

Prognosis Is Mixed For COVID-19 Post-Acute Care Staffing

By **Janet Feldkamp** (December 16, 2021)

The COVID-19 pandemic has taken a toll on health care settings across the U.S., but skilled nursing care facilities, assisted living facilities and senior living environments have been dramatically impacted.

Now, some 20 months after the initial lockdowns, the post-acute care industry is grappling not only with the fallout of these months but also with the question of where to go from here.



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The Sobering Realities

Multiple, Lasting Outbreaks

A U.S. Government Accountability Office report reviewing COVID-19 outbreak data in more than 13,000 nursing homes certified for Medicare and Medicaid and overseen by the Centers for Medicare and Medicaid Services found that 94% of the homes had an average of three outbreaks from May 2020 through January of this year. COVID-19 outbreaks persisted for five or more weeks in approximately 85% of the nursing homes studied.[1]

Devastating Effects on Residents

Another governmental report issued by the U.S. Department of Health and Human Services, Office of Inspector General, in June reported on COVID-19's devastating impact on Medicare beneficiaries in nursing homes during 2020.[2]

According to the report, two in five nursing home Medicare beneficiaries were diagnosed with COVID-19 or suspected COVID-19 during 2020. In comparing deaths per day in April 2019 and April 2020, almost 1,000 more beneficiaries died per day during April 2020.

Black, Hispanic and Asian beneficiaries had a higher impact rate than white beneficiaries. The mortality rate increased in all age ranges in nursing homes between 2019 and 2020, with the most significant increase of 7% in residents 85 years and older.

Troubling Uncertainty for Facilities

In addition to the physical and mental toll on residents, staff, families and operators, financial resources for facility owners and operators have been significantly affected in 2020 and 2021.

A September survey by the American Health Care Association and National Center for Assisted Living reports that 78% of the nursing facilities and 61% of the assisted living communities surveyed are worried about financial survival due to crushing staffing shortages, dramatically increasing wages, reduced census figures, and higher operating costs due to equipment and supplies needed to fight the pandemic.

Are laws and regulations poised to help or hinder post-acute care recovery? We're seeing both.

On the Positive Side for Facilities

Increased Scrutiny of Temporary Staffing Agencies

Most nursing facilities have used temporary workers supplied by personnel agencies throughout the pandemic to ease staffing shortages. But at what cost?

These agencies have lured away — some say poached — staff from working directly for facilities with the promise of higher wages and more control over their schedules. In turn, the agencies charge care facilities exorbitant rates that many consider to be opportunistic profiteering and price-gouging during an emergency.

Moreover, these agencies are not regulated at the federal level, prompting some states to take matters into their own hands.

Currently, only two states, Massachusetts and Minnesota, have enacted pricing limits on staffing agencies. But industry organizations, including the New York State Health Care Facilities Association and the Pennsylvania Health Care Association, have pushed hard to enact similar limits in their states. In Pennsylvania, lawmakers are poised to introduce legislation to both regulate temporary staffing agencies and set maximum pay rates for agency health care workers.

At the federal level, Washington D.C.-based aging advocacy group LeadingAge requested Federal Trade Commission intervention in the matter of price gouging and unfair competition in an Oct. 8 letter to FTC chair Lina Khan.

On the Cautionary Side for Facilities

Increasing Oversight by CMS

In its Nov. 12 memorandum the CMS announced it is "increasing oversight in nursing homes to allow a more focused review of quality-of-life and quality-of-care concerns." [3]

Included in its investigatory notes for surveyors, CMS noted, in particular, that nurse competency may merit further investigation during a survey, noting:

CMS is alerting State Agencies (SA) to pay additional attention to compliance with the requirements for nursing services at 42 CFR § 483.35, which states, 'The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(3).'

Moreover, state and federal agencies such as state Medicaid fraud control units, HHS Office of Inspector General and the U.S. Department of Justice, just to name a few, focus on poor or negative outcomes that may potentially have resulted from reduced or inadequate staffing that does not support safe and adequate care delivery.

The OIG's and state Medicaid fraud control units' website postings highlight a number of settled matters that relate to allegations of inadequate and unsafe staffing levels.

Given that adequate staffing remains an ongoing problem, the increased scrutiny means

facilities should assure adequate action plans for hiring and retaining adequately qualified staff. Staff need to be well-trained and competent to safely perform the assigned duties.

Moving Forward

Lifting of CMS Visitation Restrictions

In a Nov. 12 revision to its Sept. 17, 2020, memorandum, CMS directs facilities to allow visitors while also practicing COVID-19 infection prevention protocols.[4]

Specifically, the memorandum states:

Facilities must allow indoor visitation at all times and for all residents as permitted under the regulations. While previously acceptable during the [public health emergency], facilities can no longer limit the frequency and length of visits for residents, the number of visitors, or require advance scheduling of visits.

Being able to see family and friends is good for the mental health and well-being of residents, which naturally is good for staff as well. Providers must be diligent in screening visitors and providing information on safe visitation.

Telemedicine Reimbursement Increases Care Options

Telemedicine use dramatically increased during the pandemic, and reimbursement by Medicare and other payor sources has been approved.

CMS issued the 2022 physician fee schedule, or PFS, final rule on Nov. 2, which included promoting the greater use of telecommunications, including telehealth. Telehealth use for behavioral medicine was also expanded in the 2022 PFS final rule, which will allow for increased behavioral health access for post-acute care residents as well as patients residing in the community.

Telemedicine has provided many nursing home providers, particularly in rural areas and those without access to specialty physicians, with increased access to additional physicians without the transportation challenges. The ability to schedule a specialty telemedicine consult for a resident can lead to prompt identification and treatment that can enhance quality of life and quality of care — without the need for additional staff.

Federal Help or Hindrance

The Build Back Better Act, currently in the U.S. Senate, includes two provisions of concern for facilities.[5] One calls for HHS to study minimum staffing levels and then mandate staffing at those levels.

Another triples the amount of time a skilled nursing facility would be federally required to have a registered nurse present, from eight hours to 24 hours.

According to the American Health Care Association, it would cost skilled nursing facilities \$12 billion to hire the necessary additional workers to fulfill these mandates,[6] forcing thousands of facilities to close altogether and deepening the crisis in a long-term care industry already weakened by the loss of 221,000 jobs.[7]

However well-intentioned these efforts may be in an effort to improve quality of care,

mandating staffing levels without offering additional funding assistance to comply only increases the burden on beleaguered facilities. Their ability to maintain a stable, qualified and competent workforce will continue to be a daunting challenge.

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[1] GAO-21-367.

[2] OEI-02-20-00490.

[3] QSO-22-02-ALL.

[4] QSO-20-39-NH.

[5] H.R. 5376, SEC. 134304. Nurse Staffing Requirements.

[6] <https://www.mcknights.com/news/staffing-proposals-in-build-back-better-act-would-cost-providers-12-billion/>.

[7] <https://www.mcknights.com/news/confirmed-ltc-facing-worst-job-losses-among-all-healthcare-providers/>.