Medicare Skilled Nursing Facility Coverage & Updates

March 23, 2023

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Senior Medicare Patrol (SMP)

CMA Webinar: Help Available for Lower Income Beneficiaries

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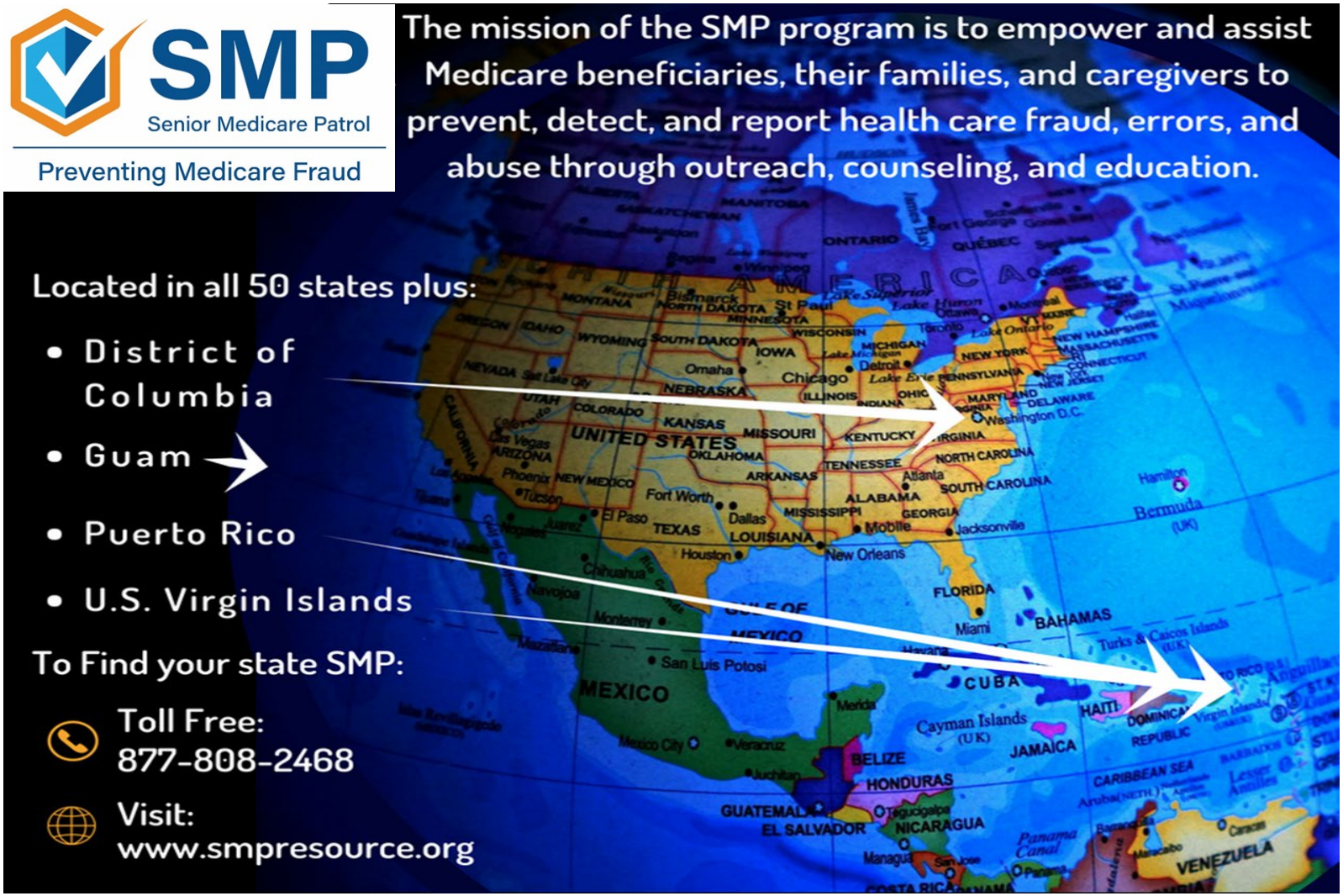
March 23, 2023



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Providing quality Medicare and related healthcare coverage information, education and policy advocacy.

