

**Biden Administration Proposes Actions to Address
Safety and Quality of Care in Nursing Homes**March 1, 2022

The Biden Administration on Feb. 28 announced a broad set of reforms intended to improve the safety and quality of nursing home care, hold nursing homes accountable for the care they provide, and make the quality of care and facility ownership more transparent so that potential residents and families can make informed decisions about care.

A [White House Fact Sheet](https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/) lists twenty-one action items to be implemented through the Centers for Medicare & Medicaid Services (CMS) and other units of the U.S. Department of Health & Human Services (HHS). Some of these will be new initiatives, but many others reflect expansions, updates or changes of emphasis within nursing home programs and activities that CMS is already conducting.

While the Fact Sheet describes these actions as urgent, it does not identify a timetable or prioritization for implementation, with the exception of the proposal to establish minimum required staffing levels described below.

Here is a brief summary and analysis of what the Administration announced, based on the limited information we have received so far.

**Quality of Care Initiatives**

* *Establish a Minimum Nursing Home Staffing Requirement*. The most significant and impactful aspect of the White House announcement is that CMS intends to propose minimum standards for staffing adequacy that nursing homes must meet. CMS will conduct a new research study to determine the level and type of staffing needed to ensure safe and quality care and will issue proposed rules within one year.
	+ Note: Rather than issuing an emergency standard as it has done with certain issues during the pandemic, CMS will approach staffing standards by issuing a proposed rule for public comment before finalizing a requirement. The notice, comment, and finalization process itself will take several months to complete once the proposed rule is published. The proposed study, as well as the rule-making approach to be followed, provide the provider community with an important opportunity to inform, shape and influence CMS policy. Analysis of Payroll Based Journal data will certainly be a central aspect of the study and rule-formulation process, likely with a crosswalk between staffing data and performance against established nursing home quality measures.
* *Reduce Resident Room Crowding*. Noting that most nursing home residents prefer to have private rooms, and that multi-occupancy rooms increase the risk of transmission of infectious diseases like COVID-19, CMS will explore ways to accelerate phasing out rooms with three or more residents and to promote single-occupancy rooms.
	+ Note: Greater-than double occupancy is a rarity in Minnesota, and our providers have already made major progress toward the goal of offering single rooms to residents, so this initiative is not likely to change our current work significantly.
* *Strengthen the Skilled Nursing Facility Value-Based Purchasing Program.* CMS intends to propose changes to the SNF VBP program that would reflect and be based on staffing adequacy, the resident experience, as well as how well facilities retain staff.
	+ Note: Depending on what changes CMS desires to make to the VBP program, it may need to seek action by Congress. No additional detail is yet available, but these proposed changes potentially will align, in part, with CMS’s intent to add the total weekend nurse staffing and turnover data to the staffing domain of the Nursing Home Five Star Quality Rating System in July 2022. One avenue for CMS to propose changes to the program would be through its annual proposed rule relating to the SNF Prospective Payment System rule, which we typically see released in April. CMS has not indicated that it intends to move that quickly on these issues, but we will monitor for additional news or developments.
* *Reinforce Safeguards against Unnecessary Medications and Treatments*. While acknowledging the dramatic decrease we have seen in the use of antipsychotic medications, thanks to the good work of the National Partnership to Improve Dementia Care in Nursing Homes, CMS intends to launch a new effort to identify problematic diagnoses and refocus efforts to continue bringing down any inappropriate use of such medications.

**Enhancing Accountability and Oversight**

* *Adequately Fund Inspection Activities*. Noting a rising number of complaints requiring investigation by surveyors, President Biden will call on Congress to provide almost $500 million to CMS, a nearly 25% increase, to support health and safety inspections at nursing homes, presumably taking the form of additional surveyor personnel across the country.
	+ Note: Several of the Administration’s proposed initiatives, including this one, would depend on action by Congress.
* *Expand and Revise Special Focus Facility (SFF) Program.* CMS will overhaul the SFF program with an eye to including more facilities within the program, moving the facilities through more quickly, and applying tougher enforcement to SFF facilities that do not show improvement.
	+ Note: Under the current program, Minnesota has two facilities designated as a SFF at any given time, and CMS makes public a list of ten other facilities that are candidates for future SFF designation, once of the two facilities graduates off the list.
* *Expand Financial Penalties and Other Enforcement Sanctions*. When issuing civil money penalties (CMPs) relating to non-compliance, CMS intends to explore making per-day fines the default form of penalty, as opposed to per instance fines. Per instance fines would still be an option for CMS but would not be the default approach. President Biden is also calling on Congress to raise the dollar limit on per-instance financial penalties levied on poor-performing facilities, from $21,000 to $1,000,000. The announcement notes that CMS will also use data, predictive analytics, and other information processing tools to improve enforcement, but no additional detail is available.
	+ Note: The level and frequency of CMPs has already increased significantly in Minnesota and across the country in recent years, and these changes would exacerbate that unfortunate trend. We will advocate strongly for CMS to build and invest in programs that support prevention and quality improvement, rather further emphasizing a punitive approach to achieving the goals of quality care and resident safety.
* *Increase Accountability for Chain Owners of Substandard Facilities*. President Biden will ask Congress to give CMS new authority: (1) to require minimum corporate competency to participate in Medicare and Medicaid programs, enabling CMS to prohibit an individual or entity from obtaining a Medicare or Medicaid provider agreement for a nursing home based on the Medicare compliance history of their other owned or operated facilities; and (2) to enable CMS to impose enforcement actions on the owners and operators of facilities even after they close a facility, as well as on owners or operators that provide persistent substandard and noncompliant care in some facilities, while still owning others.

