The Academy Weekly

News & Information for LTC Providers

The Academy of Senior Health Sciences, Inc.
www.seniorhealthsciences.org

Week of 27 August 2023

The Weekly is early this week because of Labor Day.
We hope everyone has a safe and enjoyable holiday weekend!

Ohio News

National News

Ohio News

ODM opens CMI freeze survey, updates guidance

As promised, the Ohio Department of Medicaid announced the opening of the provider survey to let the department know if the provider will be freezing their case mix index at the March31 level for rates effective Jan 1, 2024 to June 30, 2025. ODM also clarified that the freeze only impact PA1/2 for rate purposes and any change in the resident's grouper should be reflected in the billing for that resident. Please see the notice from ODM below for more information:

"The online survey for nursing facilities to select whether to use their quarterly Resource Utilization Groups (RUGs) scores or freeze their case mix score to determine their direct care rate is **now available**.

Completed surveys must be submitted to the Ohio Department of Medicaid (ODM) by October 1, 2023. Failure to respond to the survey will result in the provider defaulting to maintaining the current process of utilizing quarterly RUGs scores, which will require completion of the Optional State Assessment (OSA).

In response to several questions and to further clarify low resource utilization billing when a facility opts to freeze case mix scores as of March 2023, ODM provides the following guidance:

- If a new or existing resident groups into the PDPM PA1 or PA2 group, then the flat rate must be billed for the time that MDS is current, whether or not the facility case mix is frozen. If a new or existing resident groups into a higher acuity category while the facility case mix score is frozen, the rate will be the frozen rate. The freeze relates to the facility case mix score, not the case mix score of the individual residents.

Providers should select how they would like to calculate their direct care rates by deciding if they would like to:

- Continue to have quarterly RUGs scores calculated, which will require completion of OSAs, OR
- Freeze the case mix score for the next two years by using the quarterly case mix score from March 2023, and thereby eliminating the need for submission of OSAs.

Instructions:

- Click HERE to open the survey
- Enter your Medicaid Provider ID.
- Enter the name and email address of the person completing the survey.
- Select one of the two drop-down options on the survey. As described in previous communications and above, the choices are:

- Option 1- Continue to have quarterly RUGs scores calculated, which will require completion of OSAs, OR

- Option 2- Freeze the case mix score for the next two years by using the quarterly case mix score from March 2023, and thereby eliminating the need for submission of OSAs.

- Select “Submit.”.
- The person completing the form will receive a confirmation email.

Please note that once a valid Medicaid Provider ID is entered and “Next” is selected, that Provider ID is locked into that survey response until “Submit” is selected. If you are completing the survey for more than one NF, you must close and relaunch a new survey for each Medicaid Provider ID response. Please be sure to confirm the Medicaid Provider ID is correct before selecting “Next”. If you have not hit “Submit”, simply using the “Back” button will not clear the first Medicaid Provider ID entered. To ensure accurate responses, please begin a new survey for each NF.

Submit any questions to MDSCaseMix@medicaid.ohio.gov.

ODM sincerely thanks you for your participation in this process."

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CMS QM freeze may impact Medicaid rates

During the latest CMS SNF ODF call, CMS addressed how the switch to the latest MDS assessment October 1 would impact the quality measures related to Section G. CMS noted that the functional measures and pressure ulcers would be frozen for a period of time. The methodology on how to calculate those measures is being updated to use Section GG. Two of the current Medicaid quality improvement program (QIP) payment measures (pressure ulcers, decline in mobility), and one of the measure next fiscal year (ADL decline), would be impacted by the freeze. CMS did not provide any further information; however, they said a document would be released in mid-September with more details about the freeze and the changes in how the QMs will be calculated under the latest MDS. We do not know how the changes will impact ODM's calculation of the QIP payment. The Academy will discuss this issue further with ODM once those materials are released. (Back to top.)

National News

CMS issues staffing mandate proposed rule

The long awaited federal minimum staffing rule has been released by CMS. They waited until the Friday before a holiday weekend to drop a 3.0 hours per resident day (0.55 RN, 2.45 CNA) proposed rule. The rule also proposes an RN on duty 24/7 and an enhanced facility assessment. The timeline for implementing these requirements varies both by requirement and location, with rural providers being given more time. The RN requirement is 3-years after the rules are final for urban providers. The staffing mandate is five years after. Providers will be able to apply for a hardship waiver. Finally, the proposed rule would require more transparency on how much a provider spends on compensating direct care workers.

