



February 14, 2023

The Honorable Xavier Becerra  
Secretary United States Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

Dear Secretary Becerra:

I am writing to urge you to immediately make permanent the current waiver of the 3-day qualifying hospital stay requirement for skilled nursing care. During the COVID-19 pandemic, the efficacy of this requirement was tested through the enactment of the qualifying hospital stay waiver under 1812(f) of the Social Security Act—and it became clear that it is outdated, costly, and unnecessary. With the public health emergency (PHE) set to end in May, now is the time to apply the evidence of this demonstration and act to make the 3-day stay waivers permanent.

### **Qualifying Hospital Stay is an Outdated Requirement**

The landscape of care has changed drastically since the 3-day qualifying hospital stay requirement was enacted in 1965. Between 1965 and 2019, the average length of hospital stay for all hospitalizations in the United States dropped by 2.4 days. Surgeries and procedures that were inpatient in 1965 are now routinely performed as outpatient surgeries. Care once provided in the hospital, such as intravenous antibiotics, is now routinely performed in the nursing home. Lengthening hospital stays is duplicative, costly, and perhaps most importantly, confusing and challenging for older people, particularly those with cognitive impairments.

Additionally, while the COVID-19 pandemic created a unique environment for providers, the challenges they faced during the PHE will not simply vanish on May 11. The healthcare system continues to experience strain to varying degrees across the country due to the impact of COVID-19 and other respiratory viruses. The workforce crisis continues to have an impact on more than just nursing homes, both within and beyond the healthcare field. This strain on the system results in bed shortages, delaying of elective procedures, and deferment of less complex care to different provider settings. **A 3-day inpatient hospital stay is not a reasonable requirement.**

### **Qualifying Hospital Stay Does Not Add Benefit**

As a result of the strain on the healthcare system from COVID-19, HHS has allowed for a waiver of the 3-day qualifying hospital stay requirement since 2020. Beneficiaries who otherwise qualified for skilled nursing facility care were able to receive this care regardless of spending any time at all in the hospital. While some have long held the belief that eliminating the 3-day stay requirement would create a free-for-all of inappropriate skilled nursing home admissions, audits conducted by the Medicare

Administrative Contractors have not supported this fear. Had the audits revealed widespread, inappropriate use of the 3-day qualifying hospital stay waiver, HHS would have taken action to terminate the waiver rather than allow it to continue throughout the duration of the PHE.

Additionally, the absence of a 3-day qualifying stay has not had a negative impact on skilled nursing facility care outcomes. In fact, analysis of short stay measures on Nursing Home Care Compare show that both rehospitalizations and emergency department visits for short-stay residents held steady from 2019 – 2022 while rates of improvements in functioning increased. With these outcomes and continuing audits by the Medicare Administrative Contractors there can be no argument: **a 3-day inpatient hospital stay is not a meaningful requirement.**

### **Qualifying Hospital Stay Adds Unnecessary Expense**

In 2021, the average cost of inpatient acute hospital care was \$2,883 per day. Covered by Medicare, this cost is entirely at the expense of the taxpayer. We know that hospitals are encouraged to drive costs down focusing on providing efficient care. This seems at odds with a requirement that targets a certain threshold of care in one setting to qualify for a totally different type of care in a different setting. When the evidence has shown that three inpatient days in a hospital neither realistic nor necessary, HHS must exercise good stewardship of healthcare spending and eliminate unnecessary expenses. **A 3-day inpatient hospital stay is not a responsible requirement.**

We recognize that eliminating the 3-day qualifying hospital stay requirement is ultimately an action that must be undertaken by Congress—but HHS is not powerless. We urge you, Secretary Becerra, to implement a waiver of this unreasonable, meaningless, and irresponsible requirement while joining us in calling for Congress to eliminate it entirely. To discuss this important issue further, please contact Ruth Katz, senior vice president of public policy/advocacy at [rkatz@leadingage.org](mailto:rkatz@leadingage.org).

Sincerely,



Katie Smith Sloan  
President and CEO  
LeadingAge

Cc: Chiquita Brooks-LaSure, Administrator, CMS  
Melanie Egorin, Assistant Secretary for Legislation