

# CareForum 2022

The WellSky® Conference

## The View from Washington: Legislative & Regulatory Highlights for Long-term and Post-acute Care

Cynthia K. Morton, MPA

Executive Vice President, National Association for the Support of Long Term Care

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Today's speaker



**Cynthia K. Morton, MPA**

Executive Vice President

National Association for the Support  
of Long Term Care

# Agenda

- Review the 2023 payment updates for the post-acute care sector.
- Review key policy positions that the Administration is proposing and which have traction to be implemented.
- Forecast impactful legislation that Congress could act on this fall.

# Payment Updates

# 2023 Payment Updates

Setting / Payor	Proposed	Final	Dollars (above or below the previous year)
Skilled Nursing facility	-0.7%	2.7%	\$904 million
Home Health Agency	-4.2%	<i>Not yet finalized by CMS</i>	-\$810 million
Inpatient Rehab Facility	2.0%	3.2%	\$275 million
Hospice	2.7%	3.8%	\$580 million
Inpatient Psych	1.5	2.5%	\$90 million
Long term care Hospital	71	2.35	\$71 million
Physician Fee Schedule	-4.4%	<i>Not yet finalized by CMS</i>	-\$1.53 billion
Medicare Advantage	7.98%	8.5%	<i>Not currently known</i>

- IRF- collect data on ALL patients 10/24. HHA collect all payor 2025

# Administration Priorities

# Biden Administration Priorities for Post-Acute Care

## - **Increases quality in nursing homes**

- Minimum staffing requirement proposal before 2023 SOTU
  - Conducting staffing study now

## - **Supports care in the home**

- Increased funding for Medicaid Home and Community Based Services (HCBS)
- *American Rescue Plan* contained an 10% Medicaid HCBS increase
- Unsuccessful to add HCBS dollars to *Inflation Reduction Act*
- Released first-ever HCBS quality measures



# Administration Priorities continued

- **Unified Post-Acute Care (UPAC) Prototype released by CMS**
  - Mandated by *IMPACT Act*
  - Congress not required to act on the report
  - Needs congressional action to enact
  - CMS relied on data prior to HHGM, PDPM and prior to the pandemic
- **New Framework for Health Equity**
  - Increasing health literacy and language access, assessing for unintendedly causing disparities, improving data collection, and restructuring programs to encourage providers to address social risk factors and the social determinants of health.
- **Extended Public Health Emergency to mid-October**



# Key Legislation

# Key Legislation This Fall

- *Choose Home Care Act of 2021 (S 2565, HR5514)*
- *Improving Seniors' Timely Access to Care Act of 2021 (HR3173)*
- *The Advancing Telehealth Beyond COVID-19 Act (HR4040)*
- *The Nursing Home Improvement and Accountability Act of 2021 (S. 2694, HR 5169)*
- *Big Data: American Data Privacy & Protection Act (H.R. 8152)*
- *Potential legislation to mitigate the Physician Fee Schedule reductions*

# *The Choose Home Care Act*

- **A New Medicare benefit: Home-based Extended Care Services**
- Targeted eligibility:
  - Post Acute Patients
  - Must meet SNF and HH eligibility criteria
  - Determined clinically appropriate for home recovery
- **Benefit is a 30-day episode of care**
- **Works as an add on to the Home Health episode**

## **Services:**

- Medical social services
- Medication management and patient supports
- Medical supplies and equipment
- Meals – 30 meals to be distributed across 30 days.
- Home Adaptations and Equipment
- Supports-- bedside commode, bath bench and wheeled walker
- Rehab Therapies
- Personal care

# *Improving Seniors' Timely Access to Care Act of 2021*

- Use of prior authorization under Medicare Advantage
- 309 House sponsors!
- Requires health plans to create an electronic system to streamline and standardize prior authorization.
- Office of Inspector General Report – MA plans sometimes denied or delayed beneficiaries' access to services, even though the requests met Medicare coverage rules.