From the CMS press release: "The proposed rule consists of three core staffing proposals: 1) minimum nurse staffing standards of 0.55 hours per resident day (HPRD) for Registered Nurses (RNs) and 2.45 HPRD for Nurse Aides (NAs); 2) a requirement to have an RN onsite 24 hours a day, seven days a week; and 3) enhanced facility assessment requirements. The proposed rule also includes a staggered implementation approach and possible hardship exemptions for select facilities. This proposed rule results from a multi-faceted approach aimed at determining the minimum level and type of staffing needed to enable safe and quality care in LTC facilities. This effort included issuing a Request for Information (RFI) in the FY 2023 Skilled Nurse Facility Prospective Payment System Proposed Rule, hosting listening sessions and extensive engagement with various interested parties, conducting a 2022 Nursing Home Staffing Study, which builds on existing evidence and research studies using multiple data sources, and reviewing recent years of Payroll-Based Journal System staffing data. CMS also considered how the proposed minimum staffing requirements would align or interact with ongoing CMS initiatives and programs that impact the LTC community. Information gathered from each of these facets was used by CMS in the development of the proposed requirements that would ensure all nursing home residents are provided safe, quality care.

This proposed rule would also promote public transparency related to the percentage of Medicaid payments for services in nursing facilities and intermediate care facilities for individuals with intellectual disabilities that are spent on compensation to direct care workers and support staff. The Medicaid institutional payment transparency provision is intended to align with a similar transparency provision focused on specific Medicaid home and community-based services in the *Ensuring Access to Medicaid Services* proposed rule (CMS-2442-P), published in

the May 3, 2023, issue of the Federal Register.

Additionally, CMS announced a national campaign to support staffing in nursing homes. CMS will work with the Health Resources and Services Administration (HRSA) and other partners to make it easier for individuals to enter careers in nursing homes, investing over $75 million in financial incentives such as scholarships and tuition reimbursement. This staffing campaign builds on other actions through the HHS Health Workforce Initiative, including the recent announcement that HRSA awarded more than $100 million to train more nurses and grow the nursing workforce.

Establishing Minimum Nurse Staffing Standards

Staffing in LTC facilities has remained a persistent concern, especially among low-performing facilities that are at most risk for providing unsafe care. CMS believes that national minimum nurse staffing standards in LTC facilities, the adoption of a 24/7 RN requirement, and enhanced facility assessment requirement (as discussed later in this fact sheet) are necessary at this time to protect resident health and safety and ensure their needs are met.

Therefore, CMS proposes individual minimum nurse staffing standards for LTC facilities of 0.55 HPRD for RNs and 2.45 HPRD for NAs. However, these thresholds are minimums; while these proposed minimum standards, if finalized, would be applied across all LTC facilities, CMS also expects facilities to staff above these minimum baseline levels to address the specific needs of their unique resident population based on the facility assessment and resident acuity levels.

CMS is soliciting comments on alternative policy options that should be considered for establishing minimum nurse staffing standards. Based on the proposed policy presented in this rule, CMS is seeking feedback regarding whether alternative policy options would be better suited to meet and maintain acceptable quality and safety within LTC facilities, with consideration for external factors affecting staffing. Specifically, CMS is seeking comment on an alternative total nurse staffing standard of 3.48 HPRD, among other alternatives, within which there would still be 0.55 RN HPRD and 2.45 NA HPRD minimums. Facilities would have to meet the individual standards for RNs and NAs, i.e., 0.55 and 2.45 HPRD, respectively, as well as the 3.48 HPRD, for total nurse staffing to be considered in compliance. Lastly, we seek comments on the benefits and tradeoffs of different standards, evidence, or methodologies states use to establish minimum staffing standards and other key considerations.

