Submitter : Mr. Blaine Sheffield **Date & Time:** 03/02/2004 12:03:00

Organization : N/A

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

CMS -3121-P Without consideration of the acuity and personal needs of the patients in a nursing home, the mere posting of FTE's for the general public to view will be meaningless. There seems to be a governmental need to satisfy the concerns of only a few by requiring a posting of numbers that do not add up to accepted levels of care being delivered. Quality care is not necessarily delivered by more FTE's. Why not post the amount of training hours and the type of training being provided to staff, which could be inferred as an influence on the type of care being provided. Perhaps a better means of policing would be to require each patients family member or guardian to visit the patient minimally of once per week to observe the care of their loved one and to report any concerns to the facility management and if unresolved to a patient liasion to the government party paying for the care. This requirement would be for any patient that is receiving any form of government assistance.

Submitter : Mr. Thomas Blatchford **Date & Time:** 03/02/2004 12:03:00

Organization : Mission Texas Corp

Category : Nurse

Issue Areas/Comments

GENERAL

GENERAL

I agree with the regulation but the instructions for complteting the required form are poor. I am left with a few questions. 1-So am I to asume that todays date starts at Midnight so I would report the night shift during days then day shift on evenings and evenings on nights? 2-Since our census changes do we report the daily average or one that we take at midnight? 3-Actual hours worked would give the public the most acurate FTE count but this is not practical since time cards are not reviewed daily. 4-Can we used hours in a shift with or without meals? 5-Does this number need to match the payrole numbers? 6-We currently post the scheduled number of staff at the begining of the shift and then we change our posting at the end of a shift to reflect aproximate numbers can we continue this practice. 7-We change our census to reflect the census at the end of each shift not a daily, and you do not address this issue. 8-If we store this information electronicly does that mean we have to have the information in this format or can we post it, then transcribe it to a spread sheet and store it? 9-Does the posting of our current days information coupled with a spreadsheet of past work give us compliance or must you all see the piece of paper to believe us? 10-Can we continue to post this information along with facility specific information? 11-To ensure accuacry what would you compare this information to?

Submitter : Mrs. Arlene Wessel **Date & Time:** 03/02/2004 12:03:00

Organization : N/A

Category : Congressional

Issue Areas/Comments

GENERAL

GENERAL

Will this nurse-staffing report be required of swing-bed facilities too? If not, why not? Also, will this reporting be required of hospitals? If not, why not? Thank You

Submitter : Mrs. Cheryl Patton **Date & Time:** 03/02/2004 12:03:00

Organization : Meadow Brook Medical Care Fac

Category : Congressional

Issue Areas/Comments

GENERAL

GENERAL

Why? Facilities already submit staffing numbers to the federal government when receiving a request. A monthly or weekly submission of information would be acceptable but a shift by shift accounting takes nursing time away from residents and focuses on paper work. A retrospective look at staffing on a weekly or monthly basis is an effective tool for family members to look at or surveyors to use when resident care is in question. A shift by shift accounting at the end of a shift is unnecessary.

Submitter : Ms. Gail Barthold **Date & Time:** 03/02/2004 12:03:00

Organization : Foss Home and Village

Category : Nurse Practitioner

Issue Areas/Comments

GENERAL

GENERAL

*Nursing Services If I am a family member, I would want to know who was working on the unit at that time. The information you would have collected is after the fact. During the 10 years that I have been the Director of Nursing and before, we have posted on each unit the staff that will be working that 24 hrs. The names of each staff member is listed and for the NAC's, the section where they will be working. The family then knows who is working that shift and who specifically is caring for their loved one. For the facility, these are kept for 7 years and are a useful tool for many things. We will continue to do this...the new form that you are suggesting is added work and no benefit to the facility of family members.

CMS-3121-P-6

Submitter : Mr. carolyn slavens **Date & Time:** 03/13/2004 12:03:00

Organization : N/A

Category : Nurse

Issue Areas/Comments

GENERAL

GENERAL

I am in support of the required posting of number of staff on duty. Facilities do not staff to support the number of residents they accept and place an undue burden (physical, mental, and legal) on workers. They also do not provide a minium humane standard of care for the residents who live in these facilities.

Submitter : Mr. Dennis Ziefel **Date & Time:** 03/15/2004 12:03:00

Organization : Columbine Health Services

Category : Congressional

Issue Areas/Comments

GENERAL

GENERAL

BACKGROUND:
The background information contradicts itself concerning the value of posting staffing information. It states: "Although staffing is not an explicit part out this initiative, we believe that our proposed requirement that all SNFs and NFs post nurse staffing information and make the information available to the public is essential to keeping the public informed." Yet also in the background section is written: "There are no current plans to develop a Federal standard for optimal nursing staff levels." and "Based upon these studies, at this time, we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements." It seems to me that the document itself questions the value of posting and comparing staffing among various facilities. The make up of the nursing staff at a subacute facility versus the staffing at a "normal" skilled facility is quite different even though both facilities may provide excellent care. This type of requirement may be more misleading than helpful to the general public.
NURSING SERVICES:
The Nursing Services section states "The facility must on a daily basis, at the end of each shift, calculate the number of FTEs for the following licensed and unlicensed nursing staff directly responsible for resident care: ..." Generally, the only staff working at the end of the evening and night shifts are direct care staff. This regulation requires them to take time to compute the staffing and post it which ultimately reduces the time they can spend with patients! In addition this section requires that the facility include census data on the reporting form. Yet, the previous section states"we do not believe sufficient evidence exists to warrant minimum nurse staffing ratio requirements."
DAILY NURSE STAFFING FORM: Again the document states "We would expect this form to be completed at the end of each shift..." which means direct care staff would need to take time out to complete an unnecessary form. In this same section it states that "we would expect a facility to appoint someone responsible for presenting the information accurately." This means that additional personnel time will be used to maintain these documents.
COLLECTION OF INFORMATION REQUIREMENTS:
This rule obviously increases the amount of paperwork that a skilled facility is required to perform. As stated in the Background section, the value of this information is questionable.
REGULATORY IMPACT ANALYSIS:
This rule detracts from the direct care of the residents and provides data outside of the context of the individual facility. It is doubtful that this information will be useful to the general public and the process will add expense to the operations of the nursing facility. Staff will have to take the time to complete the form, a supervisor will need to verify the accuracy of the form, and the records department will need to maintain the information for three years.
Ironically, since my facility is a subacute facility, it will actually have a higher staffing level than the other buildings in the area. However, I feel that this rule is an unnecessary burden for all snfs.

Submitter : Ms. Jan Field **Date & Time:** 03/30/2004 07:03:41

Organization : Fairview-University Transitonal Services

Category : Health Care Professional or Association

Issue Areas/Comments

Issues

Background

There are nursing homes in many parts of the country that don't staff appropriately for the types of patients/resident they have. This may be due to difficulty in recruiting staff (i.e.nurse shortage) or the fact that the nursing home has financial challenges. Requiring a nursing home to post the FTE and census data is not going to ensure that "nurse-staffing levels may simply increase due to the market demand created by an informed public".

Currently nursing homes are asked to report the facility staffing during the annual visit by the Health Department. This information is also on the nursing home compare web site on the Internet. Since the information is on the Internet, why do facilities have to waste even 5 minutes posting it daily? If a consumer is searching for a facility they will use the Internet and get most of their information there rather than visiting facilities. I happen to know that health care is the number one hit on the Internet for baby boomers and it would be they who are looking for nursing home placement for their parents.

I think consumers will struggle to understand the significance of the facility staffing. For example, I am an administrator for a subacute/transitional facility. We are attached to a hospital and receive very high acuity patients. Our nursing staffing is at 8.95 hours per patient day. I could staff much lower but I wouldn't because we could not possibly meet the needs of the patients. A consumer whouldn't know what the staffing level should be because they have no knowledge that what is posted is adequate to care for patients/residents. There is not a universal acuity measure for nursing homes and the RUGs levels certainly do not measure acuity.

