

<RULE>



This document is scheduled to be published in the Federal Register on 08/03/2022 and available online at [federalregister.gov/d/2022-16457](https://www.federalregister.gov/d/2022-16457), and on [govinfo.gov](https://www.govinfo.gov)

<PREAMB>

[Billing Code: 4120-01-P]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413 and 483

[CMS-1765-F and CMS-3347-F]

RIN 0938-AU76 and 0938-AT36

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Updates to the Quality Reporting Program and Value-Based Purchasing Program for Federal Fiscal Year 2023; Changes to the Requirements for the Director of Food and Nutrition Services and Physical Environment Requirements in Long-Term Care Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule updates payment rates; forecast error adjustments; diagnosis code mappings; the Patient Driven Payment Model (PDPM) parity adjustment; the SNF Quality Reporting Program (QRP); and the SNF Value-Based Purchasing (VBP) Program. It also establishes a permanent cap policy to smooth the impact of year-to-year changes in SNF payments related to changes in the SNF wage index. We also announce the application of a risk adjustment for the SNF Readmission Measure for COVID-19 beginning in FY 2023. We are finalizing changes to the long-term care facility fire safety provisions referencing the National Fire Protection Association (NFPA)® Life Safety Code, and Director of Food and Nutrition Services requirements.

DATES: These regulations are effective on October 1, 2022.

FOR FURTHER INFORMATION CONTACT: PDPM@cms.hhs.gov for issues related to the SNF PPS.

Heidi Magladry, (410) 786-6034, for information related to the skilled nursing facility quality reporting program.

Alexandre Laberge, (410) 786-8625, for information related to the skilled nursing facility value-based purchasing program.

Kristin Shifflett, Kristin.shifflett@cms.hhs.gov, and Cameron Ingram, Cameron.ingram@cms.hhs.gov, for information related to the LTC requirements for participation.

SUPPLEMENTARY INFORMATION:

Availability of Certain Tables Exclusively Through the Internet on the CMS Website

As discussed in the FY 2014 SNF PPS final rule (78 FR 47936), tables setting forth the Wage Index for Urban Areas Based on CBSA Labor Market Areas and the Wage Index Based on CBSA Labor Market Areas for Rural Areas are no longer published in the **Federal Register**. Instead, these tables are available exclusively through the Internet on the CMS website. The wage index tables for this final rule can be accessed on the SNF PPS Wage Index home page, at <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/SNFPSP/WageIndex.html>.

Readers who experience any problems accessing any of these online SNF PPS wage index tables should contact Kia Burwell at (410) 786-7816.

To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

Table of Contents

- I. Executive Summary
 - A. Purpose
 - B. Summary of Major Provisions
 - C. Summary of Cost and Benefits
 - D. Advancing Health Information Exchange
- II. Background on SNF PPS
 - A. Statutory Basis and Scope
 - B. Initial Transition for the SNF PPS

