



June 5, 2023

Chiquita Brooks-LaSure  
Administrator  
Center for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Ave, SW  
Washington, DC 20201

Subject: **(CMS 1779-P)**: Medicare Program; FY 2024 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) Proposed Rule

Submitted Electronically via: <http://www.regulations.gov>

Dear Administrator Brooks-LaSure,

Trinity Health Senior Communities (THSC), a National Health Ministry of Trinity Health, is a faith-based organization that serves more than 600 residents in its owned skilled nursing communities across five states: Connecticut, Indiana, Iowa, Michigan, and North Carolina. These residents receive long term care, memory care, rehabilitative therapy, and other skilled services from colleagues whose focus is clinical excellence and compassionate care. Trinity Health Senior Communities collaborates under management contracts with ten additional older adult communities in 10 states to serve another 655 residents in need of skilled nursing services. We appreciate the opportunity to comment on CMS-1779-P, the FY 2024 Skilled Nursing Facility (SNF) Prospective Payment System (PPS) proposed rule. Our comments and recommendations reflect a strong interest in public policies that support better health, better care, and lower costs to ensure affordable, high quality, and people-centered care for all.

Trinity Health is one of the largest not-for-profit, Catholic health care systems in the nation. It is a family of 123,000 colleagues and more than 26,000 physicians and clinicians caring for diverse communities across 26 states. Nationally recognized for care and experience, the Trinity Health system includes 88 hospitals, 135 continuing care locations, the second largest PACE program in the country, 136 urgent care locations and many other health and well-being services. Trinity Health has 15 medical groups with 1,324 primary care providers and 4,193 specialty care providers. Based in Livonia, Michigan, its annual operating revenue is \$21.5 billion with \$1.4 billion returned to its communities in the form of charity care and other community benefit programs.

**This comment letter is also a plea for help. Nursing homes are still reeling from the COVID19 pandemic, and struggling with diminishing occupancy, a workforce staffing crisis and skyrocketing inflationary costs for utilities, supplies, and medications. We request that CMS immediately increase Medicare payments to reflect the true cost of delivering care, while halting all action that creates additional instability.**

**Skilled Nursing Facility Market Basket Update:** CMS proposes a 3.7% market basket update to the skilled nursing facility (SNF) prospective payment system (PPS) for fiscal year (FY) 2024. This 3.7% update is the result of a 2.7% market basket percentage with a 3.6% increase based on forecast error, less a 0.2% productivity adjustment. In addition, the Market Basket update includes a negative 2.3% decrease to account for the second half of the PDPM parity adjustment recalibration. THSC believes the parity adjustment should be postponed, or at minimum spread over the next few years, to give nursing homes a chance to stabilize from the pandemic and the current inflation. With the annual inflation rate expected to remain near 5%, and all expenses, including labor, food, supplies, and utilities at record

highs, *increases in reimbursement have not kept pace with costs of care*. THSC urges CMS to delay the PDPM parity adjustment recalibration. While THSC supports a payment adjustment for the SNF PPS in FY 2024, we find the proposed 3.7% *woefully inadequate* to meet the increasing costs we have experienced since the start of the pandemic as it would only partially address the inflationary challenges we are currently under. In addition, the proposed 3.7% increase fails to address the cost associated with complying with the additional burdens proposed in the FY 24 SNF rules. THSC has put multiple initiatives into place to keep costs in line while struggling with the impact of years of meager rate increases. Medicare is 16% of our income and our rates have remained flat for the past two years while inflation has soared to historic levels. CMS must address the immediate needs of skilled nursing facilities to stabilize the industry as it emerges from the pandemic. We advocate for evidence-based reimbursement rates that are sufficient to cover the full range of costs to provide high-quality care and services including supply needs, training, and fair wages for staff. THSC is proposing a 10-15% one-time increase to address the last few years of underpayment.

**Minimum Staffing Requirements:** Rulemaking on the expected minimum staffing requirements were not included in the FY 24 proposed rule. However, THSC remain highly opposed to this requirement which is anticipated soon. The pandemic and its aftermath have wreaked havoc on the long-term care sector. The consequences are decreased occupancy and an unprecedented labor shortage that has resulted in many providers leaving the industry. In addition, inflation has increased supply and operations costs, and labor costs are at an all-time high. As stated above, reimbursement has not kept pace with the cost of care. Minimum staffing requirements may force providers who are providing good quality of care out of business. **THSC recommends that CMS halt staffing ratio requirements until providers and policymakers have resolved the critical nursing shortage.**

**Proposed Changes to the Skilled Nursing Facility Quality Reporting Program (SNF QRP):** The SNF QRP is a pay-for-reporting program. SNFs that do not meet reporting requirements are subject to a two-percentage-point reduction in their Annual Payment Update (APU). In the FY 2024 SNF PPS proposed rule, CMS is proposing the adoption of three measures in the SNF QRP, the removal of three measures from the SNF QRP, and the modification of one measure in the SNF QRP. In addition, this proposed rule would also make policy changes to the SNF QRP and begin public reporting of four measures.

