Center for Medicare Advocacy

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Connecticut Nursing Home and Assisted Living Staffing Issues

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The Center for Medicare Advocacy is a non-profit, non-partisan law organization founded in 1986 that works to advance health equity, access to comprehensive Medicare, and quality health care.

Based in CT and Washington, DC, with additional attorneys in CA, MA, NJ.

- Attorneys, advocates, communication and technical experts
- Education, legal analysis, writing, assistance, and advocacy
  - Free for CT residents
- Systemic change – Policy and Litigation
  - Based on our experience with the problems of real people
- Medicare coverage and appeals expertise
- Medicare/Medicaid Third Party Liability Projects

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The Center for Medicare Advocacy helps Connecticut residents and stakeholders know what Medicare should cover, helps beneficiaries obtain appropriate coverage, helps reduce cost-shifting to families and Medicaid, and works for systemic change to benefit all who rely on Medicare – now and in the future.

The Center focuses on the needs and rights of people with lower incomes and people with longer-term, debilitating, or chronic conditions.

Assistance is provided at no cost for residents of Connecticut and is supported by the Connecticut Legislature and State Unit on Aging.

THIS PRESENTATION

- Importance of nurse staffing (professional and paraprofessional)
- COVID-19 and staffing
- Temporary nurse aides
- How to improve staffing levels
- Final recommendations

IMPORTANCE OF NURSE STAFFING

- No dispute: sufficient numbers of professional nurses and well-trained, well-supervised, well-compensated paraprofessional nursing staff (direct care workers) are essential for achieving high quality of care and quality of life for residents.

IMPORTANCE OF NURSE STAFFING

- 2016 article reports that more than 150 staffing studies document positive relationships between staffing, especially RN staffing, and nursing home quality

"The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes," *Health Services Insights* 2016:9 13-19, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/

COVID-19 AND NURSE STAFFING

- Study of all 215 Connecticut nursing facilities with confirmed COVID-19 cases and deaths (as of April 16, 2020) finds every 20 minutes/resident/day of RN care are correlated with 22% fewer confirmed cases and 26% fewer confirmed deaths.

Yue Li, H Temkin-Greener, S Gao, X. Cai, "COVID-19 infections and deaths among Connecticut nursing home residents: facility correlates," *Journal of American Geriatrics Society* (2020), https://onlinelibrary.wiley.com/doi/epdf/10.1111/jgs.16689

MATHEMATICA REPORT ON CONNECTICUT EXPERIENCE

- Preliminary Report found more COVID-19 cases and deaths in facilities that are
  - Larger
  - For profit (60% more cases and deaths per licensed bed than nonprofit facilities)
  - Chain owned (40% more cases and deaths than independently owned facilities)

MATHEMATICA REPORT

- Preliminary report found fewer COVID-19 cases and deaths if
  - Higher rated facilities (according to star ratings)
  - If fewer deficiencies, fewer cases (but not fewer deaths)
  - Higher staffing ratings

MATHEMATICA REPORT

- *A Study of the COVID-19 Outbreak and Response in Connecticut Long-Term Care Facilities*
  - Interim Report (Aug. 14, 2020)
  - Final Report (Sep. 30, 2020)

TEMPORARY NURSE AIDES

- March 20, as part of "blanket waivers," the Centers for Medicare & Medicaid Services (CMS) waived requirement (42 C.F.R. §483.35(d)(1)(i), (ii)) that aides not work for more than 4 months unless trained in a state-approved training program of at least 75 hours and determined to be competent

CMS, "Long Term Care Facilities (Skilled Nursing Facilities and/or Nursing Facilities): CMS Flexibilities to Fight COVID-19" (Mar. 28, 2020), https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf (Sep. 29, 2020 update)

AMERICAN HEALTH CARE ASSOCIATION

- AHCA advocated for waiver, promptly announced it had developed free 8-hour on-line training course for temporary nurse aides (TNAs)

AHCA, Temporary Nurse Aide Training & Competency Checklist https://educate.ahcancal.org/products/temporary-nurse-aide

CONNECTICUT TEMPORARY NURSE AIDES

- Connecticut Department of Public Health authorized new Temporary Nurse Aide position, for individuals registering for, completing, and passing AHCA's assessment for temporary nurse aide

https://portal.ct.gov/DPH/Facility-Licensing--Investigations/Facility-Licensing--Investigations-Section-FLIS/NEW---Temporary-Nurse-Aide-Certification

CONCERNS ABOUT TEMPORARY NURSE AIDES

- Do TNAs know how to provide care?
- Are they performing tasks for which they have not been trained and determined to be competent to perform?
- Do they know and consistently follow all infection control practices?