Advocacy & Policy

Improving rights and protections for Medicare beneficiaries and their families

Education

Website, fact sheets and educational workshops

Senior Medicare Patrol

Fraud prevention education

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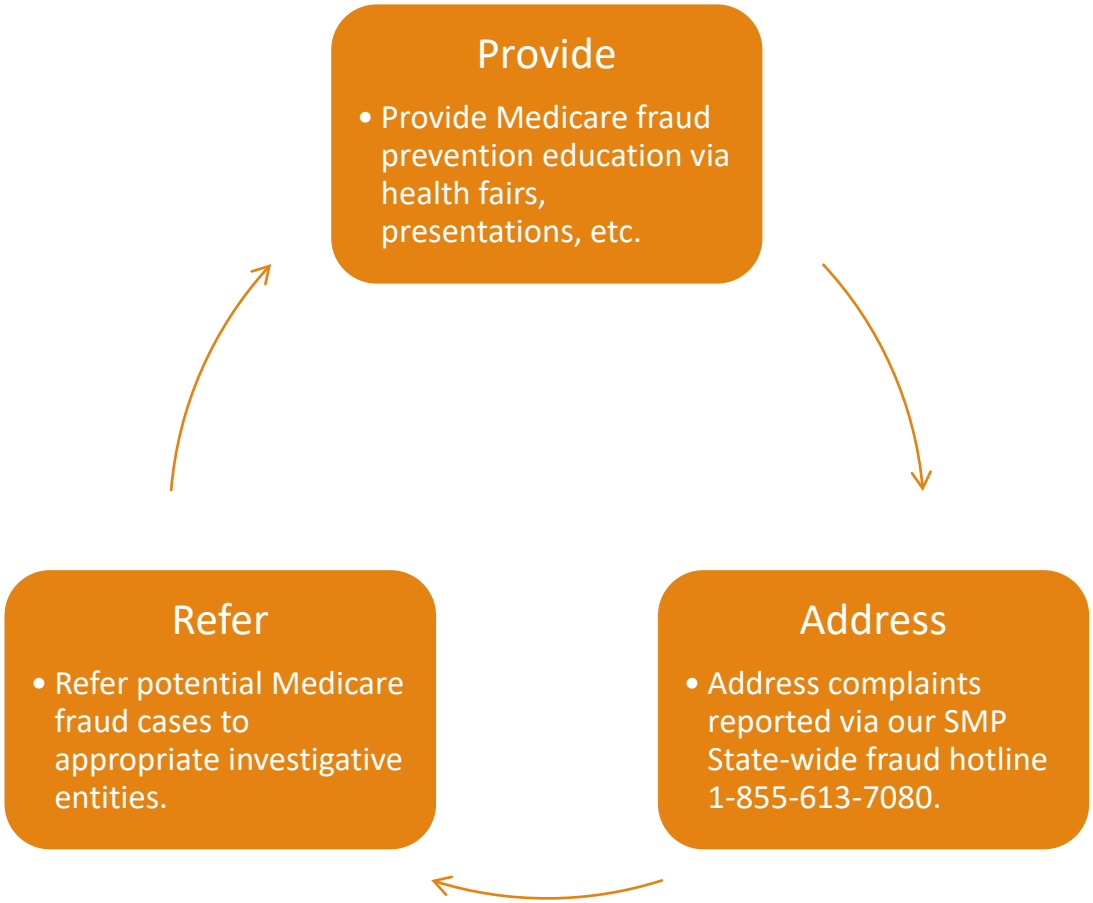

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Three Roles of SMP

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PREVENT	DETECT	REPORT
PREVENT: SMPs provide focused outreach and messaging designed to protect Medicare beneficiaries from Medicare fraud.	DETECT: As local trusted connections in the community the SMPs are often the first to hear of new issues as they begin to emerge.	REPORT: SMPs provide in-depth one-on-one assistance to Medicare beneficiaries and other complainants.

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VISIT OUR WEBSITE!

