

# Next Generation ACO Model

## Skilled Nursing Facility (SNF) Three-Day Rule Waiver

### May 2021

Currently, in traditional fee-for-service (FFS) Medicare, beneficiaries are eligible for Medicare covered skilled nursing facility (SNF) services when a beneficiary is admitted within 30 days of either (1) an inpatient hospital stay of three consecutive days or more (i.e., qualifying hospital stay), starting with the day the hospital admits the beneficiary as an inpatient, but not including the day they leave the hospital; or (2) a previous SNF stay. The time a beneficiary is in the hospital being observed or in an emergency room before they are admitted does not count toward the three-day qualifying inpatient hospital stay. However, the Next Generation ACO (NGACO) waiver allows an aligned beneficiary to be eligible for Medicare covered SNF services when admitted to a SNF without a three-day qualifying inpatient hospital or previous SNF stay, including beneficiaries who are in the hospital for fewer than three days or admitted directly from a physician's office.

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## Frequently Asked Questions

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### **Q1: What is the SNF Three-Day Rule Waiver?**

**A:** The SNF Three-Day Rule Waiver makes available to approved Next Generation ACOs (NGACOs) and their skilled nursing facilities (SNFs) a waiver of the rule requiring a three-day stay in an inpatient hospital, acute-care hospital, or critical access hospital (CAH) with swing-beds prior to admission to a skilled nursing facility (SNF). In other words, this benefit enhancement allows for beneficiary admission to approved NGACO Next Generation Participant or Preferred Provider SNFs either directly or with an inpatient hospital stay of fewer than three days.

### **Q2: Who is eligible to use the waiver?**

**A:** The waiver is available to Next Generation Participants and Preferred Providers for ACO-aligned beneficiaries to use if: (1) the beneficiary does not reside in a nursing home or SNF for long-term custodial care at the time of the decision to admit to a SNF; and (2) the beneficiary meets all other CMS criteria for SNF admission, including:

- being medically stable;
- having confirmed diagnoses (e.g., does not have conditions that require further testing for proper diagnosis);
- not requiring inpatient hospital evaluation or treatment; and
- having an identified skilled nursing or rehabilitation need that cannot be provided on an outpatient basis or through home health services.

Next Generation Participant or Preferred Provider SNFs must also have, at the time of provider list submission, an overall rating of three or more stars for seven of the past 12 months under the CMS Five-Star Nursing Home Quality Rating System. ACOs are responsible for verifying each year that SNFs remain eligible for the Next Generation Participant or Preferred Provider list. ACOs can retrieve historical star ratings for each SNF by selecting "Get Archived Data" at the following link:

<https://data.medicare.gov/data/nursing-home-compare>.

For more information about beneficiary eligibility requirements, including the exclusion of patients in long-term custodial care, please refer to Appendix I in Section 4 of the Participation Agreement.

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**Q3: Suppose a waiver-eligible SNF adds a second facility operating under a different TIN. Would the new SNF be eligible to operate under the waiver as an affiliated provider, or would the SNF be required to meet the STAR rating requirements independently?**

**A:** The new SNF would not be eligible to participate under the waiver until it meets the STAR rating requirements as an independent facility. The STAR rating requirement (three or more stars for seven of the past 12 months under the CMS Five-Star Nursing Home Quality Rating System) for waiver participation applies to all SNFs regardless of when it became an eligible Medicare facility.

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**Q4: Will critical access hospitals (CAH) that are certified to provide the Medicare SNF benefit be considered eligible SNF applicants under the waiver?**

**A:** If you are working with a CAH that bills for SNF services and meets all other requirements under the waiver, that provider would be eligible for the waiver. The waiver will apply to SNF providers that use 18x, 21x, and 28x bill types. Please be sure that the CMS Control Number (CCN) you submit for such a provider is the one applied to SNF claims; CMS checks CCNs (not National Provider Identifiers, or NPIs) when approving SNF waiver claims. Typically, this CCN is different than the one the CAH submits for non-SNF services. Without the correct CCN, the three-day rule will not be waived.

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**Q5: When can additional SNFs be added to the Next Generation Preferred Provider list?**

**A:** Participating ACOs have the opportunity to add additional SNFs (i.e., Preferred Providers) at designated points during the performance year, which are announced in the Next Generation ACO Model Newsletter.

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**Q6: If a participating SNF waiver facility falls below a three-star rating, is there a formal process to remove it from our Next Generation Participant and Preferred Provider list?**

**A:** Star ratings are reviewed at the time of Next Generation Participant or Preferred Provider list submission. Once the SNF has been approved for inclusion on the list for a given performance year, it is not removed during the performance year if the star rating declines unless requested by the ACO. If an ACO would like to remove a SNF from its Next Generation Participant or Preferred Provider list, the ACO should follow the process for submitting a provider termination to CMS.

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**Q7: What happens if a beneficiary is excluded from an ACO's alignment during an SNF stay?**

**A:** If a beneficiary is excluded from an ACO's alignment list during the year, SNF waiver claims submitted within 90 days of the effective exclusion date will be paid. Beneficiaries may be excluded for a number of reasons including joining Medicare Advantage, losing Part A or Part B coverage, having Medicare as a secondary payer, or moving outside of the ACOs service area.

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**Q8: Does the physician or provider who refers the beneficiary to an eligible SNF waiver facility have to be a Next Generation ACO Participant or Preferred Provider?**

A: No. The physician or provider who refers the beneficiary to an eligible SNF waiver facility does not need to be a Next Generation ACO Participant or Preferred Provider; only the SNF needs to be an approved SNF waiver facility.

