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October 30, 2023

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: Docket #CMS-3442-P: Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities, proposed rule***

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 to the Minimum Staffing Standards for Long-Term Care Facilities proposed rule. APIC is a nonprofit, multidisciplinary organization representing 15,000 infection preventionists (IPs) whose mission is to create a safer world through prevention of infection.

While we commend CMS efforts to improve staffing in long-term care (LTC) facilities, APIC is concerned that a focus on nurse and nurse aide staffing alone does not address significant infection prevention and control deficiencies that have long been identified in those care settings. We reiterate our call for CMS to include at least one full time dedicated infection preventionist (IP) in each LTC facility and collect and make publicly available data on the number of hours dedicated to infection prevention and control (IPC) by qualified personnel in each LTC facility.

**Infection Prevention Deficiencies in Nursing Homes**

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>1</sup> The U.S. Centers for Disease Control and Prevention (CDC) estimates that one to three million serious infections occur every year in nursing homes, skilled nursing facilities, and assisted living facilities.<sup>2</sup>

Yet even with this data, it took a worldwide pandemic and national public health emergency to demonstrate the tragedy of the routine IPC deficiencies in nursing homes. A 2021 study revealed that, while fewer than one percent of America’s population reside in nursing homes, “this tiny fraction of the country accounted for 35 percent of U.S. COVID-19 deaths” during the first year of the pandemic.<sup>3</sup>



APIC's COVID-19 Task Force noted the connection between the major gaps in long-term care IPC with insufficient IP staffing in this care setting. In its March 2022 report "Between a Rock and a Hard Place: Recommendations for Balancing Patient Safety and Pandemic Response," APIC noted that "without intact and functioning IPC programs led by knowledgeable and empowered infection preventionists, facilities have struggled with the core infection prevention principles."<sup>4</sup> Following lessons learned from the COVID-19 pandemic, APIC recommends that long-term care facility administrators should require at least one full-time, trained infection preventionist who is fully dedicated to infection prevention and control (IPC), and that whenever possible, facilities should hire certified IPs because there is clear evidence that certification promotes improved IPC practices.<sup>4,5,6</sup>

A subsequent 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 guidance in interpretive guidance on making scope and severity determinations for IPC-related deficiencies.<sup>7</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." OIG found that these nursing homes reported nursing hours that met or exceeded Medicare's specific minimum requirements for nursing hours. The report recommends 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>8</sup> As it stands, there are limited data available regarding the time allocated to infection prevention and the qualifications of the individuals responsible for IPC programs in nursing homes. To ensure residents' safety, it is crucial to have a clear understanding of the time dedicated to infection prevention and the qualifications of those overseeing these critical programs.

The OIG report also found fault with the CMS nursing home survey process. While surveys provide an important oversight tool, OIG found that surveys conducted in 2020 found few infection control deficiencies in nursing homes that had extremely high infection rates. "These homes passed Medicare's infection control test, yet COVID-19 was able to engulf them in a matter of weeks," calling into question how effective the current surveys are in finding and preventing problems with infection control in nursing homes.<sup>9</sup> In a fact sheet issued by the White House on February 28, 2022, "Protecting Seniors by Improving Safety and Quality of Care in the Nation's Nursing Homes," President Biden called for adequate funding for inspection activities, noting that, "for over seven years, funding to conduct health and safety inspections has remained flat while the number of complaints about nursing homes has surged."<sup>10</sup>



## **Staffing in Nursing Homes**

As noted in the proposed rule, there is evidence of the correlation between staffing levels and quality of care in LTC facilities. APIC agrees that minimum staffing standards would also provide staff in LTC facilities some of the support they need to safely care for residents, help prevent staff burnout, reduce staff turnover, and lead to improved safety and quality for residents and staff. However, the rule only addresses staffing for nursing staff and nurse aides. APIC believes adequate staffing for infection prevention and control is essential to address widespread deficiencies CMS surveyors have long identified in nursing homes. While RNs provide important expertise in direct patient care, IPs provide expertise in developing and maintaining IPC programs to keep residents and staff safe from healthcare-associated infections. Currently, these duties are often added to the existing responsibilities of other staff, in addition to their primary duties, rather than an area that needs trained and fully dedicated personnel to achieve a safe care environment for residents. Further, this takes the staff tasked with these responsibilities away from their direct patient care responsibilities.

APIC supports the CMS proposals to increase the number of registered nurses (RNs) and nurse aides (NAs) available for direct resident care, as well as the proposal to have an RN in the facility 24 hours a day seven days a week to provide direct resident care. Residents of LTC facilities deserve to know that no matter what time of day, appropriate staff are available to care for them. Of the staff available for care in nursing homes, RNs generally received the most training dedicated to direct patient care. This expertise helps reinforce and support staff with less medical knowledge. Similarly, APIC believes having specialized, dedicated IPC staff is paramount to patient and provider safety. While most healthcare professionals receive some training in IPC protocols, successful programs need constant education, reinforcement, and leadership from dedicated personnel. Additionally, APIC would also point out that 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.

