

FREE WEBINAR

Igniting Insights: Navigating the SNF Regulatory Inferno

*Minimum staffing requirements,
Med A payments, telehealth & more*

WED, MAY 22
12:30 PM CT

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YOUR SPEAKER



Cynthia Morton

Executive Vice-President

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Agenda

- **CMS Minimum Nurse Staffing requirements**, including exciting updates as to how Congress could impact the rule.
- **Medicare Part A Payment Proposed Rule**, offering an understanding of payment updates and key changes affecting the Quality Reporting Program.
- **Anticipated reductions in the Physician Fee Schedule**, as well as potential legislative reforms and Congressional actions in an election year.
- **Congress's response to the telehealth "cliff" at the end of 2024**, including prospects for a permanent telehealth authority versus a one-year extension.

POLL #1

Considering this legislative “inferno” of issues, how do you predict these changes will impact your facility?

- A. Just a little smoke, no fire
- B. We’ll feel a little heat but can manage the flames
- C. Total dumpster fire
- D. Not sure, that’s why I’m here!

Nurse Staffing Standard Finalized

Required Staffing Minimums – Hours Per Resident Day (HPRD)

0.55 for Registered Nurses (RNs)

2.45 for Nurse Assistants (NAs)

24 hours a day, 7 days a week on-site RN Requirement

3.48 HPRD Total Staffing Requirement

- Increased from the proposed 3.0 HPRD Total Staffing requirement
- Facilities may use any combination of nurse staff (NAs, RNs, licensed practical nurses (LPNs), and licensed vocational nurses (LVNs)) to account for the remaining 0.48 HPRD needed to comply with the total nurse staffing standard.

Facility Assessment Requirements

By August 8, 2024, all facilities must meet the following Facility Assessment requirements:

- Must use evidence-based methods when care planning, including consideration for those with behavioral health needs.
- Must assess the specific needs of each resident in the facility and to adjust as necessary based on any significant changes in the resident population.
- Includes input of the nursing home leadership, a member of the governing body and the medical director; management, an administrator, director of nursing; and direct care staff, including but not limited to, RNs, LPNs/LVNs, and NAs, and representatives of direct care staff as applicable.
- Must solicit and consider input received from residents, resident representatives, and family members.
- Required to develop a staffing plan to maximize recruitment and retention of staff consistent with what was described in the [President's April Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers](#).

Recent History of the Nurse Staffing Requirement

- 2022 SOTU-President Biden pledged that he would “protect seniors' lives and life savings by cracking down on nursing homes that commit fraud, endanger patient safety, or prescribe drugs they don't need.”
- President orders CMS to conduct a staffing study
- April 2022 SNF Part A Payment rule asks the public for comment on “Revising the Requirements for Long-Term Care (LTC) Facilities to Establish Mandatory Minimum Staffing Levels” – 3,000 comments submitted
- June 2023 [CMS Staffing study is released on website](#)
- September 2023 – [Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting](#) released – 46,000 comments submitted
- April 2024 – [Final Rule released!](#) Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule

House of Representatives

Reps. Doggett (D-TX), Schakowsky (D-IL) & 101 Democratic Members: Urge Administration to Strengthen and Finalize Nursing Home Safe Staffing Standards -phased-in minimum staffing requirement of 4.2 hours of nursing services provided to each resident per day.

Congress of the United States
Washington, DC 20515

November 6, 2023

Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 1244

Dear Administrator Brooks-LaSure,

We write offering our comments in strong support of strengthening and finalizing the Minimum Staffing Standards for Long-Term Care (LTC) Facilities and Medicaid Institutional Payment Transparency Reporting proposed rule. Strong staffing standards are not only critical to ensuring resident safety and the delivery of quality care, but they are also vital to supporting an often overworked and under-resourced workforce seeking to care for their patients with dignity.

A recent poll found the majority of U.S. adults are reluctant to admit a relative to a nursing home, giving nursing homes an overall quality grade of D+.¹ Families' top concern is nursing quality (70%), demonstrating strong public desire for strong safe staffing standards.² Yet, nursing homes remain a vital component of our health care system for families seeking long-term care for their loved ones.

To ensure resident health and safety, it is incumbent on CMS to strengthen the final rule by: 1) implementing phased in minimum staffing requirements that include a total minimum staffing level of at least 4.2 hours per resident per day (HPRD), 2.8 HPRD of certified nurse aide and assistant (CNA) care, and 1.4 HPRD of licensed nursing care, a minimum of which must be fulfilled by 0.75 HPRD of registered nurse (RN) care; 2) adopting timestamped staffing data reporting requirements to ensure oversight of a 24/7 onsite RN staffing requirement; and 3) expanding reporting requirements to provide taxpayer accountability and transparency on all spending on compensation for nursing staff.