If a facility is struggling financially or to hire staff, they may be tempted to misrepresnet what the actual staffing is that they are posting-until they are caught.

Finally, why not require nursing homes to post FTE and census data if they receive a staffing related deficiency as a result of the annual Health Department visit? I realize that posting the FTE and census data will not take a great deal of time, but why take the staff away from caring for the patients/residents for even 5 minutes to do this daily?

Submitter : Mr. Keith Swartzentruber **Date & Time:** 03/09/2004 12:03:00

Organization : Snyder Village

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

We are already posting this information Monday to Friday on a daily basis. It would create an undue hardship on direct care staff to be required to do additonal redundant paperwork.
We currently do enough of that that takes away from patient care and attention.
Thank you for your consideration

Submitter : Mr. Keith Swartzentruber **Date & Time:** 03/09/2004 12:03:00

Organization : Snyder Village

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

Retaining records for 3 years is excessive and unreasonable. Also Public Health required us to stop posting FTE's during our January 2004 survey and just post number of direct care staff. We agree that FTE's are easily misunderstood by the public. I also do not believe adding census numbers will help the public. Thank you.

CMS-3121-P-11

Submitter : Mr. Stephen Cutshaw **Date & Time:** 03/09/2004 12:03:00

Organization : CC Young

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

I am writing regarding the proposed regulation CMS-3121-P regarding the posting of direct care hours at the end of each shift. This does nothing to improve quality of care for our residents. Our record keeping is already quite cumbersome and to add to this only adds to the frustration we experience when we are asked to do paper compliance for no real purpose. The number of staff does not necessarily indicate better quality of care but could be so construed by the public. Posting of this data becomes an exercise in futility. Please do not include this in our regulations. Thank-you for your consideration of this comment.

Submitter : Ms. Kay Rogers **Date & Time:** 03/11/2004 12:03:00

Organization : SunBridge Healthcare

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

As a nursing home administrator, I find this rule another shot in the dark of trying to improve nursing home care and missing by more miles. The nursing home industry and the regulatory agencies needs to recognize that our residents' acuity level change on a fairly regular basis as residents come and go. Therefore, numbers do not represent the level of care in a facility. To add more paper work on any employee in a nursing facility that takes even 5 minutes away from resident care is a crime. Having to post staffing does nothing to ensure that residents are adequately cared for. We are not making widgets in nursing homes; we are caring for people. Futhermore, if we are fortunate enough to hire a fantastic group of CNAs, LPNs, or RNs, and develop them through training, incentives, etc., one may be able to provide better care than a facility with twice the number of direct care nursing staff. This is another example of why this rule is worthless. We already have surveyors who evaluate resident care and regulatory compliance. Posting some numbers in public view does not guarantee improvement in residents care and really takes away time from the care provided. And it will require more than five minutes per shift to verify if all scheduled staff is present, fill out the form and post it. Kay Rogers Administrator

CMS-3121-P-13

Submitter : Mrs. Dawn Giese **Date & Time:** 03/16/2004 12:03:00

Organization : Sioux Valley Canby Campus

Category : Other

Issue Areas/Comments

GENERAL

GENERAL

I would like to comment on the proposed requirements for Daily Nurse Staffing and Collection of Information Requirements (file code CMS - 3121-P)
I am the staff person who collects the data for the current requirement of posting. The posting of this information as we do it now is not a burden. It is however a task that has to be done by a reliable and conscientious staff person.
Your proposed requirement of updating the posting at the end of every shift will create a burden. Most office staff do not work 24 hours a day and 7 days a week. You would have different staff filling out the form several times a week (to cover evening and night shifts, as well as the weekends). To put this requirement on a nurse would be unfair. The nurse is to focus on resident care and quite often ends up working overtime to complete tasks related to resident cares. If we burden them with a paper compliance task as this, it will only cause more overtime. We are a facility with 2 floors and 3 specific living areas for residents. To gather staffing information for all 3 areas would certainly take more than 5 minutes. We have some shifts that overlap (no definite split between the shifts) making it difficult to fit the number of staff hours in to a particular time slot.
Please reconsider the requirements you are proposing.

Submitter : Mr. Louis Cottrell **Date & Time:** 03/18/2004 12:03:00

Organization : Alabama Nursing Home Association

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

See attached comments

Submitter : Ms. Sherry Ficklin **Date & Time:** 03/31/2004 05:03:40

Organization : R.N.S., Inc.

Category : Health Care Professional or Association

Issue Areas/Comments

Issues

Background

RN for 30 years. Specialized in rehab for the past 15 years.

Nursing Services

I believe it is important to come up with a uniform manner of assessing acuity of the patient. It is not just numbers of patients that should be considered. Their overall condition, ability to independent in feeding, etc., is also a consideration. It is not just the patient to staff ratio that should be considered.

Submitter : Ms. Debra Hellman **Date & Time:** 04/04/2004 04:04:03

Organization : CT Hospice

Category : Nurse

Issue Areas/Comments

GENERAL

GENERAL

I suggest that staffing levels at inpatient hospice facilities also be monitored and available for patients and their families. These numbers should not be allowed to include management who retain their liscences but do not work on the floor with patients.

Submitter : Ms. Lori Costa **Date & Time:** 04/05/2004 09:04:31

Organization : California Assoc. of Homes & Services For the Agin

Category : Long-term Care

Issue Areas/Comments

GENERAL

GENERAL

We ask that CMS not make these requirements more burdensome than they need be. Nursing homes in our state currently post staffing, however as presently written these regulations would require substantial changes.

Thank you for your consideration of my comments.

Issues

Background

In the preamble, CMS discusses the BIPA requirements of "directly responsible for resident care" and "uniform manner". These two requirements although seemingly innocuous need clarity in the regulations. The consumer's, CMS's, State Agency's and the providers' perception of "direct patient care" may be completely different. In a delivery system where staff, especially licensed staff, have multiple responsibilities it is difficult for the consumer to differentiate direct and indirect patient care. For example, assessing the patient as an MDS cooordinator, reviewing the patient's medical record as an infection control nurse, noting of physician orders, and conducting an interdisciplinary team conferenceare all direct patient care duties under the Nurse Practice Act in our state. However, if you asked a consumer what is direct patient care, they would probably answer that only the "laying on of hands" is direct patient care. The definition of direct care should be clarified and consistent with state nursing practice statutes.

CMS states that "OSCAR system can be less than accurate, and as such, is misleading when used as the sole data source for public reporting". However,CMS fails to recognize why the OSCAR system has such problems. In a delivery system that may have six different day shifts, it is dificult to use FTEs as a reporting mechanism. In addition in a system where small facilities may split the time of licensed staff between direct care and administrative duties, once again it is difficult to use FTEs. Most nursing homes collect data on some type of hours system. The proposed uniform manner of reporting should be one that is currently being used by the delivery system, allows for the wide variation in practices among providers and does not use FTEs, which, by CMS's own admission doesn't work.

Daily Nurse Staffing Form

The form is confusing in that it only allows for one time period for each shift. As previouly stated facilities may have multiple shifts, some of which overlap. As presently constructed the form may mislead facilities to believe they only have to report the 7 to 3pm staff etc..

Completing the form at the end of each shift will also lead to errors in the form's completion. Generally the responsibility for staffing lies with one person. Personnel on other shifts would not be familier with how to complete the form. In addition the night shift may be the first or last shift of the twenty four hour day. This may cause errors to occur. Finally, the census does change over the twenty four hour period but there is only one space for the census, implying that it is only one number that will be used. This needs to be clarified.

Nursing Services

CMS must clarify what licensed staff means. Our state may by policy allow for the use of some other licensed category in place of a licensed nurse. We recommend adding "or policy" in the parentheses which states "state law".

We believe that if Congress intended to collect census data it would have added it to the provisions of BIPA. The provisions are fairly prescriptive in nature. We object to having to collect more data than is required by law.