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Fraud & Abuse

California Health Advocates > Fraud & Abuse

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Free Medicare Fraud Education

Call SMP 855-613-7080

TAGALOG ON THE BACK

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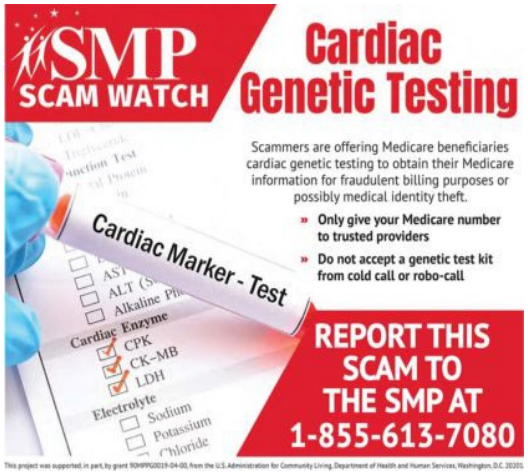

SPANISH ON THE BACK

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SMP Materials

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- Contact Porsha Avila at:
- pavila@cahealthadvocates.org

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Join Us for Our Upcoming Webinars Partnered with Center for Medicare Advocacy!

- 19 Jan. — Help Available for Lower Income Beneficiaries
- 23 Feb. — Medicare Home Health Coverage and Updates
- 23 Mar. — Medicare Skilled Nursing Facility Coverage & Updates
- 25 May — Voices of Medicare - Pressing Beneficiary Issues

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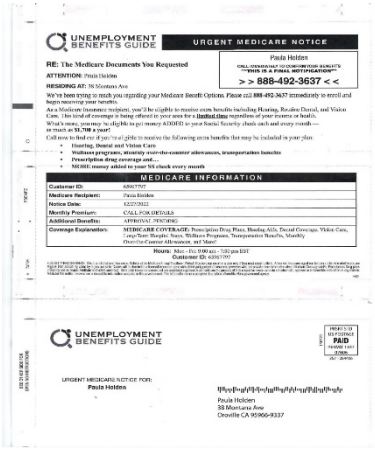

UNEMPLOYMENT BENEFITS GUIDE

URGENT MEDICARE NOTICE

RE: The Medicare Documents You Requested

ATTENTION: Paula Holden

RESIDING AT: 38 Montana Ave

Paula Holden

> > 888-492-3637 < <

We've been trying to reach you regarding your Medicare Benefit Options. Please call 888-492-3637 immediately to enroll and begin receiving your benefits.

As a Medicare Insurance recipient, you'll be eligible to receive extra benefits including Hearing, Routine Dental, and Vision Care. This kind of coverage is being offered in your area for a limited time regardless of your income or health.

What's more, you may be eligible to get money ADDED to your Social Security check each and every month — as much as $1,700 a year!

Call now to find out if you're eligible to receive the following extra benefits that may be included in your plan:

- Hearing, Dental and Vision Care
- Wellness programs, monthly over-the-counter allowances, transportation benefits
- Prescription drug coverage and...
- MORE money added to your SS check every month

MEDICARE INFORMATION

Customer ID:	6586797
Medicare Recipient:	Paula Holden
Notice Date:	12/27/2022
Monthly Premium:	CALL FOR DETAILS
Additional Benefits:	APPROVAL PENDING
Coverage Explanation:	MEDICARE COVERAGE: Prescription Drug Plans, Hearing Aids, Dental Coverage, Vision Care, Long-Term Hospital Stays, Wellness Programs, Transportation Benefits, Monthly Over-the-Counter Allowances, and More!

Hours: Mon - Fri, 9:00 am - 7:00 pm EST

Customer ID: 6586797

UNEMPLOYMENT BENEFITS GUIDE

PRIORITY U.S. MAIL CUSTOMER PAID CHANGE LABEL

URGENT MEDICARE NOTICE FOR:
Paula Holden

Paula Holden
38 Montana Ave
Oroville CA 95966-9337

Tri-fold mailer
Unemployment
Benefits
Guide??
Bait & Switch!
Fine print:
Insurance
solicitation!

T-2

2023 BENEFIT INFORMATION
FOR CALIFORNIA CITIZENS ONLY

2023

As a resident of California, you are entitled to more benefits not provided by government funds.
You may have access to a 2023 state-regulated life insurance program which will pay 100% of all final expenses up to $15,000.
Return this postage-paid card within 15 days to receive this new benefit information.

Please Respond By Jan. 20, 2023

Contact Information (Please Print)

NAME | AGE

SPOUSE'S NAME | AGE

STREET ADDRESS (No PO Box)

PHONE (Daytime Calls) ( ) -

Email address (optional)

Looks
like an
IRS form!