- 1. We strongly urge CMS to strengthen the proposed minimum staffing requirements to at least 1.4 hours per resident per day (HPRD) of licensed nurse care, which must include at least a minimum of 0.75 HPRD from registered nurses (RNs), as well as 2.8 HPRD of certified nurse aides and assistants (CNAs) care. Furthermore, we urge CMS to establish a total minimum staffing level of at least 4.2 HPRD. Finally, we urge CMS to phase in minimum staffing requirements rather than an abrupt, distant implementation date.**

For decades, researchers have clearly established a link between higher staffing levels and improvements in the safety and quality of care delivered to nursing home residents. Higher staffing levels result in lower mortality rates, fewer rehospitalizations and emergency room

Rep. Michelle Fischbach (R-MN) & 23 Republicans + 1 Democrat Introduce: *The Protecting America's Seniors' Access to Care Act* H.R. 7513 – prohibits HHS from moving forward with the staffing rule; establishes an advisory panel on the SNF workforce. Passed out of Ways and Means Committee 26-17.

118TH CONGRESS
2^D SESSION

H. R. 7513

prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the skilled nursing facility workforce.

IN THE HOUSE OF REPRESENTATIVES

MARCH 1, 2024

Mrs. FISCHBACH (for herself and Mr. PENCE) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the skilled nursing facility workforce.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting America's Seniors' Access to Care Act".

C. 2. PROHIBITION ON FINALIZING PROPOSED STAFFING RULE.

The Secretary of Health and Human Services may not implement, enforce, or otherwise give effect to the proposed rule entitled "Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting" published by the Department of Health and Human Services on September 6, 2023 (88 Fed. Reg. 61352-61429), and may not promulgate any substantially similar rule.

Senate

[28 Senators - Boozman \(R-AR\), Lankford \(R-OK \), Tester \(D-MT\) Urge Biden Administration to Halt Unworkable Nursing Home Staffing Rule \(22 R's, 6 D's\)](#)

- With the labor shortage... now is the worst possible time to create a federal staffing mandate. The overly burdensome directive would lead to additional nursing home facility closures and hurt senior adults, their families and their communities, especially rural communities where access to care is already scarce.

Senator Deb Fischer (R-NE) – S 3410 The Protecting Rural Seniors' Access to Care Act – 12 sponsors Republican & Democrat –

- Would prohibit the Secretary of Health and Human Services from finalizing a proposed rule regarding minimum staffing for nursing facilities, and to establish an advisory panel on the nursing home workforce.

Skilled Nursing Facility Prospective Payment System

Proposed Rule for Part A

FAST FACTS:

4.1% market basket increase proposed

- Higher than FY24 (4.0%) and highest in recent years

Will not come close to covering Nurse Staffing Mandate


Does not include the 2% withhold for the Value Based Purchasing Program

VBP reduces payments by \$196.5 million

May increase or decrease slightly in the Final Rule

Effective October 1, 2024

Market Basket Update	+2.8%
Market basket forecast error adjustment	+1.7%
Productivity adjustment (moving averages)	-0.4%
Proposed Net Increase Over FY2024	+4.1%


\$1.3 billion

Quality Reporting Program (QRP)

Adding four SPADEs to the social determinants of health (SDOH) category.

Collecting and reporting this data would begin with the **FY 2027 SNF QRP (October 1, 2025)**.

Proposed new questions are:

- **Living Situation** - “What is your living situation today?” The proposed response options are: (0) I have a steady place to live; (1) I have a place to live today, but I am worried about losing it in the future; (2) I do not have a steady place to live; (7) Resident declines to respond; and (8) Resident unable to respond.
- **Food** – Two questions, with the same list of response options: “Within the past 12 months, you worried that your food would run out before you got money to buy more,” and, “Within the past 12 months, the food you bought just didn’t last and you didn’t have money to get more.” The proposed response options are: (0) Often true; (1) Sometimes true; (2) Never True; (7) Resident declines to respond; and (8) Resident unable to respond.
- **Utilities** – “In the past 12 months, has the electric, gas, oil, or water company threatened to shut off services in your home?” The proposed response options are: (0) Yes; (1) No; (2) Already shut off; (7) Resident declines to respond; and (8) Resident unable to respond.