We object to making the information available to the public without some kind of parameters in the requirements for the facilities protection. In this current litigious environment, the public may want copies of the staffing forms for the entire stay of the resident. This may cost a considerable amount of money and be a burdent to the facility staff. Without any parameters around the "accessible to the public" requirement it is conceivable that facilities may be burdened with requests. We ask that the burden and cost of copying be put on the person requesting such, as is the case in a lawsuit. In addition we ask that the requests be limited to members of the public having a legal relationship to the resident, direct family member of the resident or responsible party such as a conservator.

In addition we are concerned since the posting would contain the names of the facility staff, who may or may not want the "public" to know where they work. They also have a right to privacy. Some protections should be given for the names of staff.

Submitter : Mrs. Denise Trimble **Date & Time:** 04/05/2004 11:04:54

Organization : Steere House Nursing & Rehabilitation Center

Category : Nurse

Issue Areas/Comments

Issues

Daily Nurse Staffing Form

If I am understanding this regulation correctly the purpose is to inform the general public as to how many staff are present to give direct care. I do not beleive the general public would understand FTE's and this would cause more confusion. Actual numbers of hands on staff is clearer, easier to understand and easier to calculate and post. Why keep these records for 3 years when we also keep copies of the actual nursing schedules? I also beleive all three shifts should be posted at the same time so the public can see how many direct care staff are on for 24 hours. Why would someone visiting on the 7-3 shift only want to see how many direct care staff worked 11-7 (the shift prior to this). I would think they would want to see the staffing for 24 hours. A simple statement regarding the actual census makes sense so they can better understand the staffing. The simpler the form the easier for the general public to understand and the SNF to comply!! Thank you

Submitter : Ms. Debbie Combs-Jones **Date & Time:** 04/08/2004 05:04:47

Organization : Moses Cone Extended Care Center

Category : Long-term Care

Issue Areas/Comments

GENERAL

GENERAL

Posting of staffing levels is a good approach to reassuring visitors that we have enough nursing personnel to provide good care for our residents, but I feel the information must be presented in a manner that is useful to the individuals accessing that information.

Issues

Background

As of January 2003, nursing homes have been required to post staffing levels for each shift, each day. The format of the document used for this purpose was at the descretion of the facility. The form proposed in CMS-3121-P requires that staffing levels be expressed in the form of Full Time Equivalents.

Daily Nurse Staffing Form

As I understand it, the purpose of posting the staffing levels for each shift, each day, is to inform residents, their families, visitors, surveyors etc. of the number of nursing personnel providing direct care at any given time. The proposed form requires that the facility post this information in the form of Full Time Equivalents. However, most of the general public who view the posted information is uninformed as to the definition of Full Time Equivalent and they find this information confusing. The concept of FTEs is a management tool and even our line staff nurses don't understand this measure: They certainly aren't able to explain it to a visitor. Many visitors have come to my office and asked "what does half a person actually do". If we really want to provide useful, understandable information to the public, we should post staffing levels in the form of TOTAL NUMBER of nursing personnel present for a given shift.

CMS-3121-P-20

Submitter : Mrs. Leah Hagan **Date & Time:** 04/09/2004 02:04:16

Organization : Crowne Mnagement, LLC

Category : Nurse

Issue Areas/Comments

Issues

Nursing Services

Currently it is proposed that the facility would complete the form at the end of each shift. I think in reality, this may be a hard task to accomplish at the end of each shift with all that occurs at the end of each shift. Ususally facilities do not have RN's on 2nd and 3rd shift that would be available to calculate this information and the charge nurse is usually trying to tend to resident care and charting at the END of the shift.

As far as not including for example the DON in the number of FTE'S unless the individual acts as the charge nurse for that day is not a fair accounting of the staff on hand. Although there may be a charge nurse handeling giving medication and providing treatments for residents timely, a DON may be stepping in during the shift to assist to feed residents, admit residents and provide care, etc. They may not perform these tasks for the entire period they are there but still should be counted in the numbers.

Accounting for staff as FTE's I think will not allow the public to truly understand the staffing being provided.The purpose of this form from my understanding is to post the information for the general public of which most do not understand FTE's. They will interpret as this is the number of people present which is often not correct.

Not counting feeding assistants into the equation will not allow a facility to truly represent their staffing present on a daily basis. Several facilities use feeding assistants for 2-3 hours a day and use more than one duirng the shifts. These should be included in the numbers as they are providing direct care for residents. (If a facility had no feeding assistants as opposed to one having 6 present for 4 hours each during the day, there would be no difference in the numbers posted for the public to view when accually the one with feeding assistants does have more staff present to assist with direct care of the residents.

CMS-3121-P-21

Submitter : **Date & Time:** 04/12/2004 02:04:43

Organization :

Category : Hospital

Issue Areas/Comments

Issues

Background

The State Department of Health already reviews this staffing data on annual licensing surveys and when presenting to the facility for allegations.

Collection Of Information Requirements

The additional paperwork that would be imposed under this rule negatively affects patient care by redirecting resources to those paperwork activities rather than patient care and its oversight.

Nursing Services

The "Nursing Home Compare" information for public review at the CMS website includes nurse staffing ratios for individual facilities.

Regulatory Impact Analysis

This proposed rule is viewed as redundant, burdensome, and will negatively affect patient care.

Submitter : Ms. Lourdes E. Alvarado-Ramos **Date & Time:** 04/12/2004 05:04:21

Organization : Washinton State Department of Veterans Affairs

Category : Long-term Care

Issue Areas/Comments

GENERAL

GENERAL

CMS must measure the additional workload that the tracking form will generate for facilities and make appropriate adjustments to the daily rate.

If the form is adopted, it should be electronic with the ability to roll up results and sort data, not another hard copy format that has to be generated and stored at new expense to the facilities.

If CMS' ultimate purpose is to track staffing and census data that would potentially drive mandated staffing ratios, this proposed "form" should be a software application tied to current data transmission systems that will enable collection of quality data simply and at no cost to the facilities.

The posting of required information is proposed for the end of each shift. Request clarification is made on whether the data collection and posting are retrospective for the worked shift. Prospective information is already being posted per CMS requirement and this data is usually compiled at the beginning of the shift, not at the end.

Issues

Background

CMS is proposing that SNFs and NFs complete a CMS-specified form at the end of each shift, on a daily basis, to post the full-time equivalents (FTEs) of registered nurses, licensed practical nurses, licensed vocational nurses, and certified nurse aides who are directly responsible for resident care. CMS is also proposing that
SNFs and NFs use this form to capture and display daily resident census information. CMS proposes that these facilities would also be required to make this information available to the public upon request.

Collection Of Information Requirements

Staffing information is reflected in staffing schedules that are tied to the payroll system. Resident data is collected through locally operated software which is not compatible from one organization to another.

Daily Nurse Staffing Form

Not available.

Nursing Services

Form implementation increases Nursing Administrative time. This is a requirement above the present staffing scheduling system and resident census system.

Regulatory Impact Analysis

Facilities post staffing data and keep it a variety of formats. Many are generated through computerized staffing programs and others are manually generated.

Implementation of "the form" will require re-entry of such data to meet CMS specific requirements.

Submitter : Mrs. Deborah Simaytis **Date & Time:** 04/14/2004 12:04:43

Organization : Meadowlawn Health Care

Category : Individual

Issue Areas/Comments

Issues

Daily Nurse Staffing Form

From my understanding this went into affect the first of 2003? Which our company did start this process and find it no problem at all. Actually it has assisted in some issues that have arose with family members, when they state the facility is not staffed with enough staff. Posting this information for well over a year has helped.

Submitter : Mr. Sandra Page **Date & Time:** 04/07/2004 12:04:00

Organization : St. Luke's Hospital

Category : Nurse

Issue Areas/Comments

GENERAL

GENERAL

A. "Nursing Services" (483.30) CMS-3121-P Faulty method for calculating FTE's on 12 hr shift.
Facility B should read: (8 employees X 12 hr shifts) + (3 employees x 4 hr shifts) = 108 hrs
108 hrs/8 = 13.5 FTE's for 12 hr shift.
The method you have listed in the Federal Register Feb 27 will not calculate correctly over a 24 hour period for total FTE's.

