

## *The Nursing Home Improvement and Accountability Act of 2021*

The COVID-19 pandemic has taken an enormous toll on nursing home residents and staff, who represent more than one-third of all deaths nationwide, despite accounting for fewer than five percent of cases.<sup>1</sup> While there is no single solution to the myriad problems COVID-19 exposed, significant improvements to staffing and oversight, along with better data systems and transparency, are necessary to increase quality and safety for residents and better protect nursing home staff. *The Nursing Home Improvement and Accountability Act of 2021* represents an unprecedented investment in the foundation of nursing home care, filling much-needed gaps in staffing, transparency, and accountability, and quality of care to ensure nursing homes are better prepared to face future public health emergencies. The bill also includes a new demonstration program to modernize nursing homes to provide home-like care environments for those who cannot remain at home.

**Staffing improvements.** The COVID-19 pandemic underscored the important relationship between sufficient staffing and the safety of nursing homes residents, with understaffed facilities being two times more likely to have COVID-19 resident infections early in the pandemic than comparable facilities with higher staffing levels.<sup>2, 3, 4</sup> While a clarion call for change, such clear associations are not new. For years, researchers have linked low staffing levels in nursing homes to poor quality, patient safety violations, and higher rates of antipsychotic use.<sup>5</sup> To address insufficient staffing in nursing homes, this bill:

- Requires the Secretary of the Department of Health and Human Services (HHS) to conduct a study on staffing within three years (and every five years thereafter) to determine minimum staffing levels of Registered Nurses (RNs), Licensed Practical Nurses (LPNs) or Licensed Vocational Nurses (LVNs), and Certified Nursing Assistants (CNAs) that are needed in nursing homes for purposes of providing quality care; and following completion of the first report, the bill requires the Secretary to use the findings from the report to set minimum staffing requirements (and update, as appropriate) in skilled nursing facilities (SNFs) and nursing facilities (NFs) for RNs, LPNs/LVNs, and CNAs within five years.
- Provides temporary additional federal resources through Medicaid to lift up wages and support the recruitment and retention of staff, as well as support improvements in resident care.
- Requires all nursing homes use the services of an infection prevention and control specialist – an essential role in controlling the spread of infectious disease – no less than 40 hours per week.

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<sup>1</sup> *Nearly One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes*, N.Y. TIMES (June 1, 2021), <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>

<sup>2</sup> Charlene Harrington et al., *Nurse Staffing and Coronavirus Infections in California Nursing Homes*, 21:3 POLICY, POLITICS, & NURSING PRACTICE 174-186 (2020), <https://pubmed.ncbi.nlm.nih.gov/32635838/>.

<sup>3</sup> Charlene Harrington et al., *Appropriate Nurse Staffing Levels for U.S. Nursing Homes*, 13 HEALTH SERVICE INSIGHTS 1-14 (2020), <https://journals.sagepub.com/doi/full/10.1177/1178632920934785>.

<sup>4</sup> Karen Spilsbury et al., *The Relationship Between Nurse Staffing and Quality of Care in Nursing Homes: A Systematic Review*, 48:6 INTERNATIONAL JOURNAL OF NURSING STUDIES 732-750 (2011), <https://www.sciencedirect.com/science/article/abs/pii/S0020748911000538>.

<sup>5</sup> Charlene Harrington et al., *The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes*, 9 HEALTH SERVICES INSIGHTS 13-19 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/>.

- Ensures RNs are available in nursing homes 24 hours per day (currently, an RN must be present only eight hours each day).
- Gives the Secretary the authority to issue penalties to nursing homes that submit inaccurate staffing information through the Payroll Based Journal staffing database.
- Ensures *Care Compare* – the online tool residents and their families use to select a quality nursing home – reflects only staff hours devoted to direct patient care and adds weekend staffing information (in addition to the current weekday hours).

**Transparency, accountability, and quality.** Unmonitored, limited, and confusing data have made it difficult to track and improve safety in nursing homes as well as ensure Medicare and Medicaid residents receive the best possible quality of care. To address these needs, the bill:

- Improves the accuracy and reliability of nursing home data, such as the Minimum Data Set, which reflects quality information vital to the *Care Compare* website used by residents and their families to select top-quality facilities; and incentivizes accurate reporting and enhances the scope of measures available to track quality of care.
- Provides long overdue administrative funding to the Centers for Medicare & Medicaid Services (CMS) to ensure Medicare cost reports submitted by nursing homes are accurate; also requires the HHS Office of the Inspector General (OIG) to examine the relationship between costs and quality in nursing homes based on these newly reviewed data.
- Requires nursing homes to provide a surety bond of no less than \$500,000 to the Secretary of HHS to provide assurances of facility financial viability, ensuring money for patient care remains available in the case of an unexpected facility closure or for other program integrity purposes.
- Protects seniors' legal rights in nursing homes by ensuring admission to or residence in a facility is not contingent upon signing a pre-dispute binding arbitration agreement.
- Improves the nursing home survey and oversight process by requiring the Secretary to review the effectiveness of surveys and enforcement in nursing homes, including as it relates to infection control and emergency preparedness; and provides enhanced funding to state agencies to improve oversight processes and hire, train, and retain surveyors.
- Expands the Special Focus Facility (SFF) program that provides additional oversight to low-performing SNFs or NFs to no fewer than five percent of the lowest rated facilities and establishes a consultation and education program to support these facilities in compliance and quality improvement efforts.

**Physical and cultural change.** For individuals who need nursing home care, there are often no options beyond institutional facilities that better resemble hospitals than they do homes. Existing evidence of small facilities that try to meet changing patient preferences is positive and demonstrated success in managing the COVID-19 pandemic, making it an appealing model that nursing home experts have been looking to as a way to improve quality.<sup>6, 7</sup> This legislation takes

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<sup>6</sup> Lauren W. Cohen et al., *The Green House Model of Nursing Home Care in Design and Implementation*, 51:S1 HEALTH SERVICES RESEARCH 352-377 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5338211/>.

<sup>7</sup> Rob Waters, *The Big Idea Behind A New Model Of Small Nursing Homes*, 40:3 HEALTH AFFAIRS (2021), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.00081>.

steps to modernize the physical environment of nursing homes and enhance staff experience to promote evidence-based, patient-centered care for residents. Specifically, the bill:

- Creates a demonstration program to provide funds to nursing homes to invest in the physical infrastructure of facilities, higher workforce standards, and integration of individual resident preferences.