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**Q9: Suppose a beneficiary is admitted to an eligible SNF under the three-day rule waiver. After six days, the patient or a family member requests a transfer to a SNF that is closer to their home. The second SNF is not an eligible SNF. Is the second SNF eligible for Medicare payment?**

A: The second SNF is eligible for payment because the beneficiary was initially admitted to an eligible SNF under the three-day rule waiver.

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**Q10: Suppose a beneficiary was admitted to an eligible SNF under the three-day rule waiver. On day 10, the beneficiary is discharged to his or her home. On day 20, the beneficiary is admitted to a non-eligible SNF under the three-day rule waiver. Is the second SNF stay eligible for payment?**

A: The second SNF stay is eligible for payment because the beneficiary was initially admitted to an eligible SNF under the three-day rule waiver. Further, Medicare's Benefit Policy Manual reads, "After you leave the SNF, if you re-enter the same or another SNF within 30 days, you may not need another qualifying three-day hospital stay to get additional SNF benefits. This is also true if you stop getting skilled care while in the SNF and then start getting skilled care again within 30 days." Therefore, since the beneficiary was in an eligible SNF at the beginning of the scenario, the stay at the ineligible SNF waiver facility will not require a qualifying three-day hospital stay.

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**Q11: Suppose a beneficiary is discharged to home after a short inpatient stay (less than three days), but after a week at home the beneficiary decides that she needs to be admitted to a SNF. Can the patient be admitted to a SNF under the waiver? Is there anything different that needs to happen for the admission?**

A: This would be considered a "Direct SNF admission" (see Appendix I of the Participation Agreement) because the patient was not admitted to the SNF (or Swing Bed) directly from an inpatient hospitalization.

In a Direct SNF Admission, the patient would need to be evaluated by a physician (or other practitioner licensed to perform the evaluation) within three days prior to the SNF-waiver admission. Other beneficiary criteria for SNF eligibility under the waiver would be the same as an admission from a short inpatient stay, including: medical stability, a confirmed diagnosis, inpatient hospital evaluation or treatment is not required, and a

skilled nursing or rehabilitation need is identified by the evaluating physician or other practitioner that cannot be provided on an outpatient basis.

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**Q12: Suppose a beneficiary is aligned to the ACO at the beginning of the performance year (PY), but later becomes excluded from ACO alignment. Is there a grace period by which CMS would pay for a SNF stay under the waiver?**

**A:** Yes, a 90-day grace period applies to the SNF Three-Day Rule Waiver for beneficiaries originally aligned to the ACO during the performance year and who subsequently become excluded during the same performance year. The grace period is not intended to cross performance years. For example, if a beneficiary is aligned for PY2019, but not PY2020, the grace period would not apply if the SNF stay occurred in PY2020. Beneficiaries may be excluded for a number of reasons including joining MA, losing Part A or Part B coverage, having Medicare as a secondary payer, or moving outside of the ACOs service area. More information is available in the appendices of the NGACO participation agreement.

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**Q13: Suppose a beneficiary chooses to go to a SNF that is not eligible under the waiver. Do the rules and payment revert back to the non-wavered status and is the beneficiary required to stay in the hospital three days before moving to the SNF?**

**A:** The beneficiary has the option to go to a SNF that is not participating in the SNF Three-Day Rule Waiver, but the three-day hospital inpatient stay requirement would not be waived. The standard Medicare billing rules apply, whereby a qualifying hospital stay is required prior to the SNF admission.

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**Q14: Do SNFs need to include demonstration or condition codes on waiver-related claims?**

**A:** No, SNFs admitting waiver patients do not need to apply demonstration or condition codes to the claims. The FFS system has been configured to recognize Next Generation ACO SNF waiver claims, so SNFs do not need to do anything different than they do when they submit regular FFS claims.

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**Q15: Q12: How do I know if a beneficiary's care is part of the Bundled Payments for Care Improvement (BPCI) Advanced Initiative?**

**A:** NGACO beneficiaries cannot be in the BPCI Advanced and NGACO Models. The NGACO Model takes priority, so if a NGACO beneficiary goes to a SNF using the waiver, it will be considered a NGACO SNF waiver stay.

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**Q16: How can I check beneficiary and SNF eligibility to use the waiver in real-time?**

A: An ACO can use the ACO User Interface (ACO-UI) to check beneficiary and SNF eligibility to use the SNF waiver. The ACO-UI is the same system you use to add or terminate Participant and Preferred Providers, and select Benefit Enhancements for your providers. You can find the ACO UI user guides on the Connect Site by searching in the Library for: ACO\_UI\_External\_User\_Guide\_Quickstart or ACO\_UI\_User\_Guide.

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**Q17: Do SNF advertising materials used by Next Generation Participants and Preferred Providers that relate to the waiver need to be approved by CMS?**

A: Yes, ACOs must have descriptive ACO materials reviewed and approved by CMS before Next Generation Participants and Preferred SNFs can use them. Refer to the Next Generation ACO Model Participation Agreement for further information about “Descriptive ACO Materials and Activities.”

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**Q18: Does the waiver affect the number of allowable rehabilitation days under Medicare?**

A: No, the waiver does not affect CMS requirements or regulations regarding the maximum allowable annual rehabilitation days.

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**Q19: Can a patient be admitted to a SNF from an observation stay?**

A: Yes, that would be considered a SNF-waiver admission since there was no preceding three-day hospital stay.