

The Nursing Home Improvement and Accountability Act of 2021
Section-by-Section

Section 1. Short Title. The short title for this bill is the Nursing Home Improvement and Accountability Act of 2021.

TITLE I—TRANSPARENCY AND ACCOUNTABILITY

Section 101. Improving the Accuracy and Reliability of Certain Skilled Nursing Facility Data. Section 101 reduces skilled nursing facility (SNF) payments by two percentage points beginning in fiscal year (FY) 2025 for SNFs that submit inaccurate data through the Minimum Data Set (MDS) or quality measures included in the SNF Value-Based Purchasing Program. This section also applies the Centers for Medicare & Medicaid Services' (CMS) current data validation process to additional MDS quality measures; the provision transfers \$50 million from the Hospital Insurance (HI) Trust Fund to the CMS Program Management Account for FY 2026 through FY 2035 for purposes of carrying out the data validation tasks. Finally, the section provides the Secretary of the Department of Health and Human Services (HHS) flexibility to collect additional SNF quality measures beyond those already required under the Improving Medicare Post-Acute Care Transformation (IMPACT) Act of 2014.

Section 102. Ensuring Accurate Information on Cost Reports. Section 102 requires the Secretary of HHS, beginning in calendar year 2022, to audit a representative sample of the Medicare cost reports SNFs are required to submit. The section transfers \$250 million, available until expended, from the HI Trust Fund to the CMS Program Management Account for purposes of carrying out this new requirement. Additionally, it requires the Inspector General of HHS to conduct a review and analysis of the relationship between the cost report functional accounts and nursing home quality within two years after the Secretary conducts the first cost report audit and every two years thereafter. The provision transfers \$25 million to the Inspector General in FY 2023, for such purposes.

Section 103. Requiring a Surety Bond for Skilled Nursing Facilities and Nursing Facilities. Section 103 requires SNFs and nursing facilities (NFs) to provide the Secretary of HHS with a surety bond of not less than \$500,000, unless the Secretary waives the requirement due to a facility's providing a comparable surety bond under state law.

Section 104. Survey Improvements. Section 104 requires the Secretary of HHS to review and identify plans to improve, as appropriate, the extent to which existing surveys and enforcement processes improve compliance with the SNF and NF requirements of participation. It also requires the Secretary to look at a number of other factors in the review, including the ability of state survey agencies to identify infection control and emergency preparedness deficiencies; and sufficiently hire, train, and retain individuals to conduct surveys. This section requires the Secretary to submit a Report to Congress on the findings from the review and provides \$570 million to carry out the new requirements and allocate funding to states for improvements.

Section 105. Prohibiting Pre-Dispute Arbitration Agreements. Section 105 prohibits SNFs, NFs, and providers of home and community-based services from entering into pre-dispute binding arbitration agreements with residents or individuals receiving services.

Section 106. Improvements to the Special Focus Facility Program. Section 106 requires that not later than October 1, 2022, the Secretary of HHS ensures that no less than five percent of SNFs or NFs participate in Medicare and Medicaid’s Special Focus Facility Programs. It also establishes a compliance assistance program to provide on-site consultation and educational programming to SNFs and NFs. The section appropriates \$14.8 million annually for implementation of the provision.

TITLE II—STAFFING IMPROVEMENTS

Section 201. Nurse Staffing Requirements. Section 201 requires the Secretary of HHS, not later than three years after the date of enactment and no less than once every five years thereafter, to conduct a study and submit a Report to Congress on the appropriateness of establishing minimum staff-to-resident ratios in SNFs and NFs. Such report must include recommendations on minimum staffing levels for Registered Nurses (RNs), Licensed Practical Nurses (LPNs) or Licensed Vocational Nurses (LVNs), and Certified Nursing Assistants (CNAs). This section transfers \$50 million (available until expended) to the CMS Program Management Account for purposes of carrying out the studies, beginning in FY 2022. Finally, this section requires the Secretary, through rulemaking, to apply the staffing minimums recommended in the Report to Congress to the Medicare and Medicaid requirements of participation, subject to limited waivers, within two years of each report (updated periodically to reflect any changes in recommendations from the latest report).

Section 202. Improving Nursing Home Compare Staffing Data. Section 202 requires the Secretary of HHS to exclude the hours licensed nurse staff spend on administrative duties from the staffing information provided on the *Care Compare* website. The section also requires the Secretary to display weekend staff hours, in addition to weekday staff hours, on the *Care Compare* website.

Section 203. Ensuring the Submission of Accurate Staffing Data. Section 203 gives the Secretary of HHS the authority to issue a civil monetary penalty, not to exceed \$10,000, to a SNF or NF that submits inaccurate direct care staffing information through the Payroll Based Journal staffing database.

Section 204. Requiring 24-Hour Use of Registered Professional Nurses. Section 204 requires that, beginning on or after October 1, 2023, SNFs and NFs use the services of an RN 24 hours a day, seven days a week, subject to existing statutory waivers relating to RN services.

Section. 205. Provision of Infection Control Services. Section 205 requires the Secretary of HHS to establish a requirement for the minimum number of hours per week that SNFs and NFs must provide, directly or under arrangements with others, for the provision of infection control services overseen by an infection preventionist. Such a minimum must not be less than 40 hours

per week. The Secretary may, on an individual facility basis, grant a waiver (subject to annual review) for certain facilities.

Section 206. Enhanced Funding to Support Staffing and Quality Care in Nursing Facilities.

Section 206 provides states with a temporary enhanced federal Medicaid match to fund certain workforce and care improvements. Beginning the first full calendar quarter one year after enactment, states may receive an increase to their Federal Medical Assistance Percentages (FMAP) for nursing facility services over six years to expand and improve nursing facility staffing, including by improving wages and benefits. Funds must also be used to support and improve resident care, including by expanding person-centered models of care. As a condition of these federal dollars, states must regularly update Medicaid payment rates for nursing facility services through a transparent process involving meaningful input from stakeholders, pass a portion of rate increases through to worker wages, and adopt new training resources and opportunities for staff. States must also improve and streamline options counseling for individuals seeking care. Participating states must report certain information to CMS, including wages and benefits provided to nursing facility staff. States may receive a three-percentage point increase to their federal match for four years, two-point increase for one year, and a one-point increase in the final year.

**TITLE III—BUILDING MODIFICATION AND STAFF INVESTMENT
DEMONSTRATION PROGRAM**

Section 301. Establishing a Skilled Nursing Facility Building Modification and Staff Investment Demonstration Program. Section 301 requires the Secretary of HHS, no later than January 1, 2023, to establish a demonstration program to test the impact of providing select SNFs and NFs (if the Secretary enters into agreements with states) additional funding to modify the built environment of pursue resident-centered care approaches. The demonstration program requires the Secretary to develop an application (no later than July 1, 2023) through which eligible SNFs and NFs can apply to participate in the program and specifies standards the facilities must continuously meet to receive the additional funding under the program (e.g., facilities must have between five and 14 residents, provide for private rooms, maintain accessible outdoor space for residents, and have standing resident and family councils). Among other factors, the Secretary shall give preference to facilities located in medically underserved areas, that deliver services to a majority of long-stay patients receiving services under Medicaid, and provide additional staff training above the minimum federal standards. This section appropriates \$1.3 billion for the program and transfers \$30 million from the HI Trust Fund to the CMS Program Management Account for the purposes of administering the program, including evaluations of program outcomes.