Misleading Marketing

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Top Complaints:

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1. Medicare Part C/D Communications & Marketing Violations
2. Billing Issues
3. Deceptive Hospice Enrollments
4. DME Brace Scams
5. Genetic Testing Scams
6. Medicare Card Phone Scam

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What to Look Out For:

Keep track of medical appointments

- Use journal or calendar

Medicare Summary Notice (MSN)

- Sent to FFS Medicare beneficiaries

Explanation of Benefits (EOB)

- Sent to MA members and beneficiaries with a prescription drug plan

Check statements for accuracy. Look for:

-Charges for services not rendered

-Charges for services different than those rendered (upcoding)

-Services/items charged twice

-Charges for services not ordered by primary care physician

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Red Flags on an MSN

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Help prevent Medicare fraud by checking these things

Anita Doe — **THIS IS NOT A BILL** | Page 4 of 5

November 28, 2019

Leo Zygelman, CH, (555) 555-123
200 West Center St, Manchester CT 06040-0000

Is this a provider you know?

Service Provided & Billing Code	Service Approved?	Amount Provider Charged	Medicare-Approved Amount	Medicare Paid You	Maximum You May Be Billed	See Notes Below
Chiropractic manipulative treatment, 3 to 4 spinal regions (98941-GA)	**NO**	$40.00	$0.00	$0.00	**$40.00**	**D**
Total for Claim #02-11040-307-640			$0.00	$0.00	**$40.00**	**E**

Did you receive services on this day?

December 25, 2019

Joshua Richards, M.D., (555) 555-1234
848 Scioto St, Urbana, OH 43078-2255

If you live in CT, did you really receive services in OH?

Service Provided & Billing Code	Service Approved?	Amount Provider Charged	Medicare-Approved Amount	Medicare Paid You	Maximum You May Be Billed	See Notes Below
Established patient office or other outpatient visit (98213-GA)				00	**$0.00**	**F,G**
Total for Claim #02-11040-517-100				00	**$0.00**	**E**

Do any services appear twice when they shouldn't?

SUPPORTED BY GRANT # 90MPRC0001 FROM ACL

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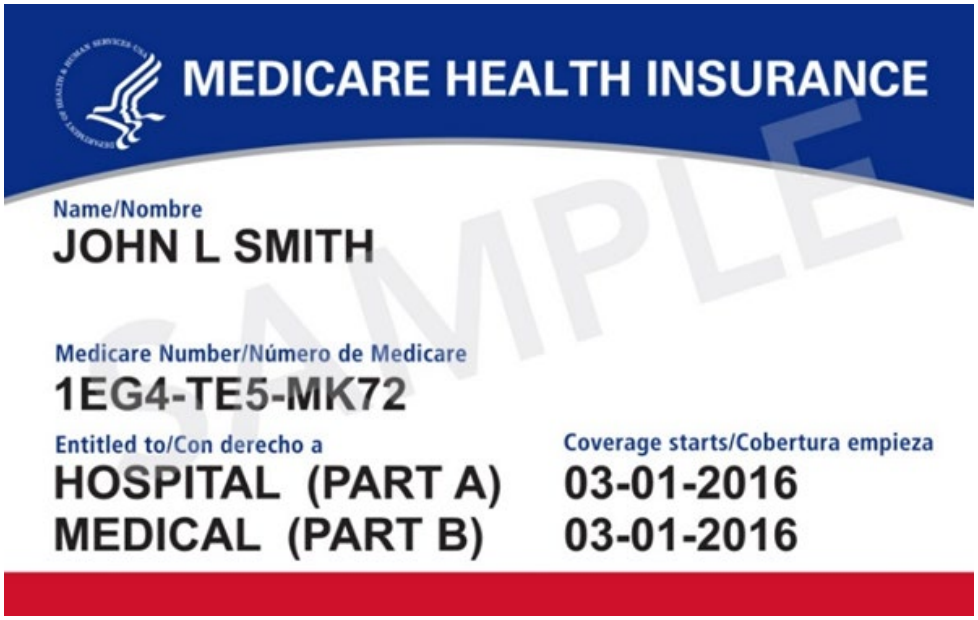
“Guard the Medicare Card”



Scammers do not discriminate between Original Medicare and Medicare Advantage enrolled beneficiaries. Their target is anyone with this Medicare card.