# *The Advancing Telehealth Beyond COVID-19 Act*

- Sponsored by Reps. Liz Cheney (R-WY) and Debbie Dingell (D-MI) -- **extend through 2024 telehealth policies under Medicare that were initially authorized at the start of the COVID-19 pandemic in March 2020.**
- Continues for two years the no geographic restrictions and expands originating sites.
- Expanded qualified practitioners: rehab therapists, physician assistants, nurse practitioners, clinical nurse specialists, nurse-midwives, clinical social workers, clinical psychologists, registered dietitians, and nutrition professionals.
- Mental health services furnished through telehealth for up to six months without an in-person meeting.
- Audio-only telehealth services to ensure seniors and rural patients who may not have internet connectivity can receive the care they need.
- Expanded access to telehealth services for recertification of hospice care eligibility during an emergency period.
- CBO estimated that the bill would cost almost \$2.35 billion.

# Telehealth Before the CARES Act

- **Who?** Only Eligible Practitioners
- **Where?** Certain Sites of service
- **What?** Certain services
- **How?** Certain technology to be used

	Public Health Emergency	Current Statute
Nursing facilities	Yes	Rural areas only
Physicians	Yes	Yes
Rehab Therapists	Yes	No
Beneficiaries' home	Yes	No
Services?	Many	CMS has CPT code list
Technology needed	Very broad	Narrow– HIPAA compliant only

# *The Nursing Home Improvement and Accountability Act of 2021 (S. 2694, HR 5169)*

- Introduced by **Senate Finance Chair, Wyden (D-OR)** and **Senate Aging Committee Chair Casey (D-PA)**, along with Sens. Blumenthal (D-CT), Bennet (D-CO), Whitehouse (D-RI), and Brown (D-OH).
- Introduced by **Chairman of Ways and Means Committee, Richard Neal (D-MA)** and **Chairman of Energy and Commerce Committee, Frank Pallone (D-NJ)**
- **Study and report to Congress on the appropriateness of establishing minimum staff-to-resident ratios in SNFs and NFs;**
  - **Secretary is required through rulemaking to apply the staffing minimums recommended in the Report to Congress to the Medicare and Medicaid requirements for participation within two years of each report.**
- Prohibits pre-dispute binding arbitration agreements
- Registered Nurse (RN) onsite in nursing homes 24 hours a day, 7 days a week;
- Mandates an Infection Preventionist at least 40 hours per week;
- Penalties for submitting inaccurate data through the MDS or quality measures
- Enhanced funding through Medicaid to support staff improvements and increase wages and benefits;
- Expanding the Special Focus Facility program to 5% of all SNFs; and
- Allocating \$1.3 billion to establish a demonstration project to modify nursing home building requirements, i.e. limiting size to 5-14 residents, universal design, private bedrooms and bathrooms, shared living spaces – similar to Greenhouse models.

# *American Data Privacy & Protection Act (H.R. 8152)*

- Introduced June 2022,
- Bipartisan support of House leaders.
- Significant scope -- applies to virtually any entity – across myriad business sectors.
- Creates a tough national standard designed to minimize the amount of consumer data companies would be allowed to collect, process and transfer.
- A coalition representing “Big Tech” companies ranging from Amazon to Zoom expressed concerns about the sweeping nature of the bill in a House E&C hearing.
- The California Privacy Protection Agency opposes the bill’s “sweeping preemption language” that runs counter to existing federal laws, which allow states to adopt stronger protections such as those found in the *California Privacy Protection Act (CPPA)*.



# *American Data Privacy & Protection Act* *(H.R. 8152)*

- Covers information that “identifies or is linked or reasonably linkable” to an individual with additional protections for data related to individuals under the age of 17.
- Prohibits most entities from using data in a way that discriminates on the basis of protected characteristics (*e.g.*, race, gender or sexual orientation)
- Transparency requirements would require entities to disclose types of data collected, how data is used, how long data is kept and whether data is made accessible to the People’s Republic of China, Russia, Iran or North Korea (*i.e.*, actors linked to credible cyber threats).
- Additional requirements placed on data brokers.
- Legislation to monitor closely!