- C. Required Annual Rate Updates
- III. Analysis and Responses to Public Comments on the FY 2023 SNF PPS Proposed Rule
 - A. General Comments on the FY 2023 SNF PPS Proposed Rule
- IV. SNF PPS Rate Setting Methodology and FY 2023 Update
 - A. Federal Base Rates
 - B. SNF Market Basket Update
 - C. Case-Mix Adjustment
 - D. Wage Index Adjustment
 - E. SNF Value-Based Purchasing Program
 - F. Adjusted Rate Computation Example
- V. Additional Aspects of the SNF PPS
 - A. SNF Level of Care--Administrative Presumption
 - B. Consolidated Billing
 - C. Payment for SNF-Level Swing-Bed Services
 - D. Revisions to the Regulation Text
- VI. Other SNF PPS Issues
 - A. Permanent Cap on Wage Index Decreases
 - B. Technical Updates to PDPM ICD-10 Mappings
 - C. Recalibrating the PDPM Parity Adjustment
 - D. Request for Information: Infection Isolation
- VII. Skilled Nursing Facility Quality Reporting Program (SNF QRP)
 - A. Background and Statutory Authority
 - B. General Considerations Used for the Selection of Measures for the SNF QRP
 - C. SNF QRP Quality Measure Beginning with the FY 2025 SNF QRP
 - D. SNF QRP Quality Measures under Consideration for Future Years: Request for Information (RFI)
 - E. Overarching Principles for Measuring Equity and Healthcare Quality Disparities across CMS Quality Programs – Request for Information (RFI)
 - F. Inclusion of the CoreQ: Short Stay Discharge Measure in a Future SNF QRP Program Year – Request for Information (RFI)
 - G. Form, Manner, and Timing of Data Submission under the SNF QRP
 - H. Policies Regarding Public Display of Measure Data for the SNF QRP
- VIII. Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP)
 - A. Statutory Background
 - B. SNF VBP Program Measures
 - C. SNF VBP Performance Period and Baseline Period
 - D. Performance Standards
 - E. SNF VBP Performance Scoring
 - F. Adoption of a Validation Process for the SNF VBP Program Beginning with the FY 2023 Program Year
 - G. SNF Value-Based Incentive Payments for FY 2023
 - H. Public Reporting on the Provider Data Catalog Website
 - I. Requests for Comment Related to Future SNF VBP Program Expansion Policies
- IX. Changes to the Requirements for the Director of Food and Nutrition Services and Physical Environment Requirements in Long-Term (LTC) Facilities and Summary of Public Comments and Responses to the Request for Information on Revising the Requirements for Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels
- X. Collection of Information Requirements
- XI. Economic Analyses
 - A. Regulatory Impact Analysis
 - B. Regulatory Flexibility Act Analysis

- C. Unfunded Mandates Reform Act Analysis
- D. Federalism Analysis
- E. Regulatory Review Costs

I. Executive Summary

A. Purpose

This final rule updates the SNF prospective payment rates for fiscal year (FY) 2023, as required under section 1888(e)(4)(E) of the Social Security Act (the Act). It also responds to section 1888(e)(4)(H) of the Act, which requires the Secretary to provide for publication of certain specified information relating to the payment update (see section II.C. of this final rule) in the **Federal Register**, before the August 1 that precedes the start of each FY. In addition, this final rule includes requirements for the Skilled Nursing Facility Quality Reporting Program (SNF QRP) and the Skilled Nursing Facility Value-Based Purchasing Program (SNF VBP), including adopting new quality measures for the SNF VBP Program and finalizing several updates to the Program's scoring methodology. The SNF QRP adopts one new measure to promote patient safety, begins collection of information which will improve the quality of care for all SNF patients, and revises associated regulation text. We are revising the qualification requirements for the Director of Food and Nutrition Services and revising requirements for life safety from fire for long-term care facilities that previously used the Fire Safety Evaluation System (FSES) to demonstrate compliance with provisions of the Life Safety Code (LSC).

B. Summary of Major Provisions

In accordance with sections 1888(e)(4)(E)(ii)(IV) and (e)(5) of the Act, the Federal rates in this final rule will reflect an update to the rates that we published in the SNF PPS final rule for FY 2022 (86 FR 42424, August 4, 2021). In addition, the final rule includes a forecast error adjustment for FY 2023, updates to the diagnosis code mappings used under the Patient Driven Payment Model (PDPM), and includes a recalibration of the PDPM parity adjustment. This final rule also establishes a permanent cap policy to smooth the impact of year-to-year changes in SNF payments related to changes in the SNF wage index.

This final rule finalizes requirements for the SNF QRP, including the adoption of one new measure beginning with the FY 2024 SNF QRP: the Influenza Vaccination Coverage among Healthcare Personnel (HCP) (NQF #0431) measure. We are also revising the compliance date for the Transfer of Health Information measures and certain standardized patient assessment data elements. In addition, we are revising regulation text that pertains to data submission requirements for the SNF QRP.

We are also finalizing several updates for the SNF VBP Program, including a policy to suppress the Skilled Nursing Facility 30-Day All-Cause Readmission Measure (SNFRM) for the FY 2023 SNF VBP Program Year for scoring and payment adjustment purposes. We are also adding two new measures to the SNF VBP Program beginning with the FY 2026 SNF VBP program year and one new measure beginning with the FY 2027 program year. We are also finalizing several updates to the scoring methodology beginning with the FY 2026 program year. We are also revising our regulation text in accordance with our proposals.

