



# Biden Proposes Nursing Home Reforms During State of The Union Address

Insights

3.02.22

If you blinked, you may have missed it, but President Biden announced a plan in last night's State of the Union address to “set higher standards for nursing homes” to “make sure your loved ones get the care they deserve and expect” – a call that should put all nursing home employers on high alert for heightened scrutiny that is sure to follow. Before the speech, the White House issued a detailed statement describing new steps that the Centers for Medicare & Medicaid Services (CMS) will take to improve nursing homes' quality and safety, to protect residents and healthcare workers, and to “crack down on bad actors.” How should affected employers react to this proposal?

## Nursing Homes Have Been in the Recent Spotlight

Nursing homes have frequently been in the headlines over the last two years. It is well known that older adults face a higher risk of severe illness from COVID-19. The vast majority of the nation's 1.4 million nursing home occupants are in this highest risk level. And the familiar communal settings often found in nursing homes increases the risk of infection among residents.

The federal government began taking action aimed at nursing homes early in the pandemic. For example, in the summer of 2020, OSHA began citing nursing homes for failures related to use of the N95 respirator mask. Several states that began to ease COVID-based restrictions at various points expressed reluctance to do so in nursing home settings. And, last August, CMS announced a vaccine mandate for healthcare organizations receiving federal funds through Medicare and Medicaid – which includes most nursing homes. And as you well know, the Supreme Court recently allowed that mandate to go into effect nationwide.

## 4 Key Initiatives Aimed at Nursing Homes

President Biden's plan includes four new initiatives:

- CMS will propose a **minimum staffing requirement** for nursing homes. The plan remains short on specifics, however, instead promising that CMS will conduct research “to determine the level and type of staffing needed to ensure safe and quality care and will issue proposed rules within one year.” The plan states that nursing homes that fail to meet this eventual standard will be “held accountable.”

- CMS will “explore” ways to **reduce room overcrowding** for nursing home residents, specifically phasing out rooms with three or more occupants and promote single-occupancy rooms. The primary goal is to reduce the spread of infectious diseases like COVID-19 among residents.
- CMS will **strengthen the Skilled Nursing Facility (“SNF”) Value-Based Purchasing (“VBP”) Program**, which Congress created in the Protecting Access to Medicare Act of 2014. A SNF is an in-patient rehabilitation and medical treatment center staffed with trained medical professionals, including registered nurses and physical therapists. The VBP Program provides financial incentives to SNFs based on the quality of care they provide to Medicare beneficiaries, as measured by performance on a percentage of hospital readmissions. The proposal would add “staffing adequacy, the resident experience, as well as how well facilities retain staff” as relevant considerations in awarding these incentives.
- CMS will “launch a new effort” to **reinforce safeguards against unnecessary medications and treatments**. Here, the statement highlights what it calls an “overprescription” of antipsychotic drugs and aims to continue the recent downward trend of their use in nursing homes.

In addition to these proposed changes, the statement discusses at length plans to enhance accountability and oversight for nursing homes. This includes additional funds for inspections, expanded financial penalties and other enforcement tools, and increased transparency of facility ownership.

## What You Should Know

When can affected employers expect these proposed changes to take effect? It is currently too early to tell. Some of them can be implemented at the administrative level by CMS. But the more ambitious proposals – like increasing the maximum penalty on poor-performing facilities from \$21,000 to \$1 million – will require action from Congress. Given the Democrats’ slim majority in the Senate and the impending midterm elections this fall, those changes are not guaranteed.

It is critical to note that like acute care hospitals and many other pillars of the healthcare industry, nursing homes are currently experiencing severe staffing shortages. Several factors, including compensation pressures, budgetary constraints, pandemic-related employee burnout, and an aging nursing population are all contributing to this crisis. Nursing homes and most other healthcare providers will have to continue to wrestle with these challenges, including the CMS vaccination mandate, as administrative oversight evolves and tightens.

## Conclusion

We will monitor the situation and provide updates as developments occur, so make sure you are subscribed to Fisher Phillips’ Insight system to get the most up-to-date information. If you have questions about how to ensure that your policies comply with workplace and other applicable laws, contact your Fisher Phillips attorney or any attorney in our Healthcare Industry Team.

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