Improving the RN On-Site Requirement

LTC facilities provide care for residents with increasing medical complexity and

acuity of health conditions who require substantial resources and care provided or supervised by an RN. While the minimum staffing standard proposal described above seeks to build on existing requirements by creating consistent and broadly applicable standards that significantly reduce the risk of unsafe and low-quality care across LTC facilities, the current minimum nurse standards do not reduce the risk of avoidable resident safety events when there is no RN on site, particularly during evenings, nights, weekends, and holidays. Therefore, CMS proposes that LTC facilities must have an RN onsite 24 hours a day, seven days a week, who is available to provide direct resident care. This proposal aims to address these challenges and ensure that residents are receiving safe, quality care by an RN, at all times when needed.

CMS is interested in comments regarding the feasibility of our proposed requirements for each LTC facility to have an RN on site 24 hours a day, seven days a week, including possible alternatives to this proposal.

Strengthening the Facility Assessment Requirement

To help improve the safety of residents, a comprehensive approach to establishing staffing standards is necessary to ensure that facilities are making thoughtful, informed staffing plans and decisions focused on meeting resident needs. As part of that approach, LTC facilities are already required to conduct, document, and review annually and, as necessary, a facility-wide assessment to determine what resources are necessary to care for residents competently during both day-to-day operations and emergencies.

To ensure that facilities are utilizing the facility assessment as intended by making thoughtful, person-centered staffing plans and decisions focused on meeting resident needs, including staffing at levels above the proposed minimums as indicated by resident acuity, CMS is proposing several updates to the facility assessment as a means of strengthening these requirements, including:

- Clarifying that facilities must use evidence-based methods when care planning for their residents, including consideration for those residents with behavioral health needs;
- Requiring that facilities use the facility assessment to assess the specific needs of each resident in the facility and to adjust as necessary based on any significant changes in the resident population;
- Requiring that facilities include the input of facility staff, including, but not limited to, nursing home leadership, management, direct care staff (i.e., nurse staff), representatives of direct care staff, and staff who provide other services; and,

- Requiring facilities to develop a staffing plan to maximize recruitment and retention of staff consistent with what was described in the President's April Executive Order on Increasing Access to Higher Quality Care and Supporting Caregivers.

Permitting Regulatory Flexibility

CMS aims to hold nursing homes accountable for ensuring that residents receive safe and high-quality care. While we fully expect that LTC facilities will be able to meet our proposed minimum staffing standards, we recognize that in some instances, external circumstances may temporarily prevent a facility from achieving compliance despite the facility's demonstrated best efforts. Moreover, some LTC facilities are still experiencing challenges in hiring and retaining certain nursing staff because of local workforce unavailability, which was exacerbated by the COVID-19 pandemic. Therefore, CMS proposes to allow for a hardship exemption in limited circumstances. LTC facilities may qualify for a temporary hardship exemption from the minimum nurse staffing HPRD standards only if they are able to meet specific criteria demonstrating the following:

- Workforce unavailability based on their location, as evidenced by either a medium (that is, 20 percent below the national average) or low (that is, 40 percent below national average) provider-to-population ratio for the nursing workforce, as calculated by CMS, by using the Bureau of Labor Statistics and Census Bureau data, or the facility is located at least 20 miles away from another LTC facility (as determined by CMS); and
- Good faith efforts to hire and retain staff through the development and implementation of a recruitment and retention plan; by documenting job postings, and job vacancies, including the number and duration of vacancies, job offers made, and competitive wage offerings, and
- A financial commitment to staffing by documenting the total annual amount spent on direct care staff.

Prior to being considered, the LTC facility must be surveyed to assess the health and safety of the residents. Suppose an LTC facility is found noncompliant with the minimum staffing requirements while not meeting the exclusionary criteria (as outlined below). In that case, CMS will determine if the facility is in a workforce unavailability area. If CMS determines the facility is in a workforce unavailability area, the LTC facility's documentation of a good faith effort to hire and retain staff and the LTC facility's documentation of a financial commitment must be submitted to the State or CMS. CMS will then determine if the facility will be granted an exemption from enforcement. CMS will indicate if a facility has obtained an

exemption on the Medicare.gov Care Compare website to ensure current and prospective residents and their families are aware that a facility has levels of staffing lower than the standard.
Facilities would not be eligible for an exemption if:

- They have failed to submit their data to the Payroll-Based Journal System;
- They have been identified as a special focus facility (SFF) or
- They have been identified within the preceding 12 months as having widespread insufficient staffing with resultant resident actual harm or a pattern of insufficient staffing with resultant resident actual harm or have been cited at the immediate jeopardy level of severity with respect to insufficient staffing as determined by CMS.

