

CMS Response to Public Comments Received for CMS-10573

The Centers for Medicare and Medicaid Services (CMS) received comments from a therapist that has worked in long-term care facilities (LTCFs) for 24 years and a professional organization for individuals in the fields of infection control and epidemiology. This is the reconciliation of the comments.

Comment:

CMS received a comment from a therapist who has worked in long-term care for 24 years. This commenter expressed concerns regarding LTCFs being more concerned about making profits than providing the care their residents need. While profits rise, negative outcomes for residents, such as falls, pressure ulcers, and urinary tract infections (UTIs) increase. Residents spend hours in soiled clothing and bed linens without the care they need. This situation will continue unless there is a minimum staffing requirement.

Response:

CMS appreciates the comment and the concerns expressed by the commenter. The final rule that sets forth the minimum nurse staffing requirements for LTCFs, “Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting” (89 FR 40876), was published on May 10, 2024. The requirements in that rule are effective on June 21, 2024. Regarding the minimum nurse staffing requirements, these are being phased in through various implementation dates over the next 5 years to avoid any unintended or unanticipated negative consequences to resident care as each LTCF is working on its compliance with the new staffing requirements (89 FR 40876, 40913). CMS expects that all LTCFs will work towards compliance with these staffing standards during this period of phased-in implementation.

Comment:

CMS received a comment from a professional organization for individuals in the fields of infection control and epidemiology. This commenter supports the requirements to increase the hours nurses care for residents in LTCFs; however, they also believe CMS underestimated the burden these requirements will have to LTCFs by failing to include infection preventionists (IPs) in the assessment of resident needs. They also noted that the focus on nurse and nurse aide staffing alone does not address significant deficiencies in the infection prevention and control program (IPCP) in LTCFs. The commenter also advocated for the IP position be a full-time position.

The commenter urged CMS to reassess the estimated burden to LTCFs by including the cost of not having a trained, experienced IP to implement the IPCP in those facilities.

Response:

CMS appreciates the comment and the concerns expressed by the commenter. CMS remains committed to ensuring infection prevention and control in LTCFs. This commitment is one factor that informed the establishment of the requirement for every LTCF to have at least one individual designated as an IP who was responsible for the facility's IPCP (42 CFR section 483.80(b)). Whether the IP should be a full-time position is outside the scope of this notice. In addition, we did not discuss any new or revised burden related to the IP and the IPCP because the requirements in the final rule are not specific to the IP. The final rule establishes minimum nurse staffing requirements for direct resident care and is unrelated to the specific requirements for the IP and IPCP. An existing burden estimate regarding the IP is already contained in CMS-10573 and was not impacted by the regulatory revisions discussed in this notice. However, we will retain the comment for review if there is future rulemaking regarding the IPCP requirements.