

Society Set to Take Action on Nursing Home Reform Proposals

By Alex Bardakh, MPP

On March 1, 2022, President Joseph R. Biden delivered the traditional annual State of the Union address. What was less traditional was the short statement on nursing home quality during his hour-long speech. “Medicare is going to set higher standards for nursing homes and make sure your loved ones get the care they deserve and that they expect,” said President Biden.

Those 30 seconds on nursing home reform were pointing to a set of more detailed proposals, which may have the greatest impact on nursing home quality since the Omnibus Budget and Reconciliation Act of 1987 (OBRA 87).

The reforms are divided into five broad categories:

1. Ensuring Taxpayer Dollars Support Nursing Homes That Provide Safe, Adequate, and Dignified Care
2. Enhancing Accountability and Oversight
3. Increasing Transparency
4. Creating Pathways to Good-paying Jobs With the Free and Fair Choice to Join a Union
5. Ensuring Pandemic and Emergency Preparedness in Nursing Homes

Each category has its own set of even more detailed proposals that outline where the Biden-Harris Administration will focus its efforts. According to the officials of the Centers for Medicare & Medicaid Services (CMS) who have spoken in various open-door forums, CMS will be fast tracking many of these proposals.

The first iteration of implementation arrived via the Skilled Nursing Facility Prospective Payment System (SNF PPS) Proposed Rule, which was issued on April 7, 2022. The rule outlined proposals to add quality measures around infection prevention and staff turnover, and it included a request for information about addressing the staffing shortage crisis.

The Society Response

Shortly after the State of the Union address, AMDA – The Society for Post-Acute and Long-Term Care Medicine issued a response urging the Biden-Harris Administration to be “broad, innovative, and practical” in its thinking on reforming PALTC (see the March 4, 2022, press release at <https://bit.ly/3bhIU08>). The Society stated its strong support for some proposals, such as single-occupancy rooms, ownership transparency, and a full-time infection preventionist.

However, the Society expressed concern about the lack of proposals for improvements in health information technology and urged the Administration to “change the way we look at care providers in PALTC,” noting that “policies that demoralize and demonize nursing homes and their staff have led many caring professionals to leave PALTC.”

This is a time for bold proposals that take the nursing home sector into the

21st century and do not leave it behind by increasing the gap in care between care settings.

Staffing Crisis

The Society called on the administration to address the staffing crisis by addressing the various aspects of the problem, including “ensuring a safe work environment for direct care staff that provides adequate compensation and benefits, plentiful training and career advancement opportunities, and engaged and competent clinical leadership.”

Likewise, the Society urged the administration to address the shortage of trained physicians in this field. Over the course of the pandemic, the Society has heard anecdotes of more physicians leaving PALTC and of severe shortages in hands-on care in parts of the country. This problem has mainly been hidden because physicians who practice in PALTC do not have a specialty or subspecialty designation.

Medical Director Transparency

The Society strongly urged the administration to improve transparency around the medical director role. “The facility medical director, required by the OBRA 1987 law, is responsible for coordination and oversight of the overall clinical care in the facility. And yet, after the more than 30 years since that law passed, this vital position remains a sadly underutilized and invisible role to most patients, families, and even others in the health-care field. The Administration can easily change this, for a start by compiling and disseminating a public listing of medical directors of every Medicare/Medicaid certified nursing facility in this country, as we have advocated for the last several years.”

The Society has requested such action be taken in several of its comment letters and has reiterated this request in its response to the SNF PPS proposed rule. Further, at the June 2022 meeting of the House of Delegates, the American Medical Association (AMA) adopted a Society proposed policy to “advocate for the Centers for Medicare & Medicaid Services to promote health care transparency and consumer access to quality health care by hosting a public listing of medical directors of all nursing facilities in the country” (<https://bit.ly/39CFIKX>).

The Society plans to continue to work with Congress and CMS to ensure implementation of this important initiative.