Submitter : Ms. Rose Hughes **Date & Time:** 04/27/2004 12:04:20

Organization : Montana Health Care Association

Category : Long-term Care

Issue Areas/Comments

GENERAL

GENERAL

The Montana Health Care Association represents skilled nursing facilities throughout the state of Montana and offers these comments on behalf of its member facilities.

We appreciate the opportunity to comment urge your careful consideration of our recommendations.

Issues

Collection Of Information Requirements

COLLECTION OF INFORMATION REQUIREMENTS, page 9285. In this section CMS estimates that it will take 5 minutes per day to complete the required form. The rule requires information gathering and FTE calculations for three separate categories of staff, three times a day. It also requires additional time related to posting and removal of the forms, and storage and ultimate disposal of the reports. The 5 minute per day estimate is a gross understatement of the time that facilities will end up spending to meet the requirements of the rules.

Daily Nurse Staffing Form

483.30 Nursing Services. (e) (1) (I). The proposed language requires facilities to calculate the number of FTE?s for posting at the end of each shift. The statute requires the posting of the current number of licensed and unlicensed nursing staff...?. Posting at the beginning of each shift would provide more ?current? information. Residents, families and visitors want to know how many staff are available when they are there, not how many staff were there earlier. We recommend that 483.30(e) (1) (I) be changed to require posting of the number of staff, rather than calculating FTE?s. We also recommend that this section be changed to require posting at the beginning of each shift, rather than the end.

483.30 Nursing Services (e) (2). The required form includes a space for facility census. The statute has no requirement that census be posted. It is clear from the CMS commentary and this requirement that CMS expects this data to be used to ?compare? facilities. Using FTE?s plus including resident census means that a simple calculation will give you FTE?s per patient. While it may be appropriate to posting staff so residents and families know how many staff are available, at their facility, any effort to compare this information across facilities is inappropriate because it will be misleading. To know simply how many residents there are and how many FTE?s there are?without know about the acuity of the residents does not allow a meaningful comparison. In addition, it will not be possible to accurately compare facilities whose DON does not serve as a charge nurse, and who utilize specialists such as MDS Coordinators and Staff Development Coordinators. The use of feeding assistants and other ?hospitality? type staff who are not posted but help take the burden off licensed and unlicensed nurses also make comparisons meaningless. We recommend that census data be removed from the CMS form.

483.30 Nursing Services (e)(3) (ii). This proposal requires the Daily Nurse Staffing forms to be kept for a minimum of 3 years. There is no such requirement in the statute. At a minimum, facilities will be required to keep an additional 1095 pieces of paper over the three year period. We believe this requirement is of questionable value to the public - basic staffing information is available from other records retained by facilities - such as payroll records. If CMS believes there is a need to review these documents, perhaps a one-year retention period would be more appropriate. We recommend that the 3-year retention period be deleted or that it be changed to one year.

Nursing Services

NURSING SERVICES, page 9284. We recommend that the entire proposed rule relating to posting of staffing be moved to a more appropriate section of the regulations, such as Administration. The regulations at 483.30 deal with the types of nursing staff required and the need for sufficient numbers of staff to provide the care and services needed by the residents of the facility. Noncompliance in 483.30 would lead consumers to assume that the facility does not employ adequate staff or that they are not meeting requirements for 24 hour coverage by licensed nursing or the requirements for a director of nursing. The proposed posting requirements are administrative?paperwork--in nature. Failure to comply with the posting requirement might mean there is an error on a daily form, or that the records are not kept for a full three years. This is not a reflection on ?nursing services? provided by the facility. A facility may be out of compliance with the posting requirement yet have more than adequate nursing staff and provide excellent quality of care. If these posting provisions are placed under ?administration? instead of ?nursing services? you will avoid the potential for misleading the public about the quality of nursing services when citing these purely ?administrative? function.

NURSING SERVICES, page 9284. CMS, in its discussion, concludes that only those RN?s, LPN?s, and CNA?s who actually ?touch? patients?PROVIDE direct hands-on care?be included on the staffing form. The statute being implemented uses the term ?directly responsible for resident care.? We believe there is a difference between directly ?providing? the care and being directly ?responsible for? the care. Key staff such as directors of nursing, MDS coordinators, and staff development coordinators all have key responsibilities with respect to resident care. Facilities who do not have specialized positions for MDS and staff development, end up spreading these duties around to other nursing staff. Thus, where these positions exist, other nursing staff have more hands-on time with residents. Yet, under your proposal, the facility without the specialized positions will appear to be staffing more licensed staff than those who have specialists they are unable to report. In order for consumers to have a clear picture of a facility?s commitment to resident care and sufficient numbers of qualified nursing staff involved in resident care, they need to know about ALL of the nursing staff available in the facility with responsibility for resident care. We recommend that the proposal be changed so that all licensed and unlicensed nursing staff are disclosed.

CMS-3121-P-36-Attach-1.pdf

CMS-3121-P-36-Attach-1.pdf

CMS-3121-P-36-Attach-1.pdf

CMS-3121-P-36-Attach-1.pdf

Submitter : Mr. Richard Mollot **Date & Time:** 04/27/2004 06:04:29

Organization : Long Term Care Community Coalition

Category : Consumer Group

Issue Areas/Comments

GENERAL

GENERAL

DO YOU BELIEVE NUMBERS POSTED ARE ACCURATE? The findings indicate that only 78% of the respondents felt the numbers were accurate. RECOMMENDATION: CMS must promulgate a strong enforcement mechanism to ensure that posting data is accurate and meets other requirements of the final regulation. Otherwise, there is a great risk that the entire enterprise will be meaningless. Possible enforcement mechanisms include a significant fine structure, a strong oversight role for the states and ombudsman (which could be funded by fines collected), a toll-free number and easy to use website for consumers to voice complaints or concerns about violations, establishment of a procedure for verification of posting information by employee records or payroll records (either on a regular basis or spot checking).
WAS POSTING EASY TO FIND:Yes: 272 (approximately 95%); No: 15 (approximately 5%) (N/A: 22).
WAS POSTING EASY TO READ: Yes: 257 (approximately 97%); No: 8 (approximately 3%) (N/A: 38).
We were glad to see that approximately 95% of respondents felt that the posting was easy to find and 97% found it easy to read, particularly given the lack of guidelines from CMS. However, again, these findings must be interpreted in light of the fact that all respondents set out to find the posting and were, minimally, more aware of the posting and what it was supposed to be reporting than the average person.
RECOMMENDATION: CMS should standardize the chart with a model that has been pilot tested to ensure maximum comprehension and minimal confusion among its potential audience. It is further recommended that the daily posting be posted with an explanation of what the posting means, how to use them to determine staffing levels (ratios), the significance of the information and contacts for where to go with questions, concerns or complaints.

FURTHER RECOMMENDATIONS:
? The posting must include data on the present shift of direct care workers. In order for this information to be of value, people must be able to have the ability to verify the information posted. This would be impossible if the present shift is not posted. In addition, we strongly recommend that the previous day?s postings for all three shifts be required to be posted as well, so that people can readily see important information about a facility?s most recent staffing patterns.
? A resident census must be included in the posting. This is also a critical feature that is necessary for the posting to be of value. We are glad to see this in the preliminary guidelines from CMS and strongly support their inclusion in the final regulation.
? Posting should use standardized size and format that offers maximum clarity for consumers. We support the development of a standard posting form, as stated in the proposed guidelines, but believe that the size should be standardized too, to legal size paper (11? x 14?) which is easily available and suitable for standard office equipment (therefore not overly burdensome for providers) yet it will provide a large size to facilitate viewing ease.
? If other personnel besides licensed nurses and CNAs ? such as so-called feeding assistants ?are allowed to provide direct care to residents, they should be required to be listed on the form separately. We believe that if the states and federal government allow nursing homes to set up a new tier of direct care workers these people must be listed in the posting separately. This is an important piece of information integral to any determination of care levels.
? Facilities should be required to submit all posting information to CMS, or at least, a protocol should be established for submission to the individual states and for the establishment of state databases.
? The facilities should be required to keep the information collected and make it available to the public for at least three years. We strongly support this aspect of the proposed guidelines.

