



## Ensuring Residents' Safety in Nursing Facilities

BY KELSIE GEORGE

Approximately [1.25 million Americans](#) reside in nursing facilities. State legislators continue to seek policy options to ensure that nursing facility residents receive quality care by adequate and trained personnel in a safe and comfortable environment, including and especially during the global pandemic.

Medicaid was the dominant payer for nursing facility care in 2019, paying for the care of [775,201 residents](#). Medicare provided payment for 149,111 residents and private or other sources provided payment for 321,767 residents.

Because of the age and underlying health conditions among nursing home residents, they are particularly susceptible to severe illness or death caused by COVID-19. As of October 2020, [long-term care facilities](#) accounted for 40% of all COVID-19-related deaths. These factors have led state and federal governments to implement nursing

facility oversight measures to control the spread of COVID-19.

### Federal Action

The [Nursing Home Reform Act](#) of 1987 established the first federal oversight and enforcement mechanisms, managed by the Centers for Medicare & Medicaid Services (CMS), for nursing facility quality of care deficiencies. Nursing facilities that receive [Medicare or Medicaid funding](#) are certified as either Medicare skilled nursing facilities (SNF) and/or Medicaid nursing facilities. Nursing facilities may be a stand-alone facility or a physically distinguishable and fiscally separate part of another facility, such as a distinct part of a rehabilitation center or a separate wing or section of a hospital. Facilities must comply with requirements established by the U.S. [Department of Health and Human Services](#) to receive payment from Medicare or Medicaid programs. These requirements include maintaining residents' rights, providing quality

### Did You Know?

- Approximately [1.25 million Americans](#) live in [15,061 nursing facilities](#) across the United States.
- [Medicaid](#) is the primary payer for 62% of nursing facility residents, while Medicare accounts for 12% of nursing facility residents.
- While nursing facility residents account for [less than half a percent](#) of the U.S. population, they make up [41% of all COVID-19-related deaths](#) in the country.

care and ensuring a safe physical environment (e.g., fire safety).

The Affordable Care Act in 2010 [introduced reforms](#) addressing transparency in facility ownership, management and financing structures, [such as](#) disclosing whether nursing facilities are owned by private equity investment firms or multifacility chains. Opponents say these complicated structures could [limit the ability](#) of regulators to hold nursing facilities responsible for resident care and accountability to taxpayers. [Proponents say](#) they are important to the economic sustainability of the nursing facility industry.

Additional [regulations](#) by CMS in 2016 required facilities to establish an infection prevention and control program to assess resources needed for day-to-day and emergency operations, prepare a written emergency preparedness plan and emphasize person-centered care. [Pending changes](#) to the regulations include removing the requirement that an infection preventionist work at the facility, increasing providers' flexibility and reducing regulatory burdens.

In response to the rise in COVID-19 cases and deaths in nursing facilities, [CMS released guidance](#) for facilities responding to the pandemic. This included suspending state survey activities not related to infection control or immediate jeopardy, advising facilities to screen visitors and staff, requiring the restriction of visitors, and ensuring the use of personal protective equipment to the extent available. In August 2020, [CMS reported](#) imposing more than \$15 million in civil penalties to more than 3,400 nursing homes for noncompliance with infection control requirements and failing to report COVID-19 data during the public health emergency.

## State Action

States are responsible for surveying nursing facilities for deficiencies in quality of care, and in light of the pandemic, many have passed legislation to expand oversight to protect residents. This responsibility may fall to the Medicaid agency, health department or other state agency. The three main oversight mechanisms at the state level for nursing facilities include licensure, surveys of compliance and fiscal oversight.

**Licensure.** Nursing facilities must be licensed by a state board or agency to ensure that health services are safe, cost-effective, and compliant with state and federal laws. Some states require nursing facilities to seek a health planning agency's approval for new health care services based on a set of criteria and community need through [Certificate of Need \(CON\) programs](#). CON programs are state

regulatory mechanisms for establishing or expanding health care facilities and services in a given area. [Florida](#) requires skilled nursing facilities to obtain CON approval for various health care projects, including adding community nursing home beds or establishing a new nursing facility.

Some states also regulate ownership changes in nursing facilities. [Wisconsin](#) requires the current owner to notify the division of quality assurance within 35 days of a sale. The new owner must obtain a separate license through the department of health services to operate the facility.

**Surveys of Compliance.** States must complete a [survey of compliance](#) of each nursing facility periodically to assess the quality of services provided and investigate complaints, including allegations of noncompliance with state or federal requirements. Once completed, the state receives [75% in matching funds](#) through Medicaid as well as [discretionary appropriations](#) through Medicare. In addition to penalties imposed by CMS for violating federal requirements, states can also impose penalties for violating state requirements.

The [Missouri](#) Department of Health and Senior Services conducts surveys for state and federal compliance annually. Noncompliance with state requirements are classified as Class I, II or III violations, with Class I being the most severe. For any deficiencies, facilities are required to submit a "plan of correction" and up to two follow-up surveys are conducted to ensure corrections are made. In addition to periodic surveys, [New York](#) established an independent quality monitor to supervise compliance with written and mandatory corrective plans.

**Fiscal Oversight.** Some states require nursing facilities to pay additional fees to supplement payments to facilities serving Medicaid, Medicare and uninsured patients. In 2004, [California](#) began assessing quality assurance fees for skilled nursing facilities and [recently enacted](#) enforcement mechanisms to collect the fees. After losing 8% of nursing home residents to COVID-19, [Rhode Island](#) established a legislative commission to study the quality of care and financial condition of the state's nursing facilities.

[More than half](#) of nursing facilities between 2009 and 2016 were multifacility organizations with two or more facilities, sometimes in different states. Aiming to increase transparency in ownership, some states looked toward stricter vetting of new nursing home facility operators. Kansas passed [SB 15](#) to set stricter standards for vetting SNF owners. Ohio passed [HB 166](#) requiring SNF operators to submit information about their financial status and where they have operated in the past.

## Additional Resources

- [NCSL's "Long-Term Services and Supports and COVID-19" Policy Snapshot](#)
- [Key Questions About Nursing Home Regulation and Oversight in the Wake of COVID-19, Kaiser Family Foundation](#)
- ["Shoring Up the Long-Term Care Workforce," NCSL LegisBrief](#)

## NCSL Contact

**Samantha Scotti**  
303-856-1440