Evaluation of Virginia's Nursing Home Workforce and Considerations for a State Nursing Home Staffing Standard

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Study Purpose

- Per House Bill 605 (Willett):
  - Evaluate the workforce in Virginia's nursing facilities
  - Develop recommendations for a staffing requirement, including the efficacy of a measure of Registered Nurse coverage
- Per House Bill 1357 (McQuinn):
  - Evaluate staffing levels and stability and the relationship between staffing and resident outcomes

Findings in brief

- Regulations meant to ensure the health and safety of nursing home residents do not include a specific staffing standard
- Nurse staffing levels and skill mix impact quality of care, but are inadequate in some Virginia nursing homes
- States that establish nursing home staffing standards see improvements in staffing levels and skill mix

JCHC received nine public comments

- Public comment received from:
  - Three industry lobbying groups – LeadingAge Virginia, Virginia Health Care Association (VHCA), and Virginians Advocating for Seniors (VAFS)
  - Three consumer advocacy groups – Advocate Voice Virginia (AVV), Northern Virginia Aging Network (NVAN), AARP Virginia
  - Two individuals
  - One nursing home operator - Saber Healthcare Group

Policy option 1

JCHC could submit legislation to amend § 32.1-127 of the *Code of Virginia* to establish a staffing standard for nursing homes in Virginia:

- Beginning SFY29, 3.09 adjusted total nurse staffing HPRD
- Beginning SFY31, 3.32 adjusted total nurse staffing HPRD, including 0.54 adjusted RN staffing HPRD and 2.06 adjusted CNA staffing HPRD
- Beginning SFY34, 3.43 adjusted total nurse staffing HPRD, including 0.60 adjusted RN staffing HPRD and 2.23 adjusted CNA staffing HPRD

SFY = state fiscal year; HPRD = hours per resident day; RN = registered nurse; CNA = certified nurse aid

All nine public comments addressed policy option 1

- Four commentors generally support (AARP Virginia, LeadingAge Virginia, NVAN, Saber Healthcare) and one individual opposes staffing standards
- Themes among public comments include:
  - Immediate implementation date (AARP Virginia, AVV, NVAN, and one individual)
  - Additional General Assembly action for SFY31 and SFY34 thresholds (Saber Healthcare, VHCA)
  - Support (AARP Virginia, Saber Healthcare), opposition (VAFS), or request for technical review of acuity-adjusted metrics and methodology (VHCA)
  - Inclusion of therapy staff (VAFS, VHCA)

Policy option 1a

JCHC could submit a budget amendment to establish a hardship fund for which nursing homes could apply if they are unable to meet the SFY29 threshold after documenting and accounting for investments in the recruitment and retention of nursing staff. The budget amendment could require nursing homes to use such funds only for nursing staff and to report to the state on how they used the funds.

Policy option 1b

The JCHC could include, in legislation amending § 32.1-127 of the *Code of Virginia* creating a staffing standard, an enactment clause that places the effective date of SFY31 and SFY34 staffing standard thresholds contingent upon an additional appropriation from the state to cover the increased costs of care for Medicaid members.

Six public comments addressed policy options 1a or 1b

- One commentor each opposes policy option 1a (VHCA) and 1b (AARP Virginia) and one commentor supports policy option 1b (NVAN)
- Themes among public comments include:
  - Additional requirements for the hardship fund, such as documentation and independent verification of recruitment and retention efforts, facility/operator financial performance, and revenue spent on direct care employees (AARP Virginia, AVV)
  - Implementation and enforcement of all thresholds contingent upon state appropriations (Saber Healthcare, VHCA) or not at all (AARP Virginia)

Policy option 1c

The JCHC could include, in legislation amending § 32.1-127 of the *Code of Virginia* creating a staffing standard, an enactment clause that requires the Board of Health to promulgate regulations incorporating staffing standards into the state's licensing requirements and gives the Commissioner the authority to impose sanctions pursuant to § 32.1-27.3 of the *Code of Virginia* when nursing homes fail to meet staffing standards.