In addition, we are finalizing LTC facilities LSC changes in § 483.90(a) to allow older exiting facilities to continue to use the 2001 FSES mandatory values when determining compliance for containment, extinguishment, and people movement requirements as set out in the LSC. Older facilities who may not meet the FSES requirements previously used the 2000 LSC FSES will be allowed to remain in compliance with the older FSES without incurring substantial expenses to change their construction types, while maintaining resident and staff safety.

Additionally, we are finalizing changes to the requirements for the Director of Food and Nutrition Services in LTC facilities in § 483.60. We are revising the required qualifications for a director of food and nutrition services to provide that those with several years of experience performing as the director of food and nutrition services in a facility can continue to do so. Specifically, we have added to the current requirements that individuals with 2 or more years of experience in the position of a director of food and nutrition services and who have also

completed a minimum course of study in food safety that includes topics integral to managing dietary operations (such as, but not limited to: foodborne illness, sanitation procedures, food purchasing/receiving, etc.) can continue to qualify as a director of food and nutrition services. This will help address concerns related to costs associated with training for existing staff and the potential need to hire new staff.

C. Summary of Cost and Benefits

TABLE 1: Cost and Benefits

Provision Description	Total Transfers/Costs
FY 2023 SNF PPS payment rate update	The overall economic impact of this final rule is an estimated increase of \$904 million in aggregate payments to SNFs during FY 2023.
FY 2023 SNF QRP changes	The overall economic impact of this final rule is an estimated increase in aggregate cost to SNFs of \$30,949,079.36.
FY 2023 SNF VBP changes	The overall economic impact of the SNF VBP Program is an estimated reduction of \$185.55 million in aggregate payments to SNFs during FY 2023.

D. Advancing Health Information Exchange

The Department of Health and Human Services (HHS) has a number of initiatives designed to encourage and support the adoption of interoperable health information technology and to promote nationwide health information exchange to improve health care and patient access to their digital health information.

To further interoperability in post-acute care settings, CMS and the Office of the National Coordinator for Health Information Technology (ONC) participate in the Post-Acute Care Interoperability Workgroup (PACIO) to facilitate collaboration with interested parties to develop Health Level Seven International® (HL7) Fast Healthcare Interoperability Resource® (FHIR) standards. These standards could support the exchange and reuse of patient assessment data derived from the post-acute care (PAC) setting assessment tools, such as the minimum data set (MDS), inpatient rehabilitation facility -patient assessment instrument (IRF-PAI), Long-Term Care Hospital (LTCH) continuity assessment record and evaluation (CARE) Data Set (LCDS),

long-stay residents' needs when developing equity adjustments. Some commenters recommended that we report quality data stratified by race and ethnicity to assess health equity issues in the SNF sector. Another commenter suggested that we adopt a risk-adjustment or incentive payment policy for facilities that accept residents that other facilities will not. Another commenter recommended that we engage with interested parties throughout any health equity policy development so that facilities can implement proper data collection. One commenter recommended that we pair clinical data measures with social risk metrics to help providers deliver more comprehensive care. One commenter recommended against tying quality measures involving race and ethnicity to payment, stating that such policies may be unconstitutional and could lead to ineffective or biased clinical care. The commenter stated that categories such as dual eligibility status or social determinants of health would be better ways to stratify measures than racial or ethnic categories. One commenter supported measures emphasizing and incorporating social determinants of health but recommended delaying their implementation on the basis that additional administrative burden on providers is inappropriate at this time.

Response: We will take this feedback into consideration as we develop our policies for future rulemaking.