Issues

Background

Direct care staff ? RNs, LPNs and CNAs (certified nurse aides) ? are truly the lifeline for nursing home residents. Numerous studies have shown that there is a strong, direct correlation between staffing levels and resident safety and well-being. Unfortunately, understaffing is a widespread and serious problem throughout New York and the entire country. According to recent federal reports, greater ?than 90 percent of the nation?s nursing homes have too few workers to take proper care of patients? and approximately 98 percent of New York?s nursing homes lack sufficient

staff to provide adequate care.

As a result of this crisis in staffing there is a crisis in care: residents in facilities with low staffing are much more likely to experience malnourishment, dehydration, bedsores and other serious ? often life threatening ? health problems. Thus, the potential benefits of requiring that every facility post its staffing levels are enormous. If done well they give consumers ? nursing home residents and potential residents as well as their families and friends ? timely and accurate information on the current staffing levels in an individual nursing home.

Having reliable, accessible information on a nursing home?s staffing levels is of tremendous benefit to consumers for a number of reasons:
? It gives key insight into the level of care a facility is providing
? It enables consumers to easily compare staffing levels in different homes
? It gives potential residents the chance to ?walk away? before being admitted to a facility if they don?t like what they see
? It allows consumers and their families to know how a facility benchmarks against known staffing level standards
? It enables consumers and advocates to have access to key information that they can use for advocacy with the government, in the media and with the providers themselves
? It gives long term care ombudsman and government surveyors a key piece of information relating to a facility?s ability to provide adequate care and a safe environment
? By its very existence ? publicizing staffing levels ? the posting has the potential of compelling providers to improve staffing ratios in their facilities.

There are numerous ways in which the staff posting requirement could be extremely helpful for improving care to nursing home residents on both individual and systemic bases. However, in order for it to be useful, the information must not only be accurate and up to date, it must also be easily accessible and understandable. In addition, the information must be comprehensive and complete ? enabling the reader to easily make accurate determinations about the level of care in any given facility, with the ability to easily compare levels between facilities and against state, national and other data.

To gain insight into these issues, the Long Term Care Community Coalition (formerly the Nursing Home Community Coalition) conducted a campaign from the beginning of 2003 to the beginning of 2004 asking people who go to nursing homes to report to us on the staff posting. Our key goal was to gain insight into how people were perceiving the posting: was it useful. In order to find out, we developed a one page form for people to fill out which asked for the following information: name, address, county and zip code and then ten short answer questions: date and time posting was checked, was there a posting?, was it easy to find?, easy to read?, how large?, where posted?, what were numbers posted?, did the respondent feel the numbers were accurate?, if they know how many residents were in facility and if yes the number, and (added in the middle of campaign) whether person reporting was a resident, family/friend, staff, ombudsman, other? The form also had a space where the respondent could, at their option, list personal information.

Below, in the Daily Nurse Staffing Form Section, are the results of our findings and our recommendations.

Daily Nurse Staffing Form

KEY FINDINGS & RECOMMENDATIONS FROM LTCCC STUDY OF CONSUMER EXPERIENCE WITH POSTING:

Overall, we received 309 responses that were usable, meaning that they contained sufficient information, responded appropriately to the questions asked and were legible enough for us to read. Of these responses, at least 42 came from outside of New York (several responses listed incomplete location data), with Rhode Island, Puerto Rico, Louisiana, Washington, California, Nevada, Missouri and Montana all represented. Sixty eight people responded with reports for the evening shift, 182 for the day shift and 53 for the night shift, with 6 respondents not giving a reporting time.

WAS THERE A POSTING?: Approximately 98% of the respondents found or noticed the posting. For 2% of the respondents either the nursing home was not in compliance with the law or had not posted in a conspicuous place. RECOMMENDATION: While 98% is a very high compliance finding, given that anyone who took the time to take part in the campaign was likely to be more actively seeking out the posting than the general public, we had hoped it would be 100%. Several people noted that that they found the posting in an out of the way place or a place where the public does not generally go, a further indication that for the general public this number would likely be lower than that reported here. See our recommendations below related to site and size of posting.

WHAT WAS SIZE OF POSTING?: We received a surprisingly wide range of responses to this question, from 2? x 3? to 15? x 15?. 176 people reported that the posting in their facility was approximately 8.5? x 11?, representing approximately 57% of all respondents. Forty people (approximately 13%) reported that the posting in their facility was approximately 8? x 14? and 30 (approximately 10%) reported posting of approximately 5? x 8?. RECOMMENDATION: Because size is a critical factor in the value of the staff posting information ? people need to be

able to readily find the posting and easily read the information it contains ? CMS must require a minimum size. Especially given that the population of nursing home residents and visitors is older than the average population, bigger is better. We also recommend consistency in the size of the required form, to make identification easier, and also recommend that the required size be a standard for which paper is readily available, to facility compliance with the regulation. Given all of these considerations, we recommend that CMS require that the posting be 11? x 14?, ?legal size? paper which is readily available and can be used in most office equipment. Under no circumstances should it be permitted for the posting to be less than 8.5? x 11? (standard sheet).

WHERE WAS SHEET POSTED: 115 people (approx.39%)reported the lobby/entry/reception area,57 (approx. 19%) on a community bulletin board,48 (approx. 16%) by an elevator,31 (10%) by a nurses? station, 24 (approx. 8%) by a director of nursing or other administrative office,17 (approx. 6%) were in a place where the public generally didn?t go (such as by an employee time clock),4 (approx. 1%) found the postings on residence floors, 22 did not answer the question and 9 gave unusable information. RECOMENDATION: CMS should amend its regulations to require consistency in placement of posting among all facilities by mandating a specific place in the facility where the information should be posted. The Coalition strongly recommends that CMS require the posting to be in the reception area or entry, the place where visitors routinely gather. If possible, it would be preferable for facilities to post in a prominent within the facility too, in a place where residents frequent, such a community bulletin board.

[COMMENTS & RECOMENDATIONS CONTINUED IN GENERAL COMMENT SECTION, BELOW.]

Submitter : Darrell Shreve **Date & Time:** 04/27/2004 06:04:23

Organization : Minnesota Health & Housing Alliance

Category : Long-term Care

Issue Areas/Comments

GENERAL

GENERAL

The underlying statute is ill-conceived and poorly thought out. As proposed, the regulation will impose a significant burden on virtually all facilites. If survey agencies decide to issue citations if their calculations do not agree with the facility's, the regulation will produce a paperwork nightmare for facilities. We encourage CMS to respond by revising the regulation to make its burden as light as possible on the facilities. The best approach is to use scheduled FTEs for the current day and the expected census (or census as of 12:01 a.m.).

Issues

Collection Of Information Requirements

The accuracy of CMS?s estimate of the information collection burden is astonishingly unbelievable. CMS states that the ?burden associated with this requirement is the time and effort it would take for the facility to complete the form and post it,? and CMS estimates that it will take ?a total of 5 minutes to fill in the information per day.? While it may take the facility only 5 minutes to put the numbers on the form and post it, CMS?s statement is grossly inaccurate?it ignores the time it will take the facility to collect the information and perform the calculations.

The regulation will impose very significant burdens on facilities with flexible staffing patterns?i.e., RNs, LPNs and nurse aides? work periods cross over the shift boundaries stipulated by CMS. A common example would be staff members who begin work at 5 a.m. or 6 a.m. and work eight hours. Even though these employees work one shift under the relevant labor laws (e.g., 8 hours), this CMS regulation will require the facility to separate this shift into two different shifts, counting some hours in the night shift and some in the day shift. A great many nursing homes use such flexible schedules.