CMS is proposing to modify this question to align it with the Transportation question in other programs:

- **Transportation** – “In the past 12 months, has a lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?” The proposed response options are: (0) Yes; (1) No; (7) Resident declines to respond; and (8) Resident unable to respond.

QRP – Future Measure Concepts

Considering four areas for future measure concepts in Table 29

Vaccination Composite – could represent overall immunization status of residents such as the Adult Immunization Status measure

Depression – may be similar to Clinical Screening for Depression and Follow-Up measure

Pain Management

Patient Experience of Care/Patient Satisfaction

QRP – Data Validation Process

Adopting a data validation process that is similar to the SNF VBP Program.

Effective for the FY 2027 SNF QRP, so **beginning October 1, 2025**.

Validation contractor would select up to 1,500 SNFs annually that would submit up to 10 medical records. SNFs would only be required to submit records once in a fiscal year.

- SNFs selected to participate would be the same SNFs that are randomly selected to participate in the SNF VBP and would submit the same medical records.
- For SNFs that do not submit records within 45 days of the request, CMS would reduce the annual market basket percentage update by 2%.
- CMS will propose in the future the process by which they would evaluate the submitted medical records against the MDS to determine accuracy. CMS is also proposing to apply the Medicare Administrative Contractors' existing validation process (software, claim review, quality assurance process, audits, targeted reviews) for the SNF QRP claims-based measures beginning with the FY 2027 SNF QRP.

Value-Based Purchasing Program (VBP)

- Proposed Regulation Text Technical Updates
- Proposal to Adopt a Measure Selection, Retention, and Removal Policy Beginning with the FY 2026 SNF VBP Program Year
- Estimated SNF VBP Program Performance Standards for FY 2027 and FY 2028
- Proposed Policy for Incorporating Technical Measure Updates into Measure Specifications
- Potential Next Steps for Health Equity in the SNF VBP Program
- Proposed Updates to the SNF VBP Program Review and Correction Process
- Proposed Updates to the SNF VBP Program Extraordinary Circumstances Exception Policy

Measure options under consideration for future years include:

- Resident experience measures, interoperability, and health equity/social determinants of health.
- Assessing the feasibility of a staffing composite measure that would combine the two previously adopted staffing measures.

Physician Fee Schedule (PFS) - Med B

- 2021 – CMS “reforms” the PFS by significantly increasing primary care CPT codes (those billed with E&M codes).
- This E&M code set represents approximately \$23 billion in PFS allowed charges.
- Total spend of the PFS represents is more than \$93 billion, so these “reformed” codes make up nearly a quarter of all PFS spending.

Bottom line: all other CPT codes are reduced to offset this increased spending on primary care codes

- Reductions will continue for 2025

Congress Has Helped Cover PFS Reductions Over Time

2021-2024

YEAR	FINAL CONVERSION FACTOR	% CHANGE FROM PRIOR YEAR	MACRA UPDATE	BUDGET NEUTRALITY ADJUSTMENT	Congress STATUTORY ADJUSTMENT	ADJUSTED CONVERSION FACTOR	% CHANGE FROM PRIOR YEAR
2021	\$32.41	-10.20%	0%	0.898	3.75%	\$34.89	-3.32%
2022	\$33.60	3.67%	0%	0.999	3.00%	\$34.61	-0.82%
2023	\$33.06	-1.60%	0%	0.984	2.50%	\$33.89	-2.08%
2024	\$32.34	-2.18%	0%	0.978	1.25%	\$32.74	-3.37%
2024					1.68%		

Will they continue?

Will Congress undertake major reform of the Physician Fee Schedule?

Current law requires budget neutrality – this means any increase above \$20 million must be offset by reductions to the rest of the codes.

Congress is considering reform...

- Increase the \$20 million budget neutrality threshold to \$53 million in 2025.
- Update the PFs for inflation (called the Medicare economic index) | 133 co-sponsors

Medicare Payment Reform Working Group:

Sens. Cortez Masto, Blackburn, Thune, Barrasso, Stabenow, Warner

Senate Finance Chair Wyden will release a “white paper” soon on PFS reform

POLL #2

Are you using telehealth to deliver services in your facility?

- A. Yes
- B. No
- C. Not sure

Telehealth

- Congress extended significant authorities during the PHE...
 - Advocates are pressuring Congress to make them permanent.
- **House Ways and Means Committee** passed a 2-year extension of current authority.
- **House Energy and Commerce Committee** passed a 2-year extension of current authority.
- **Senate** has not acted.

