

U.S. Bill Would Require More Staffing and Curtail Arbitration in Nursing Homes

Article
2021

Nursing homes would face minimum staffing requirements and a prohibition on pre-dispute arbitration agreements, among other significant potential changes included in **legislation** introduced last week by a group of Democratic senators.

The bill would also explore future possibilities for smaller, more private nursing homes.

The Department of Health and Human Services would report to Congress within three years on establishing minimum staff-to-resident ratios in nursing homes. Follow-up reports would then come at least every five years. HHS would apply the staffing minimums, subject to waivers, to the Medicare and Medicaid requirements of participation within two years of each report.

Nursing homes would be required to have an RN on duty at all times and provide at least 40 hours a week of infection control by a specialist. Nursing staff's administrative hours would be excluded from the Nursing Home Compare web site.

Rewards and penalties

Temporary financial incentives would be available to support increased staffing. The bill would provide states with temporary increases in Medicaid funding through the Federal Medical Assistance Percentages program. This would be available for six years for measures to expand and improve staffing, including increased wages and benefits, and improved resident care, including expanded "person-centered" models of care. States could get a 3-percentage-point increase to their federal match for four years, a 2-point increase for one year and a 1-point increase in the final year.

Inaccurate information about direct care staffing through the Payroll Based Journal database could result in fines of up to \$10,000.

The bill would reduce nursing home payments by 2 percentage points, beginning in fiscal 2025, for facilities that submit inaccurate data in MDS reports or quality measures in the SNF Value-Based Purchasing Program.

PROFESSIONALS

Alec Dobson
Partner

RELATED SERVICES

Employment Advice &
Counsel

Health Care

At least 5% of nursing homes would have to participate in CMS' Special Focus Facility Programs for nursing homes with serious quality issues. A compliance assistance program would help with on-site consulting and educational programming.

HHS would audit a representative sample of Medicare Cost Reports and analyze the relationship between the reports and nursing home quality. HHS would also review and perhaps revise how the survey process improves regulatory compliance.

Nursing homes would have to post a surety bond of at least \$500,000 or a comparable bond under state law.

Envisioning smaller facilities

HHS would establish a demonstration program to provide nursing homes with money to modify their physical structures so that a facility would have 5 to 14 residents, with private rooms, accessible outdoor space and standing resident and family councils. HHS would give preference to facilities that are in medically underserved areas, have a majority of long-stay residents receiving Medicaid, and provide staff training above minimum federal standards.

The bill, titled **The Nursing Home Improvement and Accountability Act of 2021** (S.2964), was introduced by Senate Finance Committee Chairman Ron Wyden (D-Ore.), Senate Aging Committee Chairman Bob Casey (D-Pa.) and Sens. Richard Blumenthal (D-Conn.), Michael Bennet (D-Colo.), Sheldon Whitehouse (D-R.I.) and Sherrod Brown (D-Ohio). Its prospects for passage are uncertain.

Sen. Wyden said the bill "represents a big step towards nursing home care that is safer, higher quality, more accountable and more supportive of the workers who care for our most vulnerable."

The American Health Care Association/National Center for Assisted Living said it appreciates the "initial steps" in the bill but seeks permanent funding. "The proposal to institute permanent minimum staffing requirements without a permanent funding source would be incredibly challenging for long-term care providers," AHCA President and CEO Mark Parkinson said in a statement. "Providers will not be able to meet staffing requirements if we can't find people to fill the open positions. There must be a comprehensive approach to staffing beyond just numbers."

Arbitration

Nursing homes, as well as home- and community-based care providers, would not be able to enter into arbitration agreements with residents before disputes arise. Parkinson warned of consequences of limiting arbitration. "Arbitration is quicker and less costly than litigation in court and provides similar outcomes for residents and families," he said. "An excessive litigation environment, couple with

U.S. Bill Would Require More Staffing and Curtail Arbitration in Nursing Homes

the existing financial crisis, means thousands of long-term care facilities would be forced to close their doors, in turn, displacing tens of thousands of vulnerable residents and limiting access to critical services for our nation's seniors."

The Associated Press reported that the Congressional Budget Office has not determined the cost of the bill, but it could reach tens of billions of dollars.

U.S. Bill
Would
Require
More
Staffing and
Curtail
Arbitration
in Nursing
Homes