NASEM Report

Shortly after the release of the Biden-Harris Administration proposals, the National Academies of Sciences, Engineering, and Medicine (NASEM) issued its own report on nursing home reform. The report, “The National Imperative to Improve Nursing Home

Quality: Honoring Our Commitment to Residents, Families, Staff” (<https://bit.ly/3Oa6kBQ>), outlined a broad range of recommendations, including many that touched on the administration’s proposals. This report could prove to be a pivotal moment for enacting nursing home reform. In a similar fashion, an Institute of Medicine (IOM) — predecessor to NASEM — report led to the passage of the OBRA ‘87 nursing home reform law. In its response to the report (<https://bit.ly/3bfVyeH>), the Society urged Congress and the administration to take immediate action to implement the report’s recommendations.

Given the broad stakeholder group that helped develop the report, this could serve as the one set of recommendations

endorsed by the broadest set of stakeholders in the PALTC sector. Among the many proposals was support for the Society’s proposals to address the staffing crisis as well as transparency for medical directors.

The Society looks forward to continuing its advocacy work to advance its priorities for the PALTC sector. If you are interested in helping with our efforts or have thoughts about any of our proposals please email us at publicpolicy@paltc.org.

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SPOTLIGHT ON POLICY

CMS Issues Updates to Improve the Safety and Quality of Care for Long-Term Care Residents

The Centers for Medicare & Medicaid Services (CMS) recently issued updates to its guidance on the minimum health and safety standards that long-term care (LTC) facilities must meet to participate in Medicare and Medicaid. CMS also updated and developed new guidance in the State Operations Manual (SOM) to address issues that significantly affect LTC residents. The surveyors who use these resources to perform nursing home inspections are responsible for determining whether facilities are complying with the CMS requirements.

These updates are in accordance with President Biden’s vision to protect seniors by improving the safety and quality of our nation’s nursing homes, as outlined in a fact sheet released before the State of the Union address (“Fact Sheet: Protecting Seniors by Improving Safety and Quality of Care in the Nation’s Nursing Homes,” Feb. 28, 2022, <https://bit.ly/3NSTHKM>). A key element in reaching this goal is addressing nursing home staffing levels.

To begin helping with staffing issues while the rulemaking process is underway, CMS added new requirements for surveyors to incorporate the use of payroll-based journal staffing data into their inspections. This will help better identify potential noncompliance with the CMS nurse staffing requirements, such as lack of a registered nurse for eight hours each day or lack of licensed nursing for 24 hours a day. This guidance will help uncover instances of insufficient staffing and yield improved care for patients/residents.

With emerging infectious diseases such as COVID-19, CMS believes that the role of the infection preventionist

(IP) is critical to a facility’s efforts to mitigate the onset and spread of infections. Using lessons learned from the pandemic, CMS provides further guidance requiring each facility to have an IP with specialized training to effectively oversee the facility’s infection prevention and control program — in accordance with the president’s campaign commitment to ensure that facilities have sufficient on-site IPs.

The updates also contain improvements to CMS guidance for mental health and substance use disorders and build upon the agency’s behavioral health strategy to better meet the unique needs of LTC facility residents with these types of challenges. CMS also clarified the minimum levels of knowledge and skills necessary for facility staff to ensure that these policies and practices do not conflict with resident rights or other participation requirements.

As part of the Biden-Harris Administration’s call to reduce resident room overcrowding, CMS has highlighted the benefits of reducing the number of residents in each room for preventing infections and the importance of residents’ rights to privacy and a home-like environment. The pandemic has further proven the risk of contracting infectious diseases in rooms with too many residents. CMS urges providers to consider making changes to their settings to allow for a maximum of double occupancy in each room and encourages facilities to explore ways to allow for more single-occupancy rooms.

The online SOM will be updated on or after October 24, 2022, when these changes go into effect. Surveyors will begin using the guidance and changes, which will be incorporated into the survey process, on that same date.