

Congress of the United States

Washington, DC 20515

May 1, 2024

The Honorable Robert Aderholt
Chair
Subcommittee on Labor, HHS, Education
House Committee on Appropriations
Washington, DC 20515

The Honorable Rosa DeLauro
Ranking Member
Subcommittee on Labor, HHS, Education
House Committee on Appropriations
Washington, DC 20515

Dear Chair Aderholt and Ranking Member DeLauro:

We are writing to ask that in the Fiscal Year 2025 Appropriations bill, the Committee include language to request detailed data from the Centers for Medicare and Medicaid Services (CMS) regarding the usage of skilled nursing facility (SNF) services during the COVID-19 Public Health Emergency (PHE).

Current Medicare policy requires three days of an inpatient stay in an acute care hospital to trigger coverage for follow-up care provided by a SNF. However, many patients are hospitalized under observation, which is considered an outpatient service despite almost always being provided in the hospital, with the same care teams, and in the same beds as inpatients. These observation days do not count toward the 3-day stay requirement for Medicare SNF benefits. As longstanding champions of the *Improving Access to Medicare Coverage Act*, we aim to close this outdated hindrance to Medicare beneficiaries receiving medically-recommended SNF coverage after hospitalization. Our legislation would count days spent under observation towards the three days required for SNF coverage.

Prior to the COVID-19 Public Health Emergency (PHE), Medicare Shared Savings Program Accountable Care Organizations (ACOs) under the Center for Medicare and Medicaid Innovation (CMMI) were allowed to elect a waiver of the 3-day stay rule. Data from ACOs between 2014 and 2019 shows waiver stays made up a very small proportion (3-5%) of ACO SNF stays and that most of those waiver stays were direct-from-home admissions, as opposed to those associated with a short 1-2 day hospitalization. It is important to note that beneficiaries using the waiver had shorter SNF stays, were more likely to discharge to home after their SNF stay, and had the same or better outcomes as compared to beneficiaries having non-waivered SNF stays.¹ Additionally, during the PHE, CMS waived the 3-day stay rule for SNF coverage to better facilitate patient transitions out of hospitals and maintain hospital bed capacity. Recent research has compared SNF utilization before and during the PHE, and SNF waiver stays with any acute care use accounted for a small amount (14%) of SNF stays during the PHE.² These data points show that waiver stays associated with a hospitalization account for a small proportion of total Medicare SNF stays. Both data points are also broader than the beneficiary pool that would be impacted by our proposed legislation as they captured all SNF stays with hospitalizations of fewer than three days while the *Improving Access to Medicare Coverage Act* would maintain a 3-day stay requirement.

¹ Center for Medicare & Medicaid Innovation. Skilled Nursing Facility 3-day Waiver: Analysis of Use in ACOs 2014 to 2019. <https://www.cms.gov/priorities/innovation/data-and-reports/2023/snf-waiver-summary>

² Ulyte A, Waken RJ, Epstein AM, et al. Medicare Skilled Nursing Facility Use and Spending Before and After Introduction of the Public Health Emergency Waiver During the COVID-19 Pandemic. *JAMA Intern Med.* 2023;183(7):637-645. doi:10.1001/jamainternmed.2023.0770

To gain a better understanding of the potential impact of our legislation, we are seeking an analysis of SNF utilization during the COVID-19 PHE time period. To aid in this effort, we ask that the Committee include the following report language:

The Committee recognizes the impact of the current 3-day-stay requirement on Medicare beneficiaries in need of SNF coverage but without a qualifying stay. During the COVID-19 pandemic, this requirement was waived. We ask that within 6 months, CMS report to Congress the following data to better understand the impact of the requirement on SNF utilization and Medicare spending:

1. *The total number of stays and total amount of Medicare FFS spending for covered SNF stays;*
2. *The total number of stays and total amount of Medicare FFS spending for covered SNF stays preceded by a hospitalization with less than three consecutive inpatient hospital midnights; and*
3. *The total number of stays and total amount of Medicare FFS spending for covered SNF stays for beneficiaries who meet the following waiver criteria:*
 - *Are covered under Medicare fee-for-service (FFS);*
 - *Are not attributed to an ACO; and*
 - *Received covered SNF care within 30 days of a hospitalization of three or more consecutive midnights, with the following scenarios reported separately:*
 - a. *a combination of outpatient observation and less than 3 consecutive inpatient midnights;*
or
 - b. *exclusively outpatient observation days.*
4. *For each of the above categories, the number or percentage of stays by patients who resided in an SNF prior to the hospital or observation stay that preceded a covered SNF stay.*

We look forward to working with you on this important issue for Medicare beneficiaries. Please contact Maria Costigan at maria.costigan@mail.house.gov or Brian Arata at brian.arata@mail.house.gov with any questions or needed follow-up.

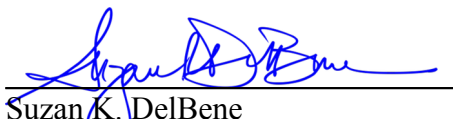
Sincerely,



Joe Courtney
Member of Congress



Glenn "GT" Thompson
Member of Congress



Suzan K. DelBene
Member of Congress