Given the complex health needs of residents living in LTC facilities and to protect resident health and safety, CMS believes that it is important for exempted facilities to continue to maintain compliance with existing requirements to provide services by a sufficient number of staff on a 24-hour basis to all residents in accordance with resident care plans. These requirements are responsive to longstanding concerns related to low staffing levels in facilities on weekends and evenings; further, ongoing RN presence is needed to provide care and monitor resident health. If a facility seeks relief from the 24/7 RN requirement, it would have to follow the applicable existing waiver process, as required by statute and set out in the current regulations.

Staggering Implementation
To give LTC facilities time to achieve compliance with the proposed minimum staffing requirements, CMS proposes that implementation of the final requirements will occur in three phases over a 3-year period for all non-rural facilities. Specifically, we propose for non-rural facilities:

- Phase 1 would require facilities located in urban areas to comply with the facility assessment requirements 60 days after the publication date of the final rule;
- Phase 2 would require facilities located in urban areas to comply with the requirement for an RN onsite 24 hours and seven days/week two years after the publication date of the final rule and
- Phase 3 would require facilities located in urban areas to comply with the minimum staffing requirements of 0.55 and 2.45 hours per resident day for RNs and NAs, respectively, three years after the publication date of the final rule.

CMS acknowledges the unique challenges that rural LTC facilities face, especially as it relates to staffing. We intend to promote safe, high-quality care for all residents regardless of location. We also recognize the need to strike an appropriate balance that considers the current challenges some LTC facilities are experiencing, particularly in rural areas. Therefore, we are proposing a later implementation date for rural facilities. Rural facilities will have three years to meet the proposed 24/7 RN requirement and five years to meet the proposed minimum staffing requirements (HPRD) as outlined below. Specifically, we propose for rural facilities:

- Phase 1 would require facilities to comply with the facility assessment requirements 60 days after the publication date of the final rule;
- Phase 2 would require facilities to comply with the requirement for an RN onsite 24 hours and seven days/week three years after the publication date of the final rule and
- Phase 3 would require facilities to comply with the minimum staffing requirement of 0.55 and 2.45 HPRD for RNs and NAs, respectively, five years after the publication date of the final rule.

Medicaid Institutional Payment Transparency

Millions of Americans, including children and adults of all ages, need long-term services and supports because of disabilities, chronic illness, and other factors. Today, most people who receive Medicaid-funded long-term services and supports are served in the community. However, about 1.5 million people receive Medicaid-funded long-term services and supports in nursing homes and intermediate care facilities for people with intellectual disabilities each year.

As the Biden-Harris Administration works to ensure that older adults, people with disabilities, and families have access to affordable, high-quality care, we recognize that workforce shortages and high rates of worker turnover in nursing facilities and intermediate care facilities for individuals with intellectual disabilities make it difficult for people with disabilities and older adults to have access to high-quality services.

The proposed rule includes provisions that are intended to promote public transparency related to the percentage of Medicaid payments for services in nursing facilities and intermediate care facilities for individuals with intellectual disabilities that are spent on compensation to direct care workers and support staff. The Medicaid institutional payment transparency reporting provisions, if adopted as proposed, would build on proposals in the *Ensuring Access to Medicaid Services* proposed rule in which CMS proposed to require, among other things, that states report to CMS and publicly on the percentage of Medicaid payments for certain home and community-based services that are spent on compensation for direct care

workers.
Highlights from this proposed rule include:

- **New proposed institutional payment reporting requirements for states** that would require states to report to CMS on the percentage of Medicaid payments for services in nursing facilities and intermediate care facilities for individuals with intellectual disabilities that are spent on compensation for direct care workers and support staff. These requirements would apply regardless of whether a state's long-term services and supports delivery system is fee-for-service or managed care.
- **Promoting the public availability of Medicaid institutional payment information** by proposing that both states and CMS make the institutional payment information reported by states to CMS available on public-facing websites.