# Congress Has Mitigated Impact of CMS' Eval/Mgt Reform on Physician Fee Schedule for Two Years

- ***Consolidated Appropriations Act of 2021 for CY2021***

- Increased PFS rates by 3.75% - added \$3 billion
- Delayed the G2211 complexity code for three years – saved additional \$3 billion
- Extended the Geographic Price Cost Index 1.0 floor for three years
- Delayed 2% Medicare sequester for 3 months (extended through CY 2021 in separate legislation)

# Congress Mitigated PFS Cuts for 2022...

- ***Protecting Medicare and American Farmers from Sequester Cuts Act*** for CY2022
  - One year increase in the PFS of 3.0%
  - Three-month delay of the full 2% Medicare sequestration cut (Jan. 1, 2022-March 31, 2022); and a three-month, 1% sequestration cut (April 1, 2022-June 30, 2022)
  - One-year delay (through December 31, 2022) of Medicare payment reductions of 15% to the Clinical Lab Fee Schedule
  - Prevented statutory PAYGO sequestration through 2022, preventing an additional automatic across-the-board cut of 4% to Medicare.

# Will Congress Mitigate Physician Fee Schedule Cuts for 2023?

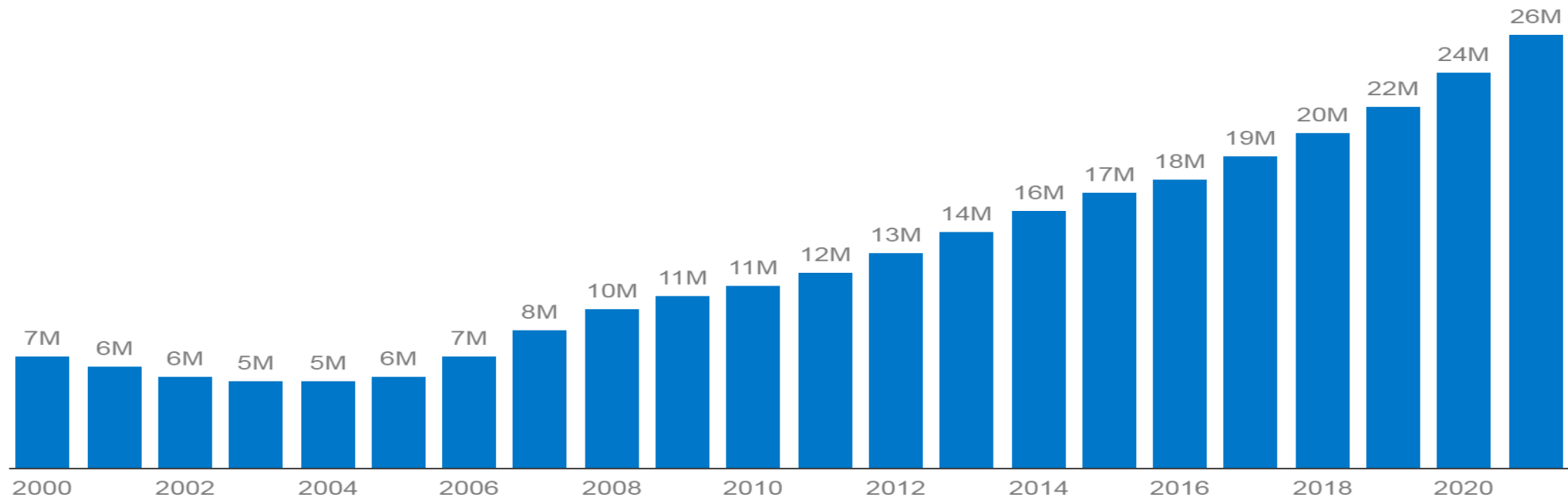
- Part B Providers facing a CY2023 **reduction of 4.4%**.
- **Large practitioner/medical coalitions to fight this yet again.**
- Congress has provider fatigue!
- Expect Congressional action in December timeframe – this legislative package will contain MANY provisions.