Policy option 1d

The JCHC could include, in legislation amending § 32.1-127 of the *Code of Virginia* creating a staffing standard, a provision establishing a good faith exception for nursing homes that are unable to meet the staffing standard despite demonstrated, significant efforts to recruit and retain required nursing staff.

Policy option 1e

The JCHC could submit a budget amendment for $726,500 in general funds in SFY28 for VDH to hire five additional positions to increase capacity for enforcement of nursing home staffing standards through the state licensure process.

VDH = Virginia Department of Health

Six public comments address policy options 1c, 1d, or 1e

- Three commentors support policy option 1c (AARP Virginia, AVV, NVAN), one supports 1d (VHCA), and three support 1e (AVV, AARP Virginia, NVAN)
- Themes among public comments include:
  - Need for objective measurement rules and written guidance (VHCA)
  - Clear eligibility criteria for the good faith exception (Saber Healthcare, VHCA) with requirements for documentation, transparency, length of exception, and state oversight (AARP Virginia, AVV, VHCA)

Policy option 1f

JCHC could submit a language-only budget amendment requiring the DMAS to collect information from nursing homes on how they are using additional public funds to increase staffing levels, as part of DMAS's annual Wage Survey.

DMAS = Department of Medical Assistance Services

Policy option 1g

The JCHC could submit a budget amendment for $250,000 in general funds for SFY28 requiring VDH to contract with an external organization to evaluate the impact of the state staffing standard.

Six public comments address policy options 1f or 1g

- Two commentors support both policy option 1f and 1g (AARP Virginia, AVV)
- Themes among public comments include:
  - Need for independent evaluation centered on resident outcomes and resident voice (AARP Virginia)
  - Making SFY31 and SFY34 staffing thresholds contingent upon evaluation results (Saber Healthcare) or additional JCHC assessment of workforce (VHCA)

Policy option 1h

JCHC could introduce a language-only budget amendment requiring DMAS to update the NF VBPP's thresholds for total nurse staffing HPRD for the SFY29 performance period to align with the state staffing standard.

NF VBPP = Nursing Facility Value-based Purchasing Program

Five public comments addressed policy option 1h

- Two commentors support policy option 1h (AVV, Saber Healthcare) and one commentor opposes option 1h as written (VHCA)
- Themes among public comments include:
  - Coordinated definitions, measurement and administration between licensure standards and the NF VBPP (VHCA)
  - Emphasis on role of NF VBPP to reward improvement and performance beyond established staffing minimums (AARP Virginia, AVV, Saber Healthcare, VHCA)

Policy option 1h – revised

Revised: JCHC could introduce a language-only budget amendment requiring DMAS **to ensure staffing metrics and thresholds selected for the NF VBPP reward nursing facility early achievement of and improvement and performance beyond the minimum standards established by Virginia's nursing home staffing standard.**

Seven public comments offer additional considerations

- Pair nursing home staffing standards with funding for comprehensive workforce development strategies (AVV, LeadingAge Virginia, NVAN, VHCA), to include prioritization of CNAs (NVAN, VHCA)
- Provide additional transparency and create limits on nursing home operators' profitability and payments to related-party entities (AVV, two individuals)

Summary of policy options

One bill that includes:

- Staffing standard thresholds (Policy option 1)
- Contingency of SFY31 and 34 thresholds upon additional state appropriations (Policy option 1b)
- Board of Health regulations for licensure (Policy option 1c)
- Good faith exception for sanctions (Policy option 1d)

Summary of policy options, cont.

Five budget amendments:

- Provide funding to establish hardship fund (Policy option 1a)
- Provide funding to VDH for enforcement (Policy option 1e)
- Direct DMAS to collect information on use of funds (Policy option 1f)
- Provide funding to VDH for an independent evaluation (Policy option 1g)
- Direct DMAS to update NF VBPP thresholds (Policy option 1h)

Member Questions & Voting