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Deceptive Marketing Practices

The US Senate Finance Committee launched an inquiry in August 2022. Findings included:

- Complaints about Medicare Advantage plans marketing more than doubled from 2020 to 2021
- Misleading information or behavior included:
  - Seniors approached by agents at local grocery stores
  - Misleading seniors about their doctor being in the plan's network
  - Mailers that look like official government mailers
  - Agents calling beneficiaries 20 times a day
  - Widespread television advertisement with celebrities that had claimed seniors were "missing out" on benefits
- For a copy of report go to: https://www.finance.senate.gov/imo/media/doc/Deceptive%20Marketing%20Practices%20Flourish%20in%20Medicare%20Advantage.pdf

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THANK YOU!

- Remember to report Medicare fraud to your local SM
- SMP Resource Center and SMP Locator link:
  - https://www.smpresource.org/Default.aspx
- If in California, call our CA SMP Hotline at 855-613-7080

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MEDICARE SNF COVERAGE

- Basic requirements
  - 3-day qualifying inpatient hospital stay, 42 C.F.R. §409.30; waived during public health emergency (ending May 11, 2023)
  - Admission within 30 days of hospital discharge
  - Physician certification of need for SNF care
  - Daily skilled nursing (7 days/week) or daily skilled rehabilitation (5 days/week) or combination (7 days/week)

TWO BARRIERS OVER THE YEARS TO COVERAGE

- Observation status (preventing coverage at admission)
- Myth of improvement (preventing continuation of coverage during resident's stay)

OBSERVATION STATUS

- Hospital patients in observation (outpatient status) do not meet 3-day inpatient qualifying hospital stay, even though their care may be indistinguishable from inpatient care
- But *Alexander v. Becerra*, No. 3:11-cv-1703-MPS (D. Ct.), court held in March 2020 that certain hospital patients reclassified from inpatient to outpatient (observation) have a right to an administrative appeal of their reclassification

LEGISLATION AND OBSERVATION STATUS

- Count all the time in the hospital towards meeting 3-day inpatient requirement
- Amend Medicare statute to repeal the 3-day inpatient requirement

"IMPROVEMENT," BUT *JIMMO*

- Formerly, myth that Medicare would not cover care unless resident was "improving"
- Not true; never true under federal regulations (42 C.F.R. §409.32(c)
- *Jimmo v. Sebelius,* Civ. No. 5:11-cv-17 (D.Vt. Jan. 24, 2013), Settlement confirms maintenance nursing and therapy when professional nursing or therapy services are needed to maintain function, prevent or slow decline or deterioration

MEDICARE SKILLED NURSING FACILITY UPDATES

BIDEN ADMINISTRATION: COMPREHENSIVE NURSING HOME REFORM AGENDA

- President Biden announced nursing home reform agenda in State of the Union and White House Fact Sheet (Feb. 2022).
- Reiterated in State of the Union address and White House Fact Sheet (Feb. 2023)

21 IMPORTANT ISSUES; FOCUS TODAY ON 2 KEY ISSUES

- Nurse staffing ratios
- Ownership and finances, transparency and accountability

NURSE STAFFING

- No dispute: Decades of research consistently find that higher nurse staffing levels matter
  - Better resident outcomes
  - Fewer deficiencies
- Studies do not find residents do better with fewer nurses

WHY FEDERAL REQUIREMENTS MUST BE CHANGED

- Current requirements are insufficient to ensure residents receive good care
- Nursing Home Reform Law (1987) and regulations, 42 C.F.R. §483.35
  - 8 consecutive hours per day, registered nurse
  - 24 hours per day licensed nurses (RN/LPN)
  - "sufficient" nursing staff to meet residents' needs

NURSE STAFFING SHORTAGES ARE NOT A NEW PROBLEM

- Nursing Home Reform Law (1987) did not mandate staffing ratios, but required a study
  - Abt Associates, *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II Final Report* (2001)
    - 4.1 hours per resident per day, consisting of
      - .75 hours per resident per day (HRPD), RN
      - .55 HRPD, LPN
      - 2.8 HRPD, CNA

FACILITIES DO NOT MEET 2001 NURSE STAFFING STANDARD

- More than 95% of facilities could not meet the 4.1 standard in 2001
- Nursing home industry: more than 95% of facilities still cannot meet the 4.1 standard now, although resident acuity and care needs have increased in past 20+ years since research was completed
  - MACPAC said 72% of facilities did not meet 4.1 standard in 2019

WHAT BIDEN-HARRIS ADMINISTRATION SAYS ABOUT NURSE STAFFING (2022)