# Medicare Advantage Enrollment Growth

Figure 1

## Total Medicare Advantage Enrollment, 2000-2021

**Medicare Advantage Enrollment** Medicare Advantage Penetration



NOTE: Includes cost plans as well as Medicare Advantage plans. About 62.7 million people are enrolled in Medicare in 2021

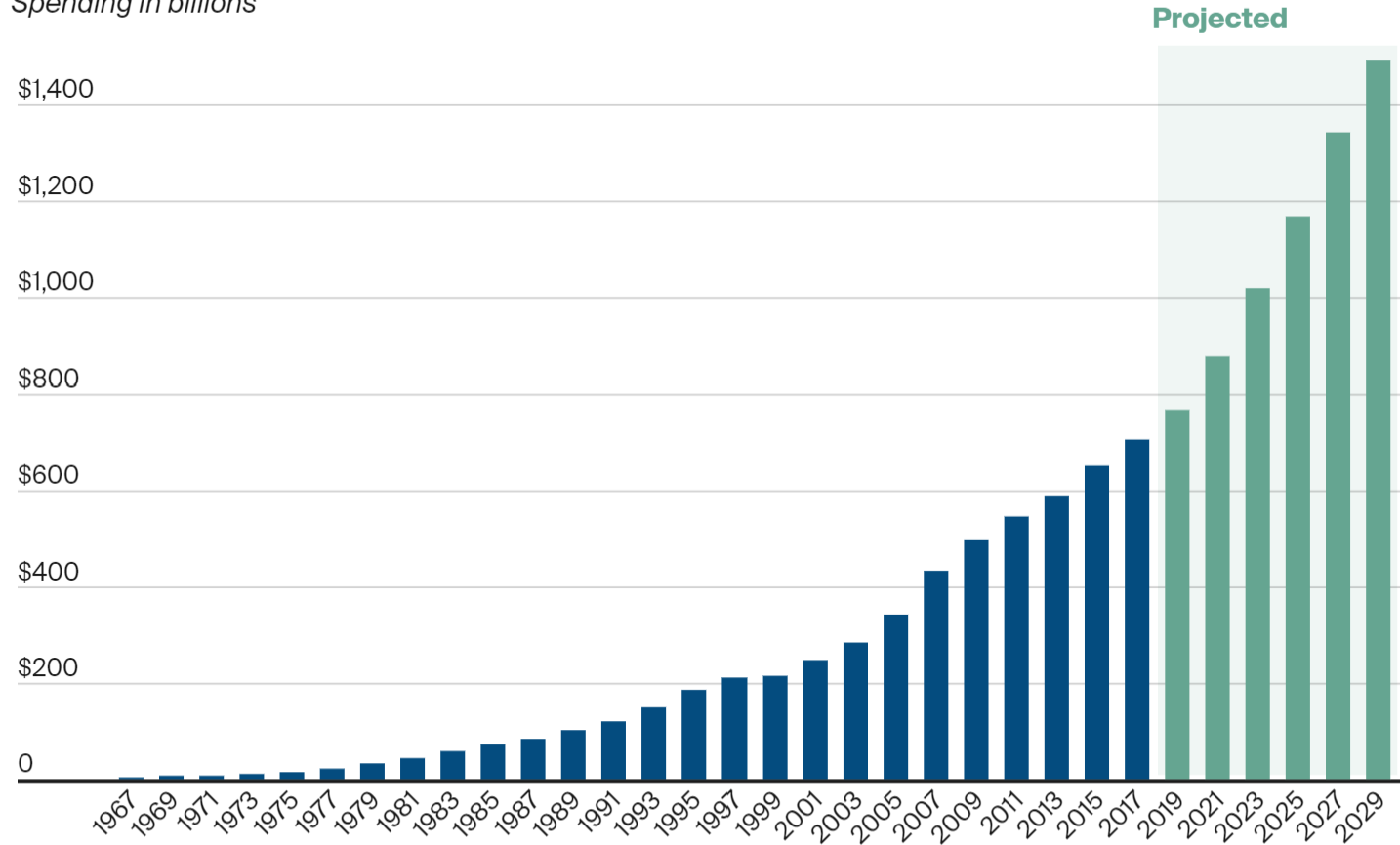
SOURCE: KFF analysis of MPR, "Tracking Medicare Health and Prescription Drug Plans: Monthly Report," 2000-2005; Medicare Chronic Conditions (CCW) Data Warehouse from 5 percent of beneficiaries, 2006-2017; CCW data from 20 percent of beneficiaries, 2018; and Medicare Enrollment Dashboard 2019-2021. Enrollment numbers from March of the respective year. • [PNG](#)



## FINANCING, SPENDING, AND AFFORDABILITY

Medicare spending is projected to nearly double between 2019 and 2029.

