

# FRAMEWORK for NURSING HOME REFORM POST COVID-19

## Overview of Recommendations

California Advocates for Nursing Home Reform, Center for Medicare Advocacy, Justice in Aging,  
Long Term Care Community Coalition, Michigan Elder Justice Initiative, National Consumer  
Voice for Quality Long-Term Care  
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To address the longstanding problems in the long-term care system, as well as those exposed by the COVID-19 pandemic, we provide a baseline framework with recommendations in six critical areas that need reform: (1) staffing and workforce; (2) regulation and enforcement; (3) ownership and management standards, transparency, and accountability for quality; (4) government payment systems, financial transparency, and accountability; (5) structural changes in the long-term care delivery system; and (6) nursing home redesign and rebuilding.

### *Areas for Congressional Action*

#### **Staffing and Workforce**

- Ensure adequate staffing levels with requirements for minimum staffing standards, including Registered Nurse staffing 24-hours per day. (1.1)
- Provide living wages and benefits to recruit and retain nursing staff. (1.3)
- Require a full-time qualified Infection Preventionist in all facilities. (1.4)
- Increase required nurse aide training to a minimum of 150 hours and require enhanced training on infection control. (1.5)

#### **Regulation and Enforcement**

- Ensure that at least one family member or friend of the resident's choice be permitted to enter facilities and provide essential support for residents at all times during a public health emergency. (2.1.3)
- Increase the budget for survey and certification to permit increased survey frequency and more timely complaint investigations. (2.2.1)
- Amend Medicaid law to remove the provision that allows facilities to establish distinct part units. (2.2.4)
- Ban the use of mandatory pre-dispute arbitration agreements. (2.2.7)
- Request studies to identify and eliminate long-standing problems, including adverse events among Medicaid beneficiaries, efficacy of the Special Focus Facility program, and the characteristics of nursing homes most and least affected by COVID-19. (2.2.10)

#### **Ownership and Management Standards, Transparency, and Accountability for Quality**

- Improve ownership reporting to CMS to include all parent, management, and property companies and all related party entities. (3.1)

- Expand the authority of CMS to impose investigations and remedies across a corporation or organization when a pattern of poor care is identified. Require CMS to prepare an annual report on the quality of care in chains, assessing patterns in staffing, deficiencies, financial arrangements, and objective quality indicators. (3.2)
- Establish federal criteria for the purchase, change of ownership or management of any nursing home seeking Medicare and/or Medicaid certification. (3.3)
- Establish a centralized application unit for ownership and management evaluations and decisions including processes to work with state agencies, state attorneys general, and the Department of Justice. (3.5)

### **Government Payment Systems, Financial Transparency, and Accountability**

- Prohibit nursing homes from engaging in related-party transactions for staffing, supplies, and/or services. (4.1)
- Incorporate a medical loss ratio on the combined administrative costs and profits of each nursing home, its related parties, and parent companies of 10 percent of net revenues per year. (4.3)
- Give CMS full access to IRS filings of all the entities involved in the ownership and operations of facilities as part of CMS audit oversight. (4.4)

### **Structural Changes in the Long-Term Care Delivery System**

- Permanently reauthorize the Money Follows the Person program and give greater flexibility to design programs that will facilitate successful transitions. Provide greater support to individuals returning to the community. (5.1)
- Make HCBS a mandated service under Medicaid. (5.2)
- Establish certification standards and federal reporting requirements for residential care/assisted living facilities that accept Medicaid residents. (5.4)

### **Nursing Home Redesign and Rebuilding**

- Revise Medicare and Medicaid payment policies to incentivize private rooms and bathrooms for all residents. Require renovations and new construction to include private rooms and bathrooms as a condition of federal or state financing support. (6.1)

## ***Actions CMS Can Take Under Current Authority***

### **Staffing and Workforce**

- Require automatic and increasing penalties for repeated staffing deficiencies. (1.2)

### **Regulation and Enforcement**

- Ensure survey and complaint investigations, as well as enforcement actions continue during a public health emergency. (2.1.1)
- Require facilities to maintain a 1-month supply of PPE for staff and residents. (2.1.2)
- Ensure surveyors and managers do not have conflicts of interest and do not provide consultation and training to facilities. (2.2.1)

- Restore per day civil money penalties as the default. Revise the process for determining scope and severity. (2.2.2)
- Develop specific criteria for states to use qualified temporary managers. (2.2.3)
- Give high priority and require minimum pre-established penalties for inappropriate discharges. (2.2.5)
- Expand and improve Care Compare by flagging nursing homes out of compliance with staffing requirements, adding staff turnover and retention measures, using Medicare claims-based information for quality measures, and expanding ownership information available. (2.2.6)
- Reinstate the 2016 regulations banning mandatory pre-dispute arbitration agreements. (2.2.7)
- Collect and publicly report nursing home data, including data on admissions, discharges, occupancy, deaths, and resident characteristics. (2.2.8)
- Establish greater coordination, cooperation and training with related federal and state entities and stakeholders. (2.2.11)

### **Ownership and Management Standards, Transparency, and Accountability for Quality**

- Post to Care Compare facilities that are owned or operated by chains. (3.2)
- Establish an effective prior approval process and qualification criteria for changes in ownership or management. (3.4) Require that applications be reviewed and approved prior to any individual or entity being allowed to own or operate a facility. (3.6)

### **Government Payment Systems, Financial Transparency, and Accountability**

- Amend Medicare cost reporting requirements to require nursing homes to provide an annual consolidated financial report of income from all sources. (4.2)
- Conduct a new rate-setting study of the time and skill levels needed to carry out all nursing activities that meet federal requirements for person-centered care. (4.5)
- Permit value-based purchasing only for facilities that have established a track record of meeting minimum standards including no findings of harm or immediate jeopardy in 3-years and only to support those who have implemented practices that exceed minimum standards for the benefit of residents. (4.6)

### **Structural Changes in the Long-Term Care Delivery System**

- Require Medicaid coverage for HCBS for up to three months prior to the month of application. (5.3)

### **Nursing Home Redesign and Rebuilding**

- Coordinate with leading experts and stakeholders to develop new standards for the design, renovation, and/or replacement of existing nursing homes and residential care facilities. (6.3) Standards for nursing home building designs should emphasize designs that reduce the spread of infection and enhance quality of care and quality of life. (6.4)