MORE CONCERNS ABOUT TEMPORARY NURSE AIDES

- As permitted by CMS, facilities report TNAs nurse aides to CMS as if they are fully trained and certified CNAs.
- CMS publicly reporting TNAs as if they were CNAs.
- CMS is not otherwise collecting information about TNAs.
- Some facilities report paying TNAs less than CNAs.
- Some states are considering grandfathering TNAs.

CONGRESSMAN DOGGETT

- And colleagues sent letter (Oct. 30) to CMS Administrator Seema Verma asking CMS to:
  - Reinstate nurse aide training requirements
  - Gather, and make publicly available, information about TNAs
  - Require that nurse aides fully meet training requirements (no grandfathering)

https://doggett.house.gov/sites/doggett.house.gov/files/CMS_Nurse%20Aide%20Training%20Letter_10%2030%2020_Signed.pdf

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HOW TO IMPROVE STAFFING LEVELS

CENTER FOR MEDICARE ADVOCACY STUDY

- The Center recently completed a study of state approaches to improving staffing levels, such as
  - Increasing reimbursement
  - Mandating staffing levels
  - Wage pass-throughs
  - Value-based purchasing (pay for performance)
  - Public (state Attorney General) and private litigation

IMPROVING NURSE STAFFING LEVELS

- No single approach is the answer; all approaches needed, used simultaneously
- Key approaches
  - Mandating staffing levels
  - Wage pass-throughs

MANDATING STAFFING LEVELS

- Seems like straightforward approach, used early on by states, but actually quite complex

MANDATING STAFFING LEVELS

- 2003 report looked at 8 states that had established minimum nurse staffing levels since 1997 (Arkansas, California, Delaware, Minnesota, Missouri, Ohio, Vermont, Wisconsin)

Jane Tilly, Kirstein Black, Barbara Ormond, The Urban Institute, *State Experiences with Minimum Nursing Staff Ratios for Nursing Facilities: Findings from Case Studies of Eight States* (Nov. 2003), https://aspe.hhs.gov/system/files/pdf/72726/8state.pdf

2003 REPORT ON MANDATING STAFFING LEVELS

- Tremendous variation in definition of staffing ratio, measurement of ratio, adjustment for case mix, monitoring, enforcement, payment

DEFINITION OF STAFFING LEVELS/RATIOS

- Hours per resident day? Staff-to-resident ratio? Both?
- Vary ratio with time of day?
- Adjust ratios by resident case mix?
- What is the period of time over which ratio is calculated? Week? 24-hour periods?
- Separate ratios by type of nurse (RN, LPN)?
- Treatment of agency staff? Different from permanent staff?

LATER STUDY OF STAFFING LEVELS/RATIOS

- 2015 study looked at changes in California and Ohio found
  - Increase of about 5% in total nursing hours per resident day
  - But number of RNs decreased, while number of LPNs and CNAs increased
  - And decrease in hours of "indirect" care staff (housekeeping, food service, activities)

Min M. Chen, David C. Grabowski, "Intended and Unintended Consequences of Minimum Staffing Standards for Nursing Homes," *Health Economics*, Vol. 24, No. 7, pages 822-839 (July 2015), http://onlinelibrary.wiley.com/doi/10.1002/hec.3063/abstract;jsessionid=D1C94F93FE069B7A5AAC7C44F6C202D6.f02t01 (abstract).

CONTINUED CALLS FOR STAFFING LEVELS/RATIOS

- Major researchers in the field, including Charlene Harrington and Jack Schnelle, support staffing ratios
  - Citing multiple research studies showing positive relationship between nursing home quality and staffing.

