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November 1, 2023

Administrator Chiquita Brooks-LaSure  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attention: CMS-3442-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

Re: CMS-3442-P – Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting

Dear Administrator Brooks-LaSure:

The Civil Service Employees Association Local 1000, AFSCME (CSEA) writes to comment on proposed regulation CMS-3442-P - Minimum Staffing Standards for Long Term Care Facilities and Medicaid Institutional Payment Transparency Reporting.

The CSEA represents tens of thousands of employees that work in direct care settings, including public and private nursing homes throughout New York State. We represent licensed nursing titles, including registered nurse (RN), licensed practical nurse (LPN), certified nursing assistant (CNA), and other non-licensed or certified direct care workers.

CSEA has significant concerns with the proposed regulation due to its failure to include LPNs in calculations of hours per resident day (HPRD), which would prevent nursing homes from applying LPN care hours towards required staffing ratios. As proposed, this regulation will make hiring LPNs financially infeasible for long-term care facilities at a time when many facilities are struggling to recruit and retain staff.

The use of LPNs for nursing care is squarely in line with several studies on this issue, including the 2023 CMS staffing study that supports an LPN-specific minimum standard of 0.73 HPRD. CSEA strongly supports an amendment to allow care from LPNs to be counted when calculating hours per resident day, similar to New York State's existing Law.

LPNs are essential members of the healthcare team within nursing homes and their role should be preserved as an option for nursing home operations. LPNs bring a unique set of skills and knowledge that complement the care provided by RNs and CNAs. In addition, LPNs are trained to administer medications, a critical aspect of care for many nursing home residents. Their presence is necessary to ensure that residents receive appropriate care.

November 1, 2023

Page 2

The failure to include LPNs in the proposed regulation will place a severe strain on New York nursing homes that are already having a difficult time recruiting licensed nursing staff. New York does not have enough RNs to fulfil its potential obligation under this proposal and implementing it as currently drafted will severely harm nursing home residents and staff.

On behalf of 300,000 active and retired, public and private employees across New York State, we urge you to amend this regulation to allow care provided by LPNs to count towards HPRD as equivalent to hours of care provided by RNs.

Sincerely,

A handwritten signature in cursive script that reads "Mary E. Sullivan".

MARY E. SULLIVAN

President

Civil Service Employees Association