IX. Changes to the Requirements for the Director of Food and Nutrition Services and Physical Environment Requirements in Long-Term (LTC) Facilities and Summary of Public Comments and Responses to the Request for Information on Revising the Requirements for Long-Term Care Facilities to Establish Mandatory Minimum Staffing Levels

A. Changes to the Requirements for the Director of Food and Nutrition Services and Physical Environment Requirements in Long-Term (LTC) Facilities

On July 18, 2019, we published a proposed rule entitled, “Requirements for Long-Term Care (LTC) Facilities: Provisions to Promote Efficiency and Transparency” (84 FR 34737). In combination with our internal review of the existing regulations, we used feedback from

interested parties to inform our policy decisions about the proposals we set forth. We specifically considered how each recommendation could potentially reduce burden or increase flexibility for providers without impinging on the health and safety of residents. In the proposed rule, we included a detailed discussion regarding interested parties' response to our solicitations for suggestions to reduce provider burden. In response to the proposed rule, we received a total of 1,503 public comments. In this final rule, we are finalizing two of the proposals, which we believe will have a significant impact on a facility's ability to recruit and retain qualified staff as well as, allowing older existing nursing homes to remain in compliance without having to completely rebuild their facility or have to use the Fire Safety Evaluation System (FSES). On July 14, 2022, we published a notice to extend the timeframe allowed to finalize the remaining proposals in the July 18, 2019 rule (87 FR 42137). We are continuing to evaluate those proposals and will issue an additional final rule if we choose to proceed with further rulemaking.

Responses to Public Comments and Provisions of the Final Rule

1. Food and Nutrition Services (§ 483.60)

Dietary standards for residents of LTC facilities are critical to both quality of care and quality of life. LTC interested parties have shared concerns regarding the current requirement that existing dietary staff include certified dietary managers or food service managers. Specifically, interested parties have concerns regarding the need for existing dietary staff, who are experienced in the duties of a dietary manager and currently operate in the position, to obtain new or additional training to become qualified under the current regulatory requirements. We believe that effective management and oversight of the food and nutrition service is critical to the safety and well-being of all residents of a nursing facility. Therefore, we continue to believe that it is important that there are standards for the individuals who will lead this service. However, to address concerns from interested parties we proposed to revise the standards at § 483.60(a)(2) to increase flexibility, while providing that the director of food and nutrition services is an individual who has the appropriate competencies and skills necessary to oversee the functions of

the food and nutrition services. Specifically, we proposed to revise the standards at § 483.60(a)(2)(i) and (ii) to provide that at a minimum an individual designated as the director of food and nutrition services would have 2 or more years of experience in the position of a director of food and nutrition services, or have completed a minimum course of study in food safety that would include topics integral to managing dietary operations such as, but not limited to, foodborne illness, sanitation procedures, and food purchasing/receiving. We are retaining the existing requirement at § 483.60(a)(2)(iii) which specifies that the director of food and nutrition services must receive frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional. We noted in the proposed rule that these revisions will maintain established standards for the director of food and nutrition services given the critical aspects of their job function, while addressing concerns related to costs associated with training existing staff and the potential need to hire new staff.

We received public comments on these proposals. The following is a summary of the comments we received and our responses.

Comment: Some commenters supported the proposal stating that the changes would increase flexibility for providers to be able to recruit and retain important staff members, and also allow experienced professionals to remain in their roles. Other commenters had significant concerns and stated that the proposed qualification requirements were insufficient since some knowledge necessary for the position could not be gained through experience alone. For example, commenters noted that the knowledge and expertise received during the Certified Dietary Manager (CDM) certification required courses are not necessarily skills staff would learn from experience. These commenters encouraged CMS to retain the current requirements for the director of food and nutrition services.

Response: We appreciate the feedback and agree that increased flexibility for recruitment and staff retention is important. However, we also acknowledge that some knowledge obtained through education may not be easily gained through experience alone. We agree with the

commenters that certain training/education should be required for anyone seeking to qualify as the director of food and nutrition services, including those experienced staff. Therefore, we are revising the proposal to allow a person who has 2 or more years of experience in the position *and* has completed a minimum course of study in food safety to meet the requirement by October 1, 2023, to qualify. These modifications to the requirements at § 483.60 will allow for more flexibility and will help providers with recruiting and retaining qualified staff, while also providing for an adequate minimum standard of education for the position. We believe that there are many paths to obtaining the knowledge and skills necessary to meet these requirements. Therefore, the experience qualifier is only one option for meeting the requirements for the director of food and nutrition services.