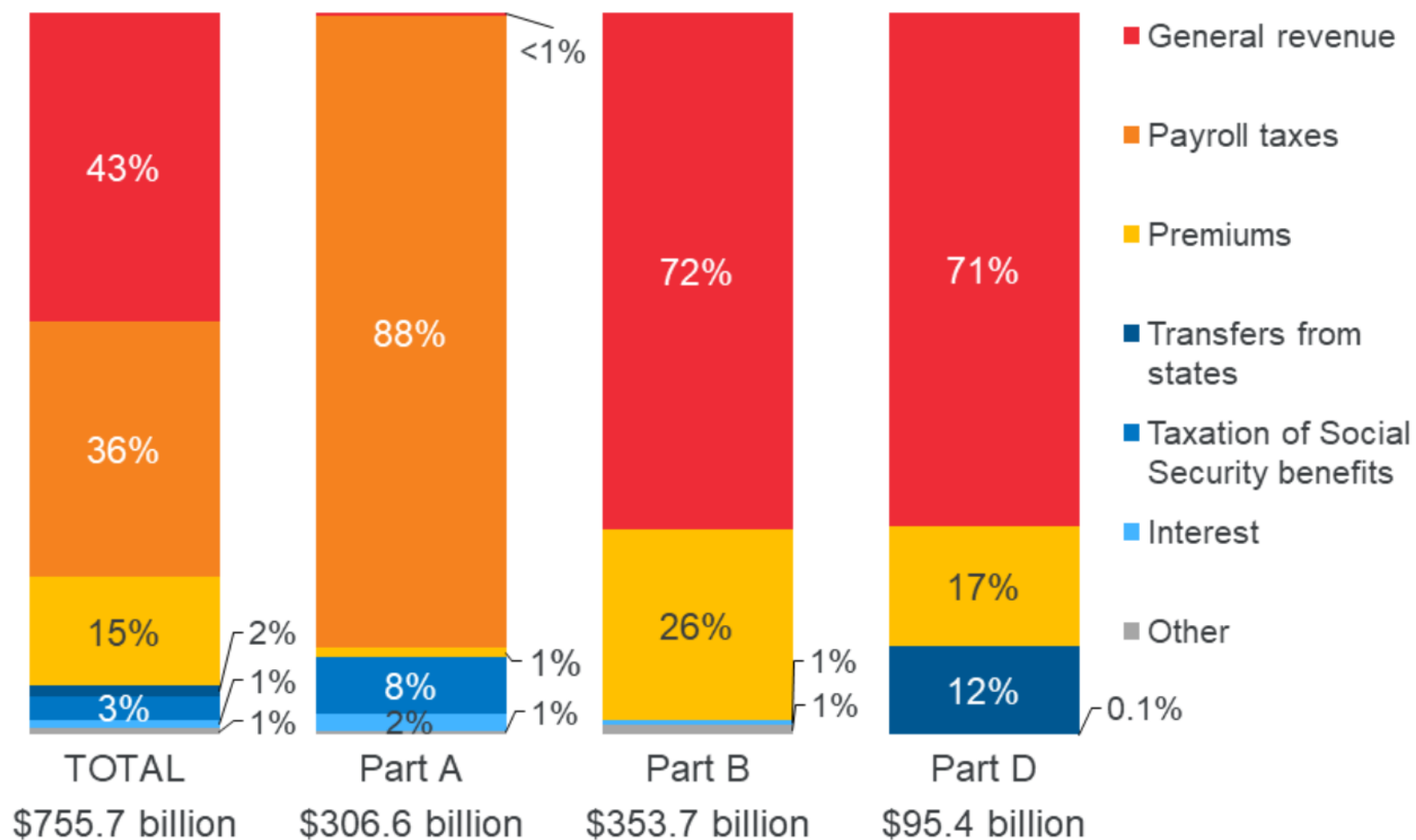
Spending in billions



[Download data](#)

Source: National Health Expenditure Accounts, by type of service and source of funds, 1960–2018 and Congressional Budget Office, Medicare Baseline, March 2020.