"The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes," *Health Services Insights* 2016:9 13-19,

https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/pdf/hsi-9-2016-013.pdf

MATHEMATICA REPORT

- Recommends that Connecticut increase minimum staffing ratios to at least match the levels in facilities with 4 or 5 stars in staffing

NEW JERSEY LAWS
DIRECT CARE STAFFING RATIO

- Senate Bill 2712 creates staffing ratios
  - 1 direct care staff member/6 residents on day shift
  - 1 direct care staff member/10 residents on evening shift
  - 1 direct care staff member/14 residents on night shift

https://legiscan.com/NJ/text/S2712/2020

NEW JERSEY LAWS
DIRECT CARE STAFFING RATIO

- "Governor Murphy Signs Legislation Requiring Reforms to Long-Term Care Industry; Bills Establish Minimum Staffing Ratios and Require Policies to Prevent Social Isolation of Residents" (News Release, Oct. 23, 2020),

https://nj.gov/governor/news/news/562020/approved/20201023a.shtml

RAISING WAGES AND BENEFITS FOR DIRECT CARE WORKERS

- Critical issue because direct care staff often work multiple jobs in order to be able to support themselves and pay their bills

MATHEMATICA REPORT

- Recommends ensuring that staff have access to guaranteed paid sick leave

NEW JERSEY LAWS RAISING DIRECT CARE WORKER WAGES

- A4482/S2758 requires minimum wage for direct care workers be $3 higher than prevailing minimum wage, annually increased by increase in consumer price index.
  https://www.njleg.state.nj.us/2020/Bills/A4500/4482_R2.PDF

"Governor Murphy Signs Legislative Package to Strengthen the Resiliency and Preparedness of New Jersey's Long-Term Care Industry" (News Release, Sep. 16, 2020), https://www.nj.gov/governor/news/news/562020/approved/20200916b.shtml

LIVING WAGE

- LeadingAge report

Making Care Work Pay: How Paying at Least a Living Wage to Direct Care Workers Could Benefit Care Recipients, Workers, and Communities, https://leadingage.org/sites/default/files/Making%20Care%20Work%20Pay%20Report.pdf?_ga=2.118488393.1154178586.1601481977-1021098696.1598989890

BENEFITS OF PAYING A LIVING WAGE

- Paying a living wage would
  - reduce staff shortages
  - reduce staff turnover
  - improve health care quality
  - improve worker productivity
  - improve the financial security of direct care workers

MORE BENEFITS OF PAYING A LIVING WAGE

- Paying a living wage would
  - reduce workers' reliance on needs-based public benefit programs
  - improve state and local economies.

MORE BENEFITS OF PAYING A LIVING WAGE

- Report finds "The emerging literature suggests that cost savings flowing from improvements in care quality may, alone, be enough to pay for wage increases."
- In other words, raising wages could pay for itself, just by improving care for residents.

NEW JERSEY LAW
DIRECT CARE RATIO

- A4482/S2758 authorizes direct care ratio, limiting percentage of reimbursement that can be spent on administrative costs, profits
  https://www.njleg.state.nj.us/2020/Bills/A4500/4482_R2.PDF

"Governor Murphy Signs Legislative Package to Strengthen the Resiliency and Preparedness of New Jersey's Long-Term Care Industry" (News Release, Sep. 16, 2020), https://www.nj.gov/governor/news/news/562020/approved/20200916b.shtml

NEW JERSEY LAWS BASED ON MANATT REPORT

- *Recommendations to Strengthen the Resilience of New Jersey's Nursing Homes in the Wake of COVID-19* (June 2, 2020)

http://d31hzlhk6di2h5.cloudfront.net/20200603/ca/d9/da/fc/201e7410ca8c06560498e758/Manatt_Recommendations_New_Jersey_LTC_Resilience_6-2-2020_final_2.pdf

OTHER MANATT RECOMMENDATIONS

- Pass-throughs for Medicaid rate increases
- Strengthen training and certification requirements
- Increase penalties for non-compliant facilities

ADDITIONAL MANATT RECOMMENDATIONS

- Enact new procedures to regulate and monitor ownership
  - Require disclosures, proposed budget, public posting, waiting periods
  - Close loopholes allowing changes without oversight by health department

FINAL POINTS

1. Whichever approaches the state takes, the state needs to audit facilities and to enforce statutory and reimbursement requirements
2. More reimbursement is not necessarily needed (LeadingAge living wage report); facilities may need to spend reimbursement differently (direct care ratio)

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CMA Connecticut Specific Resources Webpage:

https://medicareadvocacy.org/medicare-info/connecticut-consumers-guide/

Other CMA Services (free of charge for CT Residents, with gratitude to the Legislature & Dept. of Aging & Disability Services:

- For Connecticut Medicare beneficiaries:
  - Evaluation and advocacy for rightful Medicare coverage
  - Appeals of inappropriate Medicare denials
- For Connecticut Lawmakers:
  - Available for participation in Town Halls, other presentations
  - Consultation
  - Constituent assistance for Medicare and related issues

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