Therefore, the director of food and nutrition services must meet the following requirements, some of which remain unchanged from our current regulations:

- In States that have established standards for food service managers or dietary managers, meets State requirements for food service managers or dietary managers (existing §483.60(a)(2)(ii)); and
- Receive frequently scheduled consultations from a qualified dietitian or other clinically qualified nutrition professional (existing §483.60(a)(2)(iii)).

In addition, the director will need to meet the conditions of one of the following five options, four of which are retained from the existing rule:

- Have 2 or more years of experience in the position of a director of food and nutrition services, *and* have completed a minimum course of study in food safety, by no later than 1 year following the effective date of this rule, that includes topics integral to managing dietary operations such as, but not limited to, foodborne illness, sanitation procedures, food purchasing/receiving, etc. (new §483.60(a)(2)(i)(E)) (we note that this would essentially be the equivalent of a ServSafe Food Manager certification); or
- Be a certified dietary manager (existing § 483.60(a)(2)(i)(A)); or

- Be a certified food service manager (existing § 483.60(a)(2)(i)(B)); or
- Have similar national certification for food service management and safety from a national certifying body (existing § 483.60(a)(2)(i)(C)); or
- Have an associate's or higher degree in food service management or in hospitality, if the course study includes food service or restaurant management, from an accredited institution of higher learning (existing § 483.60(a)(2)(i)(D)).

We believe that maintaining qualified and trained food and nutrition personnel is critical to the health and safety of residents in LTC facilities. We note that issues with food and nutrition requirements are the 3rd most frequently cited deficiencies in LTC facilities. We believe that these requirements will help ensure resident safety while also allowing facilities the flexibility to staff according to their unique needs and resources.

Comment: Many commenters recommended this requirement be phased in over 3 years to allow providers and professionals the time they need to obtain the necessary certifications, which require 15 to 18 months and an investment of more than \$2,000 for the course, textbooks, fees, and to sit for the exam.

Response: We do not agree that a phase-in is necessary. As discussed in detail in the previous response, we have revised the requirements to allow 1 year for an experienced director of food and nutrition services to obtain training necessary to qualify for the position. Experience plus a minimum course of study is one of five ways to qualify for the position of the director of food and nutrition services. Given the many options available to qualify as well as the importance of food and safety in nursing homes, we do not believe that a 3-year delay in implementing the requirements is necessary or in the best interest of resident health and safety. We believe that all required staff will be able to meet the requirements.

After consideration of public comments, we are finalizing our proposal with the following changes—

- We are withdrawing our proposal at § 483.60(a)(2) to replace the existing qualifications for the director of food and nutrition services with an experience qualification and minimum course of study exclusively.

- We are revising § 483.60(a)(2)(i), to add experience in the position as one of the ways to qualify for the position of the director of food and nutrition services. Specifically, an individual who, on the effective date of this final rule, has 2 or more years of experience in the position of director of food and nutrition services in a nursing facility setting and has completed a course of study in food safety and management by no later than October 1, 2023, along with the other requirements set out at § 483.60(a)(2), is qualified to be the director of food and nutrition services.

2. Physical Environment (§ 483.90)

a. Life Safety Code

On May 4, 2016, we published a final rule entitled, “Medicare and Medicaid; Fire Safety Requirements for Certain Health Care Facilities,” adopting the 2012 edition of the National Fire Protection Association (NFPA) 101 (81 FR 26871), also known as the Life Safety Code (LSC). One of the references in the LSC is NFPA 101A, Guide on Alternative Approaches to Life Safety, also known as the Fire Safety Evaluation System (FSES). The FSES was developed as a means of achieving and documenting an equivalent level of life safety without requiring literal compliance with the Life Safety Code. The FSES is a point score system which establishes the general overall level of fire safety for health care facilities as compared to explicit conformance to individual requirements outlined in the Life Safety Code. The system uses combinations of widely accepted fire safety systems and arrangements to provide a level of fire safety which has been judged to be at least equivalent to the level achieved through strict compliance with the Life Safety Code. Some LTC facilities that utilized the FSES in order to determine compliance with the containment, extinguishment and people movement requirements of the LSC were no longer able to achieve a passing score, on the FSES, because of a change in scoring.