



New Initiatives Announced to Improve Nursing Home Quality & Safety

On February 28, 2022, President Joe Biden announced during his State of the Union address that the Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) will establish increased standards in nursing homes to improve equality and safety.¹ In his address, President Biden cited the poor performance of nursing homes across the U.S. and the toll that the COVID-19 pandemic has had on them, particularly with regard to financial and personnel losses.²

More than 1.4 million Americans live in over 15,500 Medicare- and Medicaid-certified nursing homes across the U.S.³ Since the onset of the COVID-19 pandemic in March 2020, over 200,000 nursing home residents and staff have died, while nearly 240,000 caregivers have left the industry.⁴ Further, a White House fact sheet released the same day as the State of the Union cited Government Accountability Office (GAO) findings that 82% of nursing homes inspected since 2020 had an infection prevention and/or control deficiency, which was a major cause of illness and death among nursing home residents.⁵ However, the Biden Administration's biggest concern with the industry is the increase in private equity (PE) firm investment in nursing homes.⁶ The White House fact sheet cited several studies, stating nursing homes owned by PE had lower care quality, worse health outcomes, structurally-reduced staffing, and increased mortality rates.⁷ These studies found that PE-owned and operated nursing homes have contributed to over 20,000 lives lost, resulting from their poor performance compared to traditional not-for-profit nursing homes.⁸

To combat the rising Medicare and Medicaid costs of care in nursing homes, the increasing tax-payer burden on poor-performing facilities, and the rise in PE-run facilities, the Biden Administration announced four new initiatives. They include: requiring minimum staffing loads, reducing room crowding, strengthening *skilled nursing facilities*' (SNFs') value-based purchasing programs, and reinforcing safeguards against providing unnecessary medications and treatments.⁹ Beyond these initiatives, the Biden Administration is seeking to enhance accountability and oversight, increase transparency, and ensure future emergency preparedness.¹⁰ Specific plans to accomplish these initiatives include phasing out rooms with occupancy greater than two residents and reducing the number of problematic diagnoses and prescriptions.¹¹ A larger,

more important objective is for each facility to collect and submit verifiable data to CMS regarding staffing rates (including turnover) and other critical metrics.¹² This effort is largely designed to benefit the consumers by allowing families to make better decisions regarding the placement of a patient.¹³ The proposed initiatives will have the greatest effects on the 97% of nursing homes that are Medicare- and Medicaid-certified.¹⁴ These facilities, both for- and not-for-profit, will have to comply with the new requirements.¹⁵

The President will also ask Congress to provide CMS with an additional \$500 million to support the increase in health and safety inspections at nursing homes.¹⁶ This 25% budget increase will allow CMS to improve the *Special Focus Facility* (SFF) program to more efficiently identify and better enforce compliance and improve care at the worst-performing facilities.¹⁷ For facilities that are not in compliance or fail to meet minimum standards, fines can now be assessed daily, instead of the one-time penalty used by the Trump Administration.¹⁸ President Biden will also call on Congress to increase penalties up to \$1 million per instance; other penalties may include being cut-off from CMS's funds and revocation of a facility's Medicare and Medicaid licenses.¹⁹

In order to enforce compliance, the use of additional data that will be required for nursing homes to report, predictive analytics, and other information processing tools will indicate to CMS whether facilities are improving and if they have met minimum standards.²⁰ This increased data transparency, including a facility's ownership status and detailed financial records will be made public (or, if already public, more accessible) via the Nursing Home Compare website.²¹

While many consider the President's plan to improve the safety and quality of care in nursing homes to be a positive announcement and long overdue, key industry stakeholders on both sides are unsure as to how well these initiatives will work and if attacking PE investors is the best path forward. Beth Martino, the senior Vice President of the *American Care Association and National Center for Assisted Living* (AHCA/NCAL) asserted the White House's initiatives should focus more on "chronically underfunded" Medicaid facilities, rather than PE-owned ones.²² She cited the small number of PE-owned facilities and the long-lasting impact underfunding has had on nursing homes, which can be attributed to the extreme shortage in caregivers and the

increase in closure or sale of not-for-profit facilities to PE investors.²³ Juan Sanabria of BMO Capital Markets notes that increased government oversight may lead to extra costs to meet requirements, particularly with regard to collecting data and meeting minimum staffing requirements.²⁴ Sanabria says this additional oversight may cause further complications when recovering from the financial and workforce losses resulting from the COVID-19 pandemic.²⁵

Seema Verma, who served as CMS Administrator during the Trump Administration, echoed many of these concerns with the new initiatives, especially if precautions are not taken to consider the underlying issues of staffing shortages relating back to poor reimbursement and severe underfunding.²⁶ Verma also stated that more steps should be taken to facilitate the

shift to *value-based care* (VBC). In doing so, she opposes increased government oversight and proposes a more collaborative approach to helping poor-performing facilities, rather than focusing only on punitive processes.²⁷

The initiatives announced by the Biden Administration during the State of the Union address are meant to increase the quality and lower the cost of care in nursing homes. They are also designed to increase transparency of organizations to help patients and families make better decisions, as well as to help CMS make critical funding and punitive decisions. It is clear this industry needs more attention; however, many stakeholders are concerned the attention is going to the wrong places, overlooking the root causes of poor performance among many facilities in the industry.

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