of 2020 and a greater surge during the fall, well after they were known to be vulnerable. More than 1,300 nursing homes had extremely high infection rates—75 percent or more of their Medicare beneficiaries—during these surges.” The report recommended that, while CMS should reassess the level of nursing care needed to keep residents safe, the agency should also examine the most effective use of IPs in the nursing home setting.<sup>4</sup>

While APIC agrees that nursing homes need increased staffing of registered nurses (RN) and nurse aides (NA) around the clock to provide direct resident care, having a dedicated IP to focus on the non-direct care aspects of managing the facility’s IPC program would allow nursing staff to spend time on direct resident care. While the revision to the estimated burden following publication of the Minimum Staffing Standards for Long-Term Care final rule accounts for increased RN and NA hours, as well as increased time for the Director of Nursing (DON), an administrator, and an administrative assistant, it still does not take into account the time required for infection prevention activities. Without a specific time or resources devoted to infection prevention, it is unlikely that the RN, NA, or DON, will dedicate necessary time towards these activities. Without specific time and resources allotted to meet the Medicare requirement to establish and maintain an IPCP, facilities are not able to keep patients/residents safe from infections. It is important to note that an IP is not required to be an RN and can be fulfilled by people holding degrees in other disciplines.

APIC urges CMS to reassess the estimated burden to nursing homes by including the cost of not having a trained, experienced IP to implement the infection control requirements for LTC facilities – to the staff, management, and patients/residents of these facilities.

Sincerely,

A handwritten signature in black ink, appearing to read "TBubba", written in a cursive style.

Tania Bubba, PhD, RN, CIC, FAPIC  
2024 APIC President

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<sup>1</sup> Medicare and Medicaid Programs: Reform of Requirements for Long-Term Care Facilities, final rule, 81 FR 68868 (October 4, 2016) (codified at 42 CFR 483.80(b)(4)). Available at <https://www.govinfo.gov/content/pkg/FR-2016-10-04/pdf/2016-23503.pdf>. Accessed 6/12/24.

<sup>2</sup> U.S. Government Accountability Office. Infection control deficiencies were widespread and persistent in nursing homes prior to COVID-19 pandemic. GAO-20-576R. Available at: <https://www.gao.gov/products/gao-20-576r>. Accessed October 26, 2023.

<sup>3</sup> U.S. Government Accountability Office. COVID-19 in nursing homes: CMS needs to continue to strengthen oversight of infection prevention and control. GAO-22-105133. Available at: <https://www.gao.gov/products/gao-22-105133>. Accessed October 26, 2023.

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<sup>4</sup> U.S. Department of Health and Human Services, Office of Inspector General. More than a thousand nursing homes reached infection rates of 75 percent or more in the first year of the COVID-19 pandemic; better protections are needed for future emergencies. OEI-02-20-00491. Available at: <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.asp>. Accessed October 26, 2023.