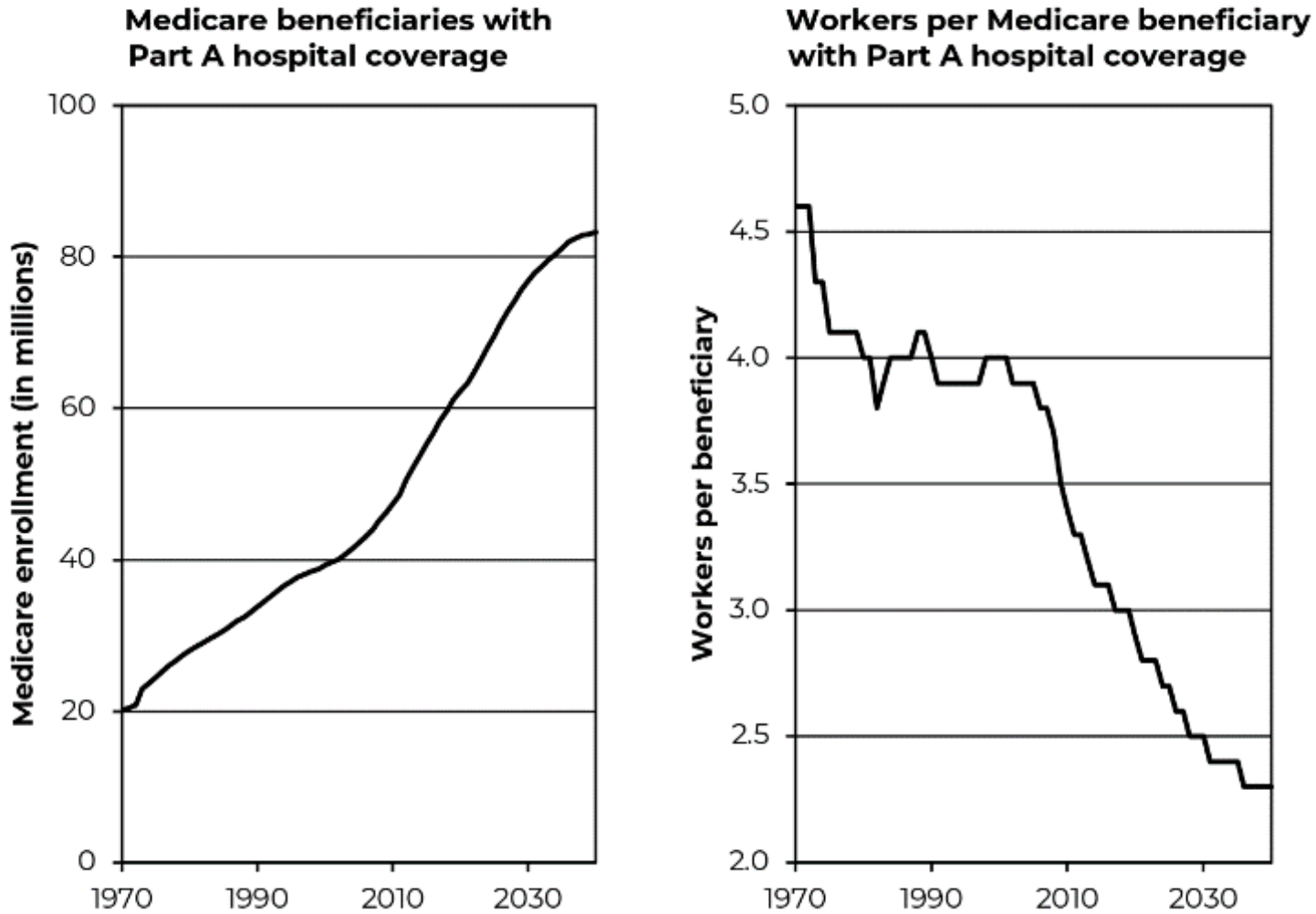
Figure 7  
Sources of Medicare Revenue, 2018



NOTE: Data are for the calendar year.

SOURCE: KFF analysis of Medicare spending data from 2019 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, Table II.B1.