The goals of these proposed requirements are to promote accountability and inform efforts to address the link between sufficient payments being received by the institutional direct care and support staff workforce and access to and, ultimately, the quality of services received by Medicaid beneficiaries.

Comment Submission
There will be a 60-day comment period for the notice of proposed rulemaking, and comments must be submitted to the Federal Register no later than November 6, 2023. For more information on how to submit comments or to review the entire rule, visit the Federal Register https://www.federalregister.gov/public-inspection/2023-18781/medicare-and-medicaid-programs-minimum-staffing-standards-for-long-term-care-facilities-and-medicaid

The 2022 Nursing Home Staffing Study is available at: https://www.cms.gov/nursing-homes

A Department of Health and Human Services press release on the proposed rule is available at: https://www.cms.gov/newsroom/press-releases/hhs-proposes-minimum-staffing-standards-enhance-safety-and-quality-nursing-homes

A White House Fact Sheet is available at: https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/01/fact-sheet-biden-harris-administration-takes-steps-to-crack-down-on-nursing-homes-that-endanger-resident-safety/"

The ASPE report is available at: https://aspe.hhs.gov/reports/dcw-wages

This CMS fact sheet is available at: https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicaid

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MLN Connects Newsletter

News

- HHS Selects the First Drugs for Medicare Drug Price Negotiation
- Medicare Shared Savings Program Saves Medicare More Than $1.8 Billion in 2022 and Continues to Deliver High-quality Care
- CMS Issues Draft Guidance on New Program to Allow People with Medicare to Pay Out-of-Pocket Prescription Drug Costs in Monthly Payments
- CMS Roundup (Aug. 25, 2023)
- CMS.gov Website Refresh – Provide Feedback on Test Website by September 5

Claims, Pricers, & Codes

- HCPCS Application Summaries & Coding Decisions: Non-Drug & Non-Biological Items and Services
- Home Health Prospective Payment System Grouper: October Update
- Updated ICD-10 Medicare Severity Diagnosis-Related Group Version 41

From Our Federal Partners

- Locally Acquired Malaria Cases Identified in Florida, Texas, & Maryland — Important Updates

To view MLN Connects online, click here.

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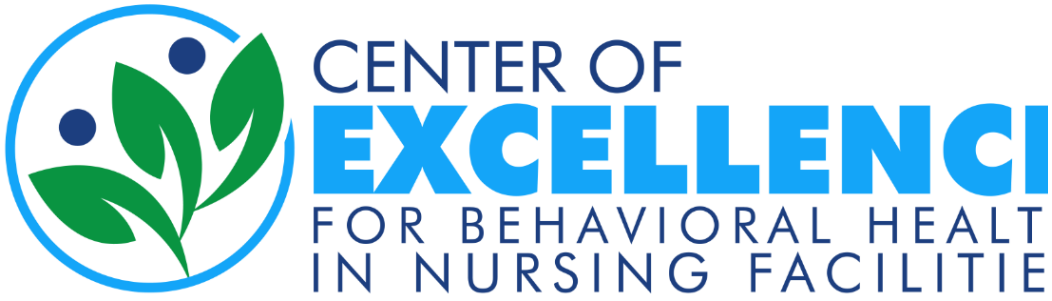

ODDS AND ENDS

VBP validation audit

CMS will be conducting a validation audit of the value based purchasing program records for about 1,500 SNFs' that submitted data in FY24. CMS did not indicate how the facilities would be selected. An outside vendor will be performing the audit and will be requesting medical records from at least 10 residents. More information will become available.

Don't change target date after Oct 1

CMS noted on the latest SNF ODF that the crossover period to the latest MDS that takes place Oct 1 will be very similar to the way it was handled in 2019. They said that the target date of an MDS cannot change from before Oct 1 to Oct 1 or later after Oct 1. Instead, providers are to submit a new MDS if a target date issued before Oct 1 needs to be changed.

NOTABLE DATES OR EVENTS

ODA AL waiver memory care survey
06 September 2023

ODM CMI freeze survey
Closes 1 October 2023

MDS RAI 1.18.11
Effective 1 October 2023

Click here for QIN-QIO education calendar

Click here for IPRO Learn online learning

Click here for CMS QSEP Portal

Click here to view CGS Part A training events

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