The actual time worked typically is available only in the facility?s time clock system. So, an employee is going to have to calculate and verify the totals for each employee for each shift, taking care to allocate properly the hours between shifts when appropriate and adjusting for absences, call-ins, replacements, etc. As a general rule of thumb, facilities have about one nurse aide for every two beds, and the ratio of licensed nursing staff to nurse aides is usually between 1:2 and 1:3. So, for a facility with 100 beds, this would mean approximately 50 nurse aides and perhaps 20 licensed nurses?around 70 nursing employees. Even if each employee never works a flexible schedule that crosses the shift boundaries and there are no part-time employees, this is still 350 specific time calculations and verifications per week (each employee working five 8-hour shifts). Given the extent of flexible scheduling and the use of part-time employees (including fill-in staff and overtime), we think the number would probably be closer to 500 specific calculations and verifications per week for the average nursing facility.

Using the conservative estimate of 350 calculations and verifications per week, how reasonable is CMS?s estimate of 5 minutes per day (which would be 35 minutes per week)? The simple arithmetic would be 10 calculations and verifications per minute, or one every six seconds. Six seconds for the employee to calculate, for example, a nurse aide?s hours worked on a particular shift (subtracting, for example, 6:58 a.m. from 3:15 p.m., to know that the nurse aide worked 8 hours), add up all the hours for all the nurse aides on that shift, and divide by 8 hours per shift to get the FTE for nurse aides on the day shift.

We think the burden will be many times the 5 minutes per day that CMS estimates, but there is a simple solution that will greatly reduce the burden on facilities. The statute does not require the posting of actual hours worked. CMS essentially admits this on page 9285--?we would expect that the actual completion of the FTE count would not commence until after the staff for that shift had actually worked.? So, if CMS would require that the facility post its scheduled hours for the day, the 5 minutes per day might be a fairly decent estimate. The schedules are already drawn up in advance, and the scheduler could calculate the FTEs relatively easily. It is the retrospective verification of hours actually worked that causes an enormous burden for facilities.
We also object to the retention requirement of 3 years. The purpose is current data, and the data are used for no other purpose. The facility should only have to keep them until the next certification survey.

Nursing Services

We recognize that the statutory language requires posting of information by occupational category and shift on a daily basis. This only goes to prove the proposition that Congress can produce some really dumb statutory requirements. The concept behind the intent is deceptively alluring, but the legislation and the regulation ignore the practical realities that are much more complex. The regulation will fall far short of providing satisfying information to residents, families, and the public, but it will impose significant and annoying burdens on facilities.

The idea of providing information on the level of staffing to residents, families, and the public potentially is valuable, but it perhaps might be useful to consider what information they would need, like or use. Our members felt that the most fundamental question to residents and families is the number of residents for which the particular resident?s nurse aide has responsibility. Knowing that the nurse aide in this facility has eight residents, compared to fifteen for the nurse aide in another facility, is probably the most important piece of information for many residents or families. We were disappointed, however, to see any mention by CMS of the use of focus groups or similar means to ascertain the information residents or families feel is the most important. We do not think that the FTE concept will be very valuable to residents or families?it is a concept designed and useful for management and budgeting purposes.
The regulation also misaligns the staffing calculation and the resident census. The FTEs are calculated primarily for the previous day, but the census is that for the current day. This introduces a fundamental inaccuracy that diminishes whatever usefulness these data have for residents or families. CMS could fix this problem in either of two ways?(1) make the staffing calculation the scheduled staffing for the current day, in which case both the staffing and resident census are estimates, or (2) make the resident census the census for the previous day, in which case both the staffing and the resident census will be retrospective. We think the first solution is preferable?residents and families will be more interested in the expected staffing for today, not the staffing from yesterday.

There is another advantage in changing the calculation of the staffing to the current day. This will eliminate a lot of review of time records to determine exactly how many hours a replacement staff worked when an assigned staff person called in sick or with some emergency. Every facility has these unexpected absences that they try to cover, but is it really important to know that on a shift where 20 nurse aides normally work a total of 160 hours that one nurse aide went home sick and only worked six hours, reducing the total to 158 hours? The effect on the FTE calculation is negligible?why do detailed calculations when the specificity of the detail is relatively meaningless?

We do not see any reason for requiring the facility to retain this information or the Daily Nurse Staffing Form for three years. The whole point of the statutory language was to provide reasonably current information for specific days to residents, families, and the public. The data are not aggregated across any period of time longer than 24 hours, nor are the data used for any other purpose. At most, the data should be retained only until the facility?s next survey.

CMS-3121-P-44-Attach-1.doc

CMS-3121-P-44-Attach-1.doc

CMS-3121-P-44-Attach-1.doc

MINNESOTA
HEALTH & HOUSING
ALLIANCE

PROMOTING EXCELLENCE AND INNOVATION IN OLDER ADULT SERVICES

April 27, 2004

Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attention: CMS-3121-P

Dear CMS:

The Minnesota Health & Housing Alliance represents approximately 250 not-for-profit nursing facilities in Minnesota. We are pleased to present our comments on the proposed rule on the Posting of Nurse Staffing Information, with the file code CMS-3121-P that was published in the *Federal Register* on February 27, 2004. Page references in our comments are to this edition of the *Federal Register*. Our Regulatory Affairs Committee, comprised of 38 members from around the state, developed our comments for your review. We appreciate this opportunity to share our suggestions with you.

NURSING SERVICES

We recognize that the statutory language requires posting of information by occupational category and shift on a daily basis. This only goes to prove the proposition that Congress can produce some really dumb statutory requirements. The concept behind the intent is deceptively alluring, but the legislation and the regulation ignore the practical realities that are much more complex. The regulation will fall far short of providing satisfying information to residents, families, and the public, but it will impose significant and annoying burdens on facilities.

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2550 University Avenue West, Suite 350S · Saint Paul, Minnesota 55114-1900
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COLLECTION OF INFORMATION REQUIREMENTS

The accuracy of CMS's estimate of the information collection burden is astonishingly unbelievable. CMS states that the "burden associated with this requirement is the time and effort it would take for the facility to complete the form and post it," and CMS estimates that it will take "a total of 5 minutes to fill in the information per day." **While it may take the facility only 5 minutes to put the numbers on the form and post it, CMS's statement is grossly inaccurate—it ignores the time it will take the facility to collect the information and perform the calculations.**

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shift boundaries stipulated by CMS. A common example would be staff members who begin work at 5 a.m. or 6 a.m. and work eight hours. Even though these employees work one shift under the relevant labor laws (e.g., 8 hours), this CMS regulation will require the facility to separate this shift into two different shifts, counting some hours in the night shift and some in the day shift. A great many nursing homes use such flexible schedules.

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MINNESOTA
HEALTH & HOUSING
ALLIANCE

PROMOTING EXCELLENCE AND INNOVATION IN OLDER ADULT SERVICES

We also object to the proposed requirement that the facility retain the Daily Nurse Staffing Forms for a minimum of three years. This is a mindless requirement totally unrelated to the purpose of the data. The only reason the FTEs are calculated on a daily basis is to provide current information to residents, families, or the public—these forms are not used for cost reports, tax purposes, payrolls or any other function for which facilities normally must keep records for a period of years. Why on earth should the facility be required to keep these records any longer than necessary? The proposed regulation should, at the least, permit the facility to dispose of the forms after its next certification survey.

Thank you for your consideration.

Yours truly,

Darrell R. Shreve, Ph.D.
Director of Research & Regulations

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CMS-3121-P-45

Submitter : **Tim Takacs** **Date & Time:** **04/27/2004 07:04:19**

Organization : **Elder Law Practice of Tim Takacs**

Category : **Attorney/Law Firm**

Issue Areas/Comments

GENERAL

GENERAL

CMS-3121-P

Comments submitted April 27, 2004, by:
The Elder Law Practice of Timothy L. Takacs
201 Walton Ferry Road
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CMS-3121-P-45-Attach-1.doc

"ADEQUATE CARE"

Federal Regulation §483.30 states: "The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care." Stating that "nursing homes are required to have enough staff to give adequate care" downplays the responsibility of nursing facilities to comply with the Federal standard.