1. CMS is proposing to increase the SNF QRP Data Completion thresholds for the Minimum Data Set (MDS) Data Items beginning with the FY 2026 SNF QRP: Current data reporting thresholds are set at 100 % of the required elements and that they are complete on 80% of the assessments. The current standard is adequate. Due to the complexity of the MDS and the technical requirements, 90% accuracy rate is not practical. **THSC opposes an increase to the threshold for the MDS.**
2. CMS is proposing the adoption of the CoreQ: Short Stay Discharge (CoreQ: SS DC) measure beginning with the FY 2026 SNF QRP. This measure calculates the percentage of individuals discharged from a SNF, within 100 days of admission, who are satisfied with their SNF stay. This new measure would require skilled nursing providers to work with CMS approved vendors to implement the satisfaction survey. This measure would require additional administrative tasks with undue burden, and unreimbursed costs to the provider. **Therefore, THSC opposes the adoption of the CoreQ, short stay discharge measure.**
3. CMS is proposing the adoption of the COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date (Patient/Resident COVID-19 Vaccine) measure beginning with the FY 2026 SNF QRP. **THSC believes that with the end of the Public Health Emergency (PHE), this measure should be eliminated.**
4. CMS is proposing to modify the COVID-19 Vaccination Coverage among Healthcare Personnel (HCP COVID-19 Vaccine) measure beginning with the FY 2025 SNF QRP: Modification of terminology is needed, however, with the end of the PHE and the announcement that CMS will soon end the requirement that covered providers establish policies and procedures for staff vaccination, **THSC proposes that CMS eliminate vaccine coverage among HCP as a QRP measure.**

5. CMS is proposing the adoption of the Discharge Function Score (DC Function) measure beginning with the FY 2025 SNF QRP: THSC facilities have historically scored high in this measure. To achieve high scores, our interdisciplinary teams (IDT) focus on continued education of staff, and oversight by clinical managers daily. Collaboration from the IDT members results in accurate assessments. We must ensure that all colleagues have proper, ongoing training and sufficient time to perform assessments, documentation, and validation of the information prior to submission. However, **THSC cautions that for patients with short lengths of stay, and/or multiple comorbidities, debility, and advanced age, it may not be a realistic expectation for them to significantly improve based on meeting or exceeding an expected discharge function score.**
6. CMS is proposing to remove the Application of Percent of Long-Term Care Hospital (LTCH) Patients with an Admission and Discharge Functional Assessment and a Care Plan That Addresses Function (Application of Functional Assessment/Care Plan) measure beginning with the FY 2025 SNF QRP: **THSC agrees with removing this measure.**
7. CMS is proposing to begin the public reporting of the Transfer of Health Information to the Provider—PAC Measure and the Transfer of Health Information to the Patient—PAC Measure beginning with the October 2025 Care Compare refresh or as soon as technically feasible: **THSC agrees that transfer of data is important, but the application to Care Compare will be confusing for consumers and burdensome to providers.**

### **Proposed Changes to the Skilled Nursing Facility Value-Based Purchasing (SNF VBP) Program**

1. CMS is proposing the adoption of the Nursing Staff Turnover Measure for the SNF VBP program beginning with the FY 2026 program year and FY 2024 performance year. This is a structural measure that has been collected and publicly reported on Care Compare and assesses the stability of the staffing within an SNF using nursing staff turnover:

The aging population also affects existing nursing staffing levels. Experienced baby boomer nurses, including many in leadership roles, are retiring and leaving the health care field. According to AMN Healthcare (2015), nearly two-thirds of baby boomer nurses are considering retirement. Rising number of high acuity residents with dwindling numbers of nurses put a large strain on nursing home staff.