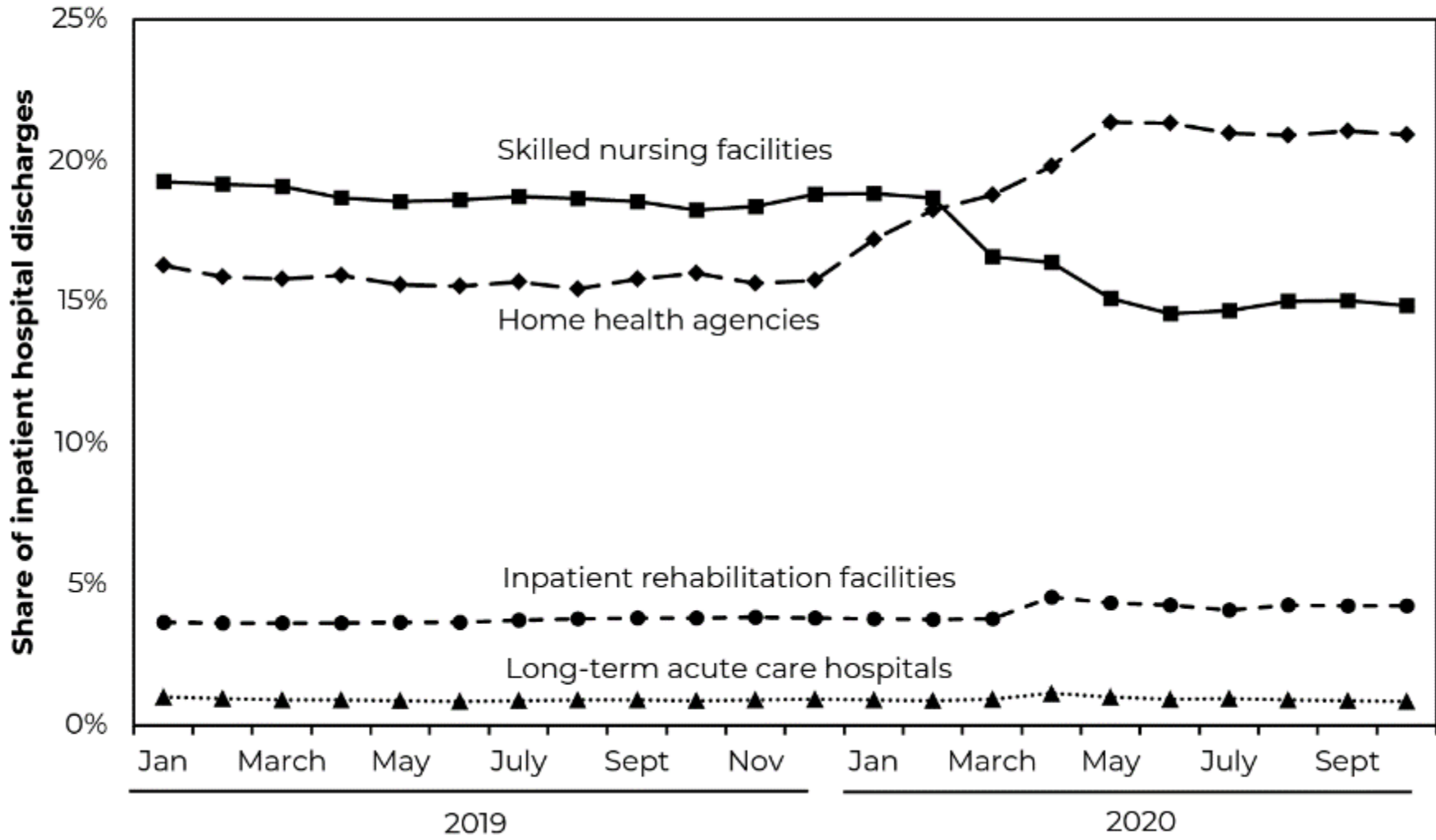
**Chart 1-7. The declining ratio of workers to Medicare beneficiaries threatens the Medicare program's financial stability**



Source: MedPAC/The 2021 annual report of the Boards of Trustees of the Medicare trust funds.



**Chart 8-3. Use of skilled nursing facilities and home health agencies after an inpatient hospital stay shifted in 2020**



Source: MedPAC Databook 2022

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# Thank you.

**Let's be in touch!**

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