NURSING SERVICES

The lack of clear and direct verbiage leaves the rule open to misinterpretation and inaccurate reporting by nursing facilities. If the posting of staff is to mean anything it should be clear that it is reporting the number of staff actually who worked and who actually provided hands on care.

It is very important that the rule indicate that the report is for **hours worked.** "Calculating the number of FTE(s)" leaves open the possibility of calculating the number of employees that were scheduled and not the number who actually worked. All too often in nursing homes, especially on the weekend, staff call in sick and do not show up for work. If one were to look at the schedule and not the time cards, it would seem the staffing is sufficient.

The phrase "directly responsible for resident care" could also be misinterpreted and result in inaccurate reporting. It needs to be made clear that the count is not for the staff who are responsible for dong resident care but counting who actually did provide the care. For instance, if a Director of Nursing job description indicates that one of her responsibilities is to provide resident care whenever needed or to fill in when necessary but she does not do any hands on care, would she be able to be counted as a FTE when calculating staff who are responsible for resident care? Also if an LPN spends four hours of an eight-hour shift developing care plans, and the other four hours caring for residents, would the facility be able to count her as one FTE?

Suggested changes to the rule Sec. 483.30 Nursing Services:

(i)On a daily basis, at the end of each shift, calculate the number of FTE(s) **who worked** for the following licensed and unlicensed nursing staff **who actually provided direct resident care:**

DAILY NURSE STAFFING FORM

The form needs to be easy to read and consumer friendly. Expand the title of the "NUMBER" column to read "NUMBER **of Full Time Floor Staff" *** referring the reader to the explanation at the bottom of the form. It would be more reader friendly if the column title were more specific and showed number of what is being counted. Indicate resident census using two categories: SKILLED and INTERMEDIATE.

Comments submitted April 27, 2004, by:
The Elder Law Practice of Timothy L. Takacs
201 Walton Ferry Road
Hendersonville, Tennessee 37075
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ttakacs@tn-elderlaw.com

Submitter : Scott Amrhein **Date & Time:** 04/27/2004 09:04:42

Organization : Continuing Care Leadership Coalition

Category : Long-term Care

Issue Areas/Comments

GENERAL

GENERAL

RE: CMS-3121-P--Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information (69 Fed. Reg. 9282), February 27, 2004.

Dear Dr. McClellan:

On behalf of over 90 not-for-profit and public long term care providers that comprise the membership of the Continuing Care Leadership Coalition (CCLC), I appreciate this opportunity to comment upon the Center for Medicare and Medicaid Services's (CMS's) proposed rule (CMS-3121-P) establishing a new data collection and recordkeeping requirement for skilled nursing facilities (SNFs).

CCLC acknowledges the responsibility that health care facilities have to provide quality patient care, and actively supports its members in complying with all current regulatory mechanisms designed to ensure the highest quality of care in nursing homes. Also, CCLC supports the development of objective and reliable measures related to quality of care and quality of life that take into account the acuity of residents living in SNFs. However, CCLC has serious concerns about creating new requirements that would mandate the provision of information to the public that is unclear, difficult to interpret, and that when taken out of context, potentially can be misleading to the public.

CONCLUSION

CCLC cannot support mandatory reporting requirements that would impose a new and significant burden to an already stressed system without appropriately funding for the cost of compliance with the requirement.

CCLC looks forward to working with CMS in addressing the concerns outlined in this letter in the interest of improving quality in skilled nursing facilities.

If you have any questions or require further information concerning these comments, please contact me at 212-506-5409.

Sincerely,

Scott C. Amrhein
President

Issues

Background

GENERAL RECOMMENDATIONS REGARDING 'BACKGROUND'

In order to enhance the value of information about SNF characteristics currently being made available to the public, CCLC recommends that CMS improve the current NHQI Quality Measures, remove the OSCAR staffing data, and further risk adjust any publicly reported data based on the acuity of residents living in a nursing facility.

Specifically, CCLC recommends that CMS move aggressively to ensure that the NHQI Quality Measures are more appropriately risk adjusted. The

existing Quality Measures remain misleading to the public because the measures , as currently constructed, are more reflective of the type of resident that lives in a nursing facility rather than the level of quality being provided at the facility. Similarly, CCLC agrees that the existing OSCAR data related to staffing is inadequate to be meaningful to the public. If CMS were to publicly report valid staffing data, CCLC agrees with CMS that it is imperative that public information on staffing be provided within the context of the facility's case mix. (69 FR 9284).

Additionally, CCLC is concerned that any staffing data that is collected and reported by CMS will face similar time lag issues as those affecting the NHQI Quality Measures, wherein the information that ultimately reaches consumers and providers will be dated and misleading.

Collection Of Information Requirements

COMMENTS CONCERNING 'COLLECTION OF INFORMATION'

In comparison to the existing CMS reporting requirements pursuant to the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), the proposed rule essentially adds three proposed reporting requirements:

- that facilities complete the form after each shift,
- that the staff calculate FTEs, and
- that facilities report resident census information.

These three changes would add a significant new burden to the process of complying with the posting requirements. The proposed requirement to report staff by shift would add at least two more reporting periods during the day in comparison with the existing requirement to post nursing staff daily. The proposed requirement to report FTEs would require that staff take the time to determine how to classify a part-time staff member, a nurse manager that assists in care, or any other staff member that does not meet the definition of one FTE. The proposed requirement to report census information would be burdensome particularly in subacute and rehabilitation environments where high levels of resident turnover are common. Therefore, CCLC contends that the proposed rule places an unreasonable burden on nursing home providers particularly at a time when all health care providers are experiencing a shortage in direct care staff and fiscal reductions.

As a result of the existing regulatory structure, staff in the long term care setting must complete a tremendous amount of paperwork. The burden of MDS completion and submission alone has created significant challenges for SNFs on a number of levels. For example, SNFs must provide initial and ongoing educational sessions for staff members in as many as nine disciplines to enable staff to appropriately complete and submit MDS information. Since the implementation of the SNF PPS, SNFs have provided not only basic MDS training, but also training on changes in policy including the advent of quality indicators, the initiation of the MDS 2.0, the MDS correction policy, new MDS submission guidelines, and the MDS Medicare PPS Assessment Form (MPAF) as well as on the regular revisions of the State Operations Manual. Many facilities have been forced to dedicate at least one full-time registered nurse (RN) solely to the task of completing paperwork as an MDS coordinator, diverting RN resources away from the provision of direct patient care. In addition, other staff members often must spend valuable time completing paperwork for the MDS, time that would be better spent on direct resident care and interaction. Our members have indicated that the existing paperwork burden alone is causing staff to leave long term care.

This proposed rule comes at a time when SNFs are facing serious Medicaid cuts on a State level and are facing proposed elimination of Medicare updates. More than half of the nursing facilities in New York State are experiencing negative operating margins and on average in the U.S. nursing facilities are losing in excess of $11.50 per resident day when Medicaid is the payer.

Furthermore, the additional paperwork burden being proposed is counterintuitive to the exciting initiatives to promote person-centered care or organizational culture change by our members. The success of these initiatives, which focus on empowering frontline staff, making the environment more home-like, and supporting teamwork, will rely heavily on the opportunity of staff to remain flexible in their roles. An additional paperwork burden will work against the many strides that our members have achieved in pursuing these initiatives.

CMS-3121-P-48-Attach-1.pdf

CMS-3121-P-48-Attach-1.pdf

Submitter : Mr. Francine Turner **Date & Time:** 04/27/2004 12:04:00

Organization : Civil Service Employees Association

Category : Other

Issue Areas/Comments

GENERAL

GENERAL

See attached comments.