**Increasing Transparency**

* *Create a Public Database.* Using information collected through provider enrollment and surveys, CMS will create a new public database that will track and identify owners and operators across states to highlight previous problems with promoting resident health and safety.
* *Improve Transparency of Facility Ownership and Finances*. CMS will implement Affordable Care Act requirements regarding transparency in corporate ownership of nursing homes, including by collecting and publicly reporting more robust corporate ownership and operating data and making the information easier to find on the Nursing Home Care Compare website.
* *Enhance Nursing Home Care Compare*: CMS will implement a range of initiatives to improve Nursing Home Care Compare, including displaying a facility’s performance against minimum staffing requirements when those new requirements are implemented, making changes to help consumers understand and use the data posted in Care Compare, and evolving toward ratings that more closely reflect data that is verifiable, rather than self-reported.
* *Examine the Role of Private Equity.*Noting that private equity investors are playing a growing role in the nursing home sector, and that research suggests facility ownership by investment groups leads to worse outcomes and higher costs, CMS will examine the role of private equity, real estate investment trusts (REITs), and other investment ownership in the nursing home sector and inform the public when corporate entities are not serving their residents’ best interests.

**Workforce Initiatives**

While many of the White House proposals will create new pressures and challenges for providers, there are some positive notes relating to workforce that recognize the need for sustained resources and support for providers in this area:

* *Ensure Nurse Aide Training is Affordable.*Noting that lowering financial barriers to nurse aide training and certification will strengthen and diversify the nursing home workforce, CMS will work to ensure nurse aide trainees are notified about their potential entitlement to training reimbursement upon employment, that reimbursement is being distributed, and that free training opportunities are widely publicized.
* *Support State Efforts to Improve Staffing and Workforce Sustainability.*Acknowledging that strengthening the nursing home workforce requires adequate compensation as well as a realistic career ladder, CMS will develop a template to assist and encourage States that are requesting to tie Medicaid payments to clinical staff wages and benefits, including additional pay for experience and specialization.
* *Launch National Nursing Career Pathways Campaign.*CMS, in collaboration with the Department of Labor, will work with external entities—including training intermediaries, registered apprenticeship programs, labor-management training programs, and labor unions—to conduct a robust nationwide campaign to recruit, train, retain, and transition workers into long-term care careers, with pathways into health-care careers like registered and licensed nurses.

**Ensuring Pandemic and Emergency Preparedness in Nursing Homes**

The Fact Sheet also signals that CMS will issue updates to regulatory requirements and/or interpretive guidance to reflect lessons learned during the pandemic. CMS has been signaling for some time that it will update surveyor guidance across a range of issues, and so this aspect of the Administration’s announcement is not a surprise. These specific items are called out:

* CMS will clarify and increase the standards for nursing homes on the level of staffing facilities need for on-site infection prevention employees.
* CMS is examining and considering changes to proactive emergency preparedness requirements as part of an effort to be ready for the next pandemic and the next weather-related emergencies.
* CMS will integrate new lessons on standards of resident-centered care into nursing home requirements around fire safety, infection control, and other areas, using an equity lens*.*

Finally, the Administration pledges that it will continue to support facilities in their on-going COVID response, through activities it has already been conducting:

* HHS will continue to support outbreak and routine COVID-19 testing through distribution of tests and related supports.
* HHS will continue to support and promote access to vaccination clinics and efforts to integrate vaccinations into routine services, incentivize vaccinations through provider quality payment programs, and continue to provide resources designed to build confidence in the vaccine.
* CMS will continue to provide technical assistance to nursing homes through its contracts with Quality Improvement Organizations. It will work to ensure that improving nursing home care is a core mission for these organizations and will explore pathways to expand on-demand trainings and information sharing around best practices, while expanding individualized, evidence-based assistance related to issues exacerbated by the pandemic.

**Next Steps**

President Biden will devote part of his March 1 State of the Union address to these nursing home initiatives, and we can think of the White House’s announcement as a list of things to come in the months ahead. While the impact of these proposals will be significant to say the least, CMS will need time to develop and implement these activities, and we do not expect them to affect providers overnight. Going forward from this week’s announcement, we will work with our members to shape the work of CMS that lies ahead and to communicate the story of committed, quality care that is already underway across Minnesota care centers.