APIC appreciates that this rule does not propose to change Sec. 483.35(b)(2) of the Medicare Long-Term Care requirements, that "The LTC facility must also designate an RN to serve as the director of nursing (DON) on a full-time basis." But often the DON and other nursing staff are tasked with other duties outside of direct patient care. A September 2020 report produced by the MITRE Corporation at the request of CMS, "Coronavirus Commission on Safety and Quality in Nursing Homes," stated that "This position [infection preventionist] is traditionally assigned to a supervisor, nursing manager, or provider as an added (rather than a core) responsibility, yielding insufficient response to the demands of the current pandemic."<sup>11</sup> APIC notes that if Medicare regulations require each facility to have a full-time DON, but the DON is also tasked with the part-time job of IP, then the time requirement would not allow for either position to be performed according to the time required by Medicare regulations. As a result, IPC programs are not afforded the time necessary to keep residents safe.

## **CMS Requirements for Infection Prevention and Control in Nursing Homes: An Inadequate Floor**

We appreciate the data collection that went into making recommendations for direct patient care, specifically for nurses and nurses' aides. We especially appreciate the point in the proposed rule that these recommendations are intended to be a floor for direct patient care staffing and the facilities should take steps to ensure they are adequately staffed in these areas.



However, it is concerning that despite a series of reports showing a lack of data related to IPC staffing and inadequate attention to infection prevention and control, CMS still has not strengthened data collection or requirements in this area since 2016. In 2016, CMS released updated Medicare Requirements for Long-Term Care Facilities stating that “The facility must designate one or more individual(s) as the infection preventionist(s) (IPs) who are responsible for the facility's IPCP.” Among the stated qualifications of the IP are to “Be qualified by education, training, experience or certification;” and “Have completed specialized training in infection prevention and control.”<sup>12</sup> While the rule states that the IP must “work at least part-time at the facility [§483.80(b)(3)], State Operations Manual Appendix PP Guidance to Surveyor for Long Term Care Facilities, F882, updated in 2023, provides the additional clarification that “the amount of time required to fulfill the role must be at least part-time and should be determined by the facility assessment, conducted according to §483.70(e), to determine the resources it needs for its IPCP, and ensure that those resources are provided for the IPCP to be effective.” The existing rule specifies the elements that are necessary for an effective IPC program, as well as the qualifications for the IP tasked with managing the program. However, facilities have continuously treated this rule as the standard, and not a floor. This violates the spirit of the rule by “designating” IPC responsibilities as “other-duties-as assigned” to healthcare personnel without adequate time and expertise to carry out the tasks of the job. Without requiring a dedicated IP for the role, this will continue to be rolled into another staff members’ duties. IP duties will not be in the forefront.

We appreciate the opportunity to comment and call on CMS to set a floor of one full-time equivalent infection preventionist in nursing homes and to collect and make publicly available how much fully qualified staff time is dedicated to carrying out each facility's IPCP.

Sincerely,

A handwritten signature in black ink that reads "Patricia Jackson".

Patricia Metcalf Jackson, RN, MA, CIC, FAPIC  
2023 APIC President

<sup>1</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>2</sup> U.S. Centers for Disease Control and Prevention. Nursing Homes and Assisted Living (Long-term Care Facilities [LTCFs]). Available at: <https://www.cdc.gov/longtermcare>. Accessed October 26, 2023.

<sup>3</sup> Quinn C, Adams A, Magaziner J, et al. Coronavirus disease 2019 and clinical research in U.S. nursing homes, Wiley Online Library – *Journal of American Geriatrics Society*, 2021, doi: 10.1111/jgs.17191.

<sup>4</sup> APIC White Paper - Between a rock and a hard place: recommendations for balancing patient safety and pandemic response. March 2022. Available at: [https://apic.org/wp-content/uploads/2022/03/PandemicResponse\\_WhiteP-FINAL.pdf](https://apic.org/wp-content/uploads/2022/03/PandemicResponse_WhiteP-FINAL.pdf). Accessed October 26, 2023.

<sup>5</sup> Roup BJ, Scaletta JM. How Maryland increased infection prevention and control activity in long-term care facilities, 2003-2008. *Am J Infect Control*. 2011;39(4):292-295. doi:10.1016/j.ajic.2010.09.004 14.

<sup>6</sup> Fu C, Mantell E, Stone PW, Agarwal M. Characteristics of nursing homes with comprehensive antibiotic stewardship programs: results of a national survey. *Am J Infect Control*. 2020;48(1):13-18. doi:10.1016/j.ajic.2019.07.015

<sup>7</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.



<sup>8</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.

<sup>9</sup> Ibid.

<sup>10</sup> White House. protecting Seniors by improving safety and quality of care in the nation's nursing homes. February 28, 2022. Available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>. Accessed October 26, 2023.

<sup>11</sup> U.S. Department of Health and Human Services. Centers for Medicare & Medicaid Services. Coronavirus Commission on Safety and Quality in Nursing Homes. September 2020. Available at: <https://www.cms.gov/files/document/covid-final-nh-commission-report.pdf>. Accessed October 26, 2023.

<sup>12</sup> U.S. Department of Health and Human Services. Centers for Medicare & Medicaid Services. Requirements for Long-Term Care Facilities. Available at: <https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-483/subpart-B>. Accessed October 26, 2023.