CMS-3121-P-50-Attach-1.doc

April 26, 2004

The Honorable Mark McClellan
Administrator
Centers for Medicare and Medicaid Services
Attention: CMS-3121-P
P.O. Box 8010
Baltimore, MD 21244-8010

RE: CMS-3121-P; Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information

Dear Dr. McClellan,

The Civil Service Employees Association (CSEA/AFSCME) appreciates the opportunity to comment on the proposed rule, *Medicare and Medicaid Programs; Requirements for Long Term Care Facilities; Nursing Services; Posting of Nurse Staffing Information*. CSEA is a labor union that represents many nursing home employees in the State of New York. It is on their behalf and on behalf of CSEA members whose family members are residents in nursing homes that we submit these comments. CSEA believes that the rule could serve as an important step in providing nursing home residents and their families with information that is relevant to the quality of care they receive.

CSEA strongly concurs with the statement in the background to the proposed rules that the "proposed requirement that all SNFs and NFs post nurse staffing information and make the information available to the public is essential to keeping the public informed." These proposed regulations can ensure that residents, families, and others obtain accurate information at the facility level about the adequacy of nursing staff on duty at all hours every day. The posted information provides the *only* data about nurse staffing on a daily, shift-by-shift basis, and it has the potential to provide the *only accurate data* available at the present time. Thus, we attach great importance to these regulations.

However, while CSEA supports the major provisions of the proposed rule, we have concerns about specific components that we believe have the potential to undermine the usefulness of posting staffing levels. Our comments reflect those concerns.

BACKGROUND

We strongly disagree with the conclusion of CMS that the study *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phases I and II* does not provide sufficient evidence to warrant minimum staffing ratio requirements. While the issue of ratios is outside the purview of this purposed rule, we could not overlook CMS' pronouncement without objecting. Our national union, AFSCME, was in close contact with CMS (then HCFA) and Abt Associates as the study was being conducted, and we, with many other organizations, reached quite the

opposite conclusion. There is ample evidence that there is a strong and direct correlation between specific staffing levels and quality of care.

CSEA commends CMS for contracting with Abt Associates to present CMS with options that will improve data collection, auditing, transmission and configuration. We believe that this effort can greatly enhance the public's access to staffing information and ultimately improve quality of care. We urge CMS to release Abt Associates' recommendations to the public as soon as they are made and to implement them in a timely manner.

Provisions of the Proposed Regulations

Section 483.30

NURSING SERVICES

CMS should require facilities to post the staffing information no later than one hour after a shift begins.

CSEA is concerned that CMS deleted the word "current" when it cited, verbatim, the nurse staffing posting requirement of Section 941 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). In fact, Section 941 reads "a skilled nursing facility shall post daily for each shift the **current** number of licensed and unlicensed nursing staff directly responsible for resident care in each facility." This language compels CMS to require that staffing information be posted during the current shift. CSEA urges CMS to require facilities to post the staffing information no later than one hour after a shift begins. Posting information for the previous shift, as the proposed rule requires, (a) conflicts with BIPA requirements; (b) does not provide meaningful information to residents and their families about how many individuals are actually present and providing direct care to residents at any given time and (c) circumvents the spirit of the proposed rule.

In a meeting with Administrator Tom Scully in December 2002, consumer advocates and providers agreed that it was not feasible to require staff to be posted *immediately* at the beginning of the shift because the goal of the law was to inform consumers about the number of nursing staff who were actually working, not the number who were scheduled but who might not have reported to work. It was agreed that posting the staffing levels within one hour after the beginning of the shift was feasible and appropriate, allowing administrative staff time to complete a count of those who were at work. Based on that agreement, CMS sent state survey agency directors a memo on January 9, 2003, suggesting that nursing facilities should “post each shift's staff numbers very close to the beginning of the shift in order to ensure that the posted numbers are actual staff working the shift.” That agreement should be adhered to in the final regulations.

CMS should collect and audit a sample of the staffing data to assure the data's accuracy.

CMS says in the preamble that it will not require facilities to transmit the data to CMS. CSEA disagrees with this decision and urges CMS to require transmission of a sample of staffing data determined by CMS, for purposes of auditing the accuracy of the data.

CSEA believes that CMS has an obligation to assure that the data posted for the public is accurate. CMS is aware that staffing data, at present, is not accurate. For example, a recent series of reports by the HHS Office of Inspector General evaluating the accuracy of staffing information reported on Nursing Home Compare for selected nursing facilities demonstrates that staffing data reported on Nursing Home Compare are inaccurate and inflated. The Daily Nurse Staffing Forms offer a tool and an opportunity for CMS to audit staffing data reported by facilities to insure that posted staffing levels are accurate.

CMS should clarify how staffing information will be made available to the public "upon request."

CSEA urges CMS to clarify how members of the public can request information, how much time facilities have to produce the information, and limitations on facility charges for copies.

CMS should require facilities to keep copies of the Daily Nurse Staffing Form for at least the most recent three months in a notebook at the front desk that residents, families, advocates and the general public can review immediately upon request. There should be no charge for viewing this information.

CMS should determine and inform state survey agencies through memoranda and the State Operations Manual how and under what circumstances non-compliance with the posting requirement will be cited as a deficiency.

CMS should issue guidance on when to cite deficiencies in the posting requirement: for failure to post, failure to post in a timely manner, failure to use the prescribed form, failure to post accurate information, failure to post information in an accessible place, and failure to retain Daily Nurse Staffing Forms.

CMS should determine and inform state survey agencies through memoranda and the State Operations Manual of specific remedies for failure to post, failure to post information in a timely manner, failure to use the prescribed form, failure to post accurate information, and failure to retain the Daily Nurse Staffing Forms.

In order to assure consistency in the imposition of remedies, CMS should provide guidance to survey agencies on which remedies are appropriate to impose for violation for staff posting requirements.

CMS should create a new task in the federal survey protocol in the State Operations Manual to require that surveyors review a sample of the Daily Nurse Staffing Forms in every standard and extended survey.

CSEA suggests that surveyors review staffing data for one week in each quarter since the previous year's standard survey and, using the Inspector General's methodology or another

methodology developed by the Secretary, audit the data by comparing what is reported by the facility to the staffing levels that surveyors calculate.

DAILY NURSE STAFFING FORM

CMS should amend the Daily Nurse Staffing Form to include additional information.

CSEA finds the Daily Nurse Staffing Form to be formatted in such a way as to provide information in a clear and straightforward manner. However, we recommend that the form be amended to include:

- A calculation of the staff-to-resident ratios.
  We agree with the proposed requirement to post the daily resident census. CSEA believes that adding the staff-to-resident ratio calculation next to the number of staff will provide the public with information that is more meaningful than raw data alone, particularly in larger facilities.
- A notation on the form that states that previous Daily Nurse Staffing Forms are available upon request, and where they can be obtained.
- The signature and title of the person completing the form.

CSEA does not believe that the addition of these items will increase the burden associated with completing the form.

CMS should provide explicit guidance to facilities on the size and placement of the Daily Nurse Staffing Forms.

CMS should specify the minimum size of the form, as it did in the January 9, 2003 memo to the state survey agencies suggesting "the size of the report be at least 8.5 x 14 inches, and printed in a size font/print large enough to be easily read." Some facilities are using substantially larger formats and should be encouraged to do so, but in no case should the form and typeface be so small that residents and others will not see it or cannot read it.

CMS should clarify the requirement to post the form in “a prominent place readily accessible to residents and visitors.” The instructions in the proposed regulations may seem sufficient and self-evident, but consumer advocates report that public information required by regulations is often posted in out-of-the-way places where all residents and visitors do not have access to it or may not readily identify its significance.

CSEA also urges CMS to encourage facilities to implement additional practices that would provide useful and timely information, including: listing the names of the staff on duty and which resident rooms they are providing services for; identifying staff who are temporary agency employees; and posting information by unit as well as for the facility as a whole.

CMS should clarify to facilities that all three shifts should be posted on the same form.

Families and others need information about all three shifts to monitor the quality of care through the day and to determine how many hours per resident day of care residents receive.

Thank you for the opportunity to comment on the proposed regulations. CSEA believes their timely implementation, with the proposed changes, will greatly improve the public's access to information that impacts quality care.

Sincerely,