Nursing turnover was at an all-time high during the pandemic for a variety of reasons, and the industry has not yet recovered. Traditionally, nursing homes have experienced high turnover rates which could be attributed to many factors such as low pay, high stress, and burnout due to staffing shortages. A survey of nurses in hospitals, long-term care facilities and other health care settings by national staffing agency Incredible Health found that roughly a third of nurses said they very likely will quit by the end of this year, primarily because of stress and burnout.<sup>1</sup> Some nursing homes have raised wages or offered sign-on or retention bonuses to stop the employee exodus. And some states have increased their minimum wage for nursing home workers. In fact, compared to other health care roles, nursing home jobs saw the largest wage increases in 2020 and 2021, according to a study in JAMA Health Forum. But employment levels in nursing homes continued to fall at a faster rate than in any other health care sector.<sup>1</sup>

***Reaching decreased nursing turnover rates could prove to be the most challenging VBP benchmark to meet. Any penalties resulting in lower Medicare reimbursement could only compound the problem.***

<sup>1</sup> <https://www.aarp.org/caregiving/health/info-2022/labor-shortage-nursing-homes.html>

2. CMS is proposing the adoption of the Discharge Function Score measure beginning with the FY 2027 program year and FY 2025 performance year. This measure is also being proposed for SNF QRP: As stated above, **THSC has traditionally scored very well here, but we caution CMS to be realistic when measuring outcomes for patients with short lengths of stay.**
3. CMS is proposing the adoption of the Long Stay Hospitalization Measure per 100 residents beginning with the FY 2027 program year and FY 2025 performance year. This measure assesses the hospitalization rate of long-stay residents. **THSC opposes the adoption of this measure. The proposed data validation method appears cumbersome, and this would add yet another burdensome data measure to already burdened nursing homes.**
4. CMS is proposing the adoption of the Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay) beginning with the FY 2027 program year and FY 2025 performance year. This measure assesses the falls with major injury rates of long-stay residents. **This measure is already publicly reported and available to consumers. THSC is opposed to adding the measure as part of the VBP Program.**
5. CMS is proposing the replacement of the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) with the Skilled Nursing Facility Within Stay Potentially Preventable Readmissions (SNF WS PPR) measure beginning with the FY 2028 program year and FY 2025 performance year. **This Measure is already publicly reported and available to consumers. THSC is opposed to this measure as part of the VBP Program.**

To prioritize the achievement of health equity and the reduction of disparities in health outcomes in SNFs, CMS is proposing the adoption of a Health Equity Adjustment in the SNF VBP Program that rewards SNF that perform well and whose resident population during the applicable performance period includes at least 20% of residents with dual eligibility status. This adjustment would begin with the FY 2027 program year and FY 2025 performance year. CMS is adjusting the scoring methodology to provide bonus points to high-performing facilities that provide care to a higher proportion of duals.

**THSC supports this measure.**

CMS is proposing to increase the payback percentage policy under the SNF VBP program from current 60% to a level such that the bonuses provided to the high performing, high duals SNFs do not come at the expense of the other SNFs. The estimates for FY 2027 program year are 66%.

**THSC supports this measure.**

CMS is also proposing to update administrative methodology policies that are required to address the changes needed to accommodate the proposed addition of quality measures into the SNF VBP Program is scoring methodology, beginning with the FY 2027 program year and FY 2025 performance year.

**THSC supports this measure.**

In addition, the proposed rule provides additional updates on the validation process being established for the quality measures and standardized assessment data for SNFs. CMS is proposing the addition of the audit portion of the validation process for MDS-based measures beginning with the FY 2027 program year and FY 2025 performance year as required by Section 1888(h)(12) of the Act.

**THSC is opposed to validation audits. Many states have an MDS validation process. In addition, state health inspection processes are already in place.**

In the FY 2024 SNF PPS rule, we are requesting comments about possible future methodologies for selecting and prioritizing quality measures to focus on underserved populations.

**THSC supports and encourages CMS to engage providers around any future methodologies for selecting and prioritizing quality measures that focus on underserved populations.**



Proposed Changes to Civil Money Penalties (CMP): Waiver of Hearing, Reduction of Penalty Amount (§ 488.436)

In this proposed rule, we are streamlining a procedure for facilities facing a civil money penalty to actively waive their right to a hearing in writing in order to receive a penalty reduction. Nearly 95% of facilities facing CMPs are following this process, by which they then receive a 35% penalty reduction. We would create, in its place, a system in which a failure to submit a timely request for a hearing would be treated as a constructive waiver. The accompanying 35% penalty reduction would remain. This proposed revision would reduce burden on not only the facilities, but on the states and CMS as they would no longer have to track and manage the written waiver requests.

**THSC supports this proposed rule.**

### **Conclusion**

Trinity Health Senior Communities appreciates the opportunity to submit our comments on the proposed Skilled Nursing Facility rule. If you have any questions, please feel free to contact me at [donnaw@trinity-health.org](mailto:donnaw@trinity-health.org) or 251-504-7353.

Sincerely,

/s/

Donna Wilhelm  
Vice President of Advocacy and Government Relations  
Trinity Health Continuing Care