

How Policymakers Can Promote Culture Change in Nursing Homes

Affordable Care Act: National Demonstration Project on Culture Change

The 2010 Affordable Care Act (“ACA”) required the Department of Health and Human Services (“DHHS”) to conduct a “National Demonstration Project on Culture Change” for the development of best practices in skilled nursing facilities and nursing facilities involved in the culture change movement. The project is to be conducted for up to three years and must include developing resources for facilities to locate and access funding to undertake culture change. Following the demonstration, DHHS must submit a report to Congress, including recommendations for such legislation and administrative action as the agency finds appropriate.⁴⁴

The National Demonstration Project was supposed to have started within a year of the ACA’s enactment in March 2010 but, as of March 2022, has yet to be implemented. Such a demonstration could potentially provide a valuable example of national leadership and support for culture change. In the wake of COVID-19 and with the Biden Administration’s announcement of its commitment to nursing home reform,⁴⁵ we believe that now may be the time for DHHS to conduct this project.

White House Plan to Improve Nursing Home Safety & Quality

As part of the Biden Administration’s plan to improve nursing home care, CMS is to explore ways to promote single-occupancy rooms in nursing homes. Shared rooms are currently the default option, and private rooms are generally only available at a higher cost to private pay residents.⁴⁶ The White House rightly views this as an opportunity to protect residents’ privacy and dignity, and to honor their preferences. Further, private rooms can reduce the risk of contracting infectious diseases, including COVID-19. CMS’ leadership is necessary to remove regulatory barriers that prevent reimbursement for private, single rooms under Medicare and Medicaid.⁴⁷ Such a measure would help to foster culture change for Medicaid recipients, who are least likely to afford private pay rooms in culture change nursing homes.

⁴⁴ 42 USC § 1395i-3, Section 6114.

⁴⁵ The White House Briefing Room, Statements and Releases: “FACT SHEET: Protecting Seniors by Improving Safety Quality of Care in the Nation’s Nursing Homes,” February 28, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/28/fact-sheet-protecting-seniors-and-people-with-disabilities-by-improving-safety-and-quality-of-care-in-the-nations-nursing-homes/>.

⁴⁶ Some states allow for families to supplement Medicaid to cover a private room. Medicaid and CHIP Payment and Access Commission, State Room and Board Affordability Policies for Residential Care Settings by State, 2016, <https://www.macpac.gov/subtopic/table-5-state-room-and-board-affordability-policies-for-residential-care-settings-by-state-2016/>.

⁴⁷ Charles P. Sabatino and Charlene Harrington, “Policy Change to Put the Home Back Into Nursing Homes,” American Bar Association, July 14, 2021, https://www.americanbar.org/groups/law_aging/publications/bifocal/vol-42/bifocal-vol--42-issue-6--july---august-2021-/policy-change-to-put-the-home-back-into-nursing-homes/.

U.S. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (HUD) administers the Federal Housing Administration loan guarantee program, which can be used for new construction, remodeling, and redesigning nursing homes.⁴⁸ Small modern nursing homes designed with rooms in clusters of 10-12 residents could improve the quality of life. Redesign can create residential, homelike environments, private rooms and bathrooms, therapeutic outdoor spaces, and other environmental and safety features to improve the environment and the safety of residents.⁴⁹

Nursing Home Civil Money Penalty (CMP) Funds

Fines, referred to as civil money penalties (CMPs), can be imposed on nursing homes when they fail to meet minimum standards. Under the federal rules, a portion of these funds can be returned to the states and used to fund projects or programs that improve nursing home resident care or quality of life in ways that exceed regulatory requirements. Over the years, numerous states have funded culture change projects through CMP funds.⁵⁰ For example, the Michigan Department of Health and Human Services is currently funding a three-year program which sponsors the Eden Alternative for culture change in six Michigan nursing homes. The program supports training and coaching interventions, and the homes participate in a quality improvement program and independent evaluation conducted by the non-profit Altarum.⁵¹

CMP funds also supported the Pioneer Network's update to its "Artifacts of Culture Change," a tool for nursing homes to assess their culture change practices and provide a roadmap for additional change in workplace practices and policies, increased resident autonomy, and creating a real home for residents.⁵²

Though CMPs are a potential funding source for culture change projects, such funding should only support activities that clearly go beyond regulatory requirements. Furthermore, from a

⁴⁸ Federal Housing Administration, "FHA Insurance, Section 232, And LEAN,"

https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/fha_insurance.

⁴⁹ Sabatino and Harrington, "Policy Change." With a rule change to permit residential care financing, the HUD Section 202 Supportive Housing for the Elderly Program may also be useful. This program provides interest-free capital advances to nonprofit sponsors to finance the development of supportive housing for the elderly and may be adaptable to finance small house nursing homes.

⁵⁰ For culture change projects funded in the years 2016 through 2020, see CMS, Civil Money Penalty Reinvestment Program, State CMP Reinvestment Projects Funded by Calendar Year, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/LTC-CMP-Reinvestment>. In 2019 and 2020, culture change projects have been funded in Alaska, Georgia, Kentucky, Louisiana, Maryland, Michigan, Mississippi, New Mexico, North Carolina, Tennessee, and Texas.

⁵¹ Altarum, "Perspective: The Case for Person-Centered Residential Long-Term Care in 2021: Measure It, Move It Forward" (November 8, 2021), <https://altarum.org/news/case-person-centered-residential-long-term-care-2021-measure-it-move-it-forward>.

⁵² CMS, Civil Money Penalty Reinvestment Program, State CMP Reinvestment Projects Funded in CY 2019 & CY 2020, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/LTC-CMP-Reinvestment>.

consumer perspective, the use of CMPs to fund a culture change project should be predicated on:

1. The involvement of residents, families, and direct care staff in planning and implementation of any proposed project;
2. The development of a practical and practicable plan for continuing the activities beyond the funding term; and
3. If given directly to a nursing home operator, an assessment of the operator's history to ensure that it is providing sufficient staffing and resources to its facilities and does not have a history of serious regulatory violations.

Note: Medicaid "Pay-for-Performance" (P4P) programs have been viewed as a potential avenue for supporting culture change projects. However, P4P and other so-called "value-based purchasing" programs have had mixed results in promoting quality of care.⁵³ Thus, we do not recommend using such a strategy to promote meaningful culture change.

⁵³ See, for example, Rachel M. Werner, R. Tamara Konetzka, and Daniel Polsky, "The Effect of Pay-for-Performance in Nursing Homes: Evidence from State Medicaid Programs," *Health Services Research* 48, no. 4 (August 2013): 1393–1414, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3657568/>.