Pres. Biden wants to preserve his regulatory achievements

Regulatory agencies have been racing against the clock to finalize some of their most consequential policies, such as abortion data privacy, antidiscrimination protections for transgender patients and nursing home minimum staffing.

Congressional Review Act (CRA) – a fast-track legislative tool that allows lawmakers to nullify rules even after the executive branch has completed them.

- Bars agencies from pursuing “substantially similar” rules going forward
- Rules can be protected if they are finished before the “look-back” window opens in the last 60 legislative days of the 2024 session.

Election and then a Lame Duck Session?

- “Lame duck” session after the election.
- Multiple health care bills stacked into one large bill.
- Could see telehealth authority included
- Physician Fee Schedule reform?
- Action on the nursing home minimum staffing final rule?



Source: <https://disney.co.uk/>

Watch for **Calls to Action** towards the end of the year!

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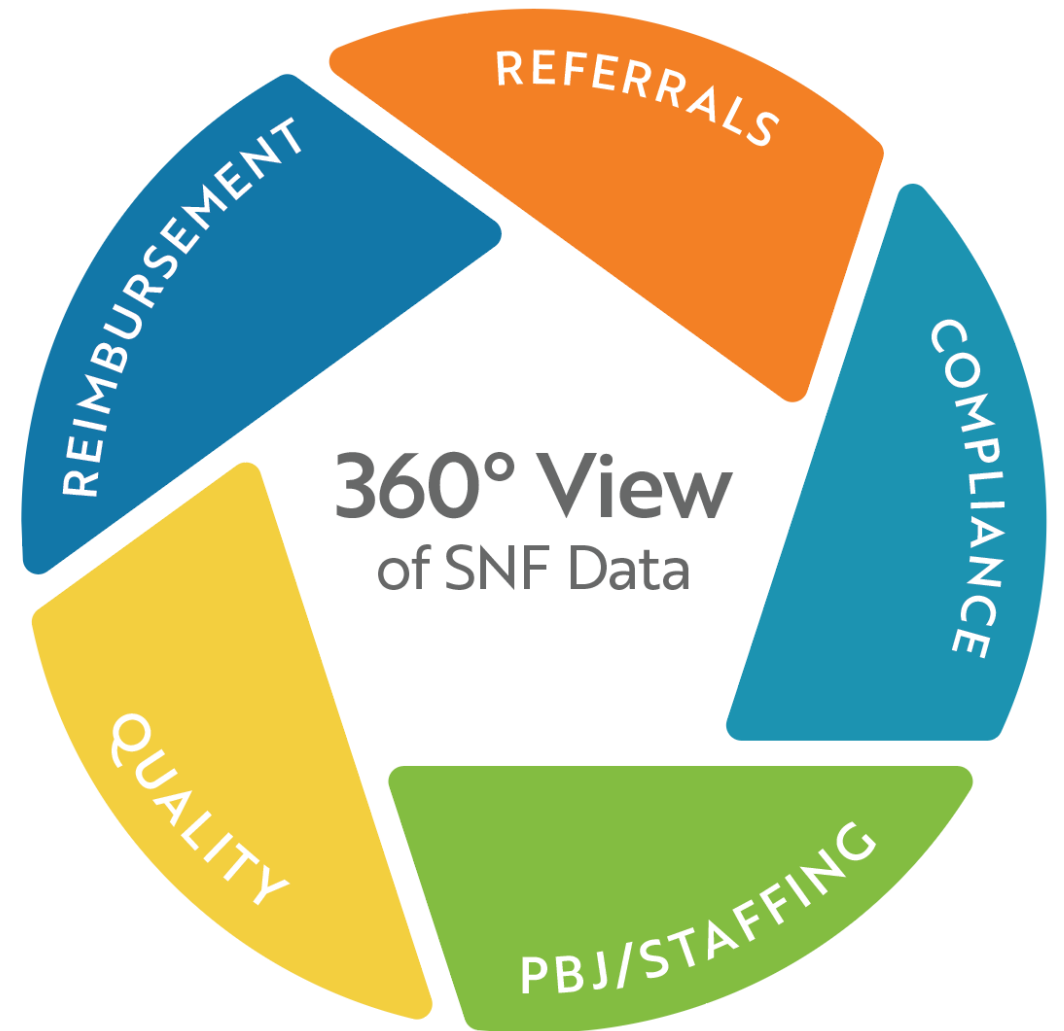
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— QUESTIONS —

Contact Cynthia Morton | Cynthia@ADVIONadvocates.org

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— THANKS FOR JOINING US! —

Webinar slides and recording will be available here:

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