- Reforms needed to ensure "every nursing home provides a sufficient number of staff who are adequately trained to provide high-quality care"

STAFFING LEVELS THAT RESIDENTS NEED VS. STAFFING LEVELS CMS WILL REQUIRE

- Two-part CMS process
  - CMS determines residents' actual nursing needs
  - CMS will propose nurse staffing levels in notice and comment public rulemaking process

PART 1

- CMS determines residents' actual nursing needs, based on analysis of prior studies, public input (Request for Information, national call), literature review, National Academies' report, new Abt study, etc.
- No distinctions based on geography, payer source, unemployment rates, or other factors not based on actual resident need

PART 2

- CMS will propose nurse staffing levels in notice and comment public rulemaking process
  - Opportunity for advocates to comment on proposal and express concerns about temporary nurse aides; how paying workers a living wage could pay for itself; adequacy of reimbursement (related party transactions)

MANDATING STAFFING LEVELS

- Seems like a straightforward approach, used early on by states, but actually complex
- 2003 report looked at 8 of the 23 states that had changed their minimum nurse staffing ratios since 1997 (Arkansas, California, Delaware, Minnesota, Missouri, Ohio, Vermont, Wisconsin)

2003 REPORT ON MANDATING STAFFING LEVELS

- Found tremendous variation in definition of staffing ratio, measurement of ratio, adjustment for case mix, monitoring, enforcement, payment

DEFINITION OF STAFFING LEVEL/RATIO

- Hours per resident day? Staff-to-resident ratio? Both?
- Vary ratio with time of day?
- Adjust ratios by resident case mix?
- What is the period of time over which ratio is calculated? Week? 24-hour period?
- Separate ratios by type of nurse (RN, LPN)?
- Treatment of agency staff? Different from permanent staff?

MONITORING AND ENFORCING STAFFING LEVELS/RATIOS

- Most states looked at staffing only at annual survey
- Researchers found little information about states' actual enforcement of requirements for staffing ratios

- ARGUMENTS WE WILL LIKELY MAKE ABOUT STAFFING WHEN RATIOS ARE PROPOSED

BETTER STAFFING = BETTER CARE

- Strong relationship between nurse staffing levels and quality of care for residents
  - RFI, Comment letter (and Appendix listing 110 studies (1977-2022)), submitted by Charlene Harrington + 79 additional geriatric nursing experts (individuals and organizations), https://www.regulations.gov/comment/CMS-2022-0069-4108

BETTER RESIDENT OUTCOMES

- Harrington and others cite studies documenting functional improvement and reductions in incontinence, urinary tract infections, pain, pressure ulcers, weight loss, dehydration, use of antipsychotics, restraints, infections, falls, rehospitalizations, emergency department use, adverse outcomes, mortality rates

ONLY NURSING STAFF SHOULD BE COUNTED IN NURSE STAFFING RATIO

- Nursing staff
  - Only RNs can legally perform comprehensive resident assessments
  - Only nurse aides bathe, transfer, assist with activities of daily living
- Decades of research on nurse staffing levels focus on direct care staff, not other staff
  - No basis to include activities staff, social services staff, or others who provide critical, but non-nursing, services, in nurse staffing ratio

CERTIFIED NURSE AIDES

- Certified nurse aides: must take state-mandated training course (minimum, 75 hours) and pass state's competency test, in order to work more than 4 months as aide
  - Requirement for nurse aide training was a major change made by the 1987 Nursing Home Reform law

WAIVER OF NURSE AIDE TRAINING REQUIREMENTS DURING PANDEMIC

- March 2020, CMS granted blanket waivers to nursing homes nationwide at beginning of pandemic, including nurse aide training requirements
- American Health Care Association created free 8-hour on-line training program, which many states accepted as sufficient training during pandemic

CMS INTERPRETATION OF FEDERAL LAW

- CMS suggested to states that they could consider time "worked" as TNAs as if it were time in training
- Many states accepted the suggestion and allowed TNAs to take CNA test without having state-mandated training

CMS ENDED BLANKET WAIVER IN APRIL 2022

- CMS expressed concern that removing minimum standards for quality, including nurse aide training requirements, had led to resident care problems unrelated to COVID-19 (e.g., weight loss)

CMS GRANTED STATEWIDE AND FACILITY WAIVERS

- Nevertheless, in August 2022, CMS permitted statewide waivers and granted waivers to 17 states and 356 nursing facilities
- All waivers will end when public health emergency ends, May 11, 2023
  - Aides hired prior to end of PHE will have until Sep. 10, 2023 to complete training/competency evaluation program

TNAS REPLACING CNAS

- Nursing home industry claims loss of more than 200,000 workers and more than 300,000 people were trained as TNAs, many working as TNAs in nursing homes now

COUNTING TNAS UNDERMINES NURSE STAFFING RATIOS

- Only nurses (RNs, LPNs, LVNs) and certified nurse aides (CNAs) should be counted in nurse staffing ratios
- TNAs should be required to get full training
  - And 75-hour minimum standard for training should be increased

ADJUSTING STAFFING RATIOS FOR RESIDENT ACUITY

- Staffing ratios must also be adjusted upwards to account for resident acuity
  - Charlene Harrington, 5-step guide to adjusting staffing ratios above minimum, to reflect resident acuity and care needs

NURSE STAFFING IS NOT JUST NUMBERS

- Staff need
  - Adequate and sufficient training
  - Living wage, health (and other) benefits
  - Sufficient supplies, working equipment
  - Career ladders, opportunities to advance
  - To be treated respectfully

PAYING A LIVING WAGE AND BENEFITS

- LeadingAge report, *Making Care Work Pay*: paying a living wage could pay for itself just by improving care for residents

SEPARATE RATIOS NEEDED FOR DIFFERENT CATEGORIES OF NURSES

- Nurse staffing ratios should include separate ratios for RNs, LPNs/LVNs, CNAs
- Study of California and Ohio (2015) found, if one "nurse staffing" number, facilities replaced RNs with LPNs and CNAs
  - But only RNs, under state nurse practice laws, can perform comprehensive resident assessments

MAINTENANCE OF EFFORT FOR NON-NURSING STAFF

- Require facilities to maintain staffing levels in non-nursing areas
- Study of California and Ohio (2015) found facilities that increased nurse staffing levels decreased housekeeping, food service, activities staff

OWNERSHIP AND FINANCES: TRANSPARENCY AND ACCOUNTABILITY

WHAT BIDEN-HARRIS ADMINISTRATION SAYS (2022)

- "Recent research has found that resident outcomes are significantly worse at private-equity owned nursing homes."
- "Increase Accountability for Chain Owners of Substandard Facilities."
- "Create a Database of Nursing Home Owners and Operators."
- "Improve Transparency of Facility Ownership and Finances"

EXISTING REIMBURSEMENT MAY LARGELY BE SUFFICIENT

- It may be neither necessary nor appropriate to add reimbursement to pay for increasing staffing levels
  - Former Massachusetts state senator Richard T. Moore, "Are nursing homes really in tough shape? Full transparency needed before any more taxpayer bailouts" (*CommonWealth*, Nov. 26, 2022)

RELATED PARTY TRANSACTIONS

- Nursing facilities hide profits through related party transactions
- New York State Attorney General sued three nursing facilities
  - related party transactions
  - inflated rents to related parties

TRANSPARENCY

- Affordable Care Act, §6101, requires greater transparency of ownership information
- Proposed rule (reintroduced Feb. 15, 2023) to implement §6101
  - Comments due Apr. 14, 2023

ACCOUNTABILITY

- Requiring more accountability for how facilities spend public reimbursement
- Nursing Home Reform Law, 42 U.S.C. §1395i-3(f)(1): Secretary's duty and responsibility "to promote the effective and efficient use of public moneys"

DIRECT CARE RATIO

- Requiring facilities to spend designated portions of reimbursement on resident care, limiting profits
- NY's direct care ratio (70% on direct care, profits limited to 5%)
  - Facilities sued, claiming if law had been in effect in 2019, they would have had to return $824 million to state

CONCLUSION

- Administration's commitment creates important opportunity to improve nursing home care for residents and workers

The Center for Medicare Advocacy is a national, non-profit law organization that works to advance access to comprehensive Medicare coverage, health equity, and quality health care for older people and people with disabilities. Founded in 1986. Based in Washington, DC and CT, with additional attorneys in CA, MA, NJ.

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- Systemic change – Policy and Litigation
  - Based on our experience with the problems of real people
- Medicare coverage and appeals expertise
- Medicare/Medicaid Third Party Liability Projects

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