

February 4, 2025

[ENSG, PACS, SBRA, OHI]: Potential Timing of the Nursing Home Staffing Rule's Demise

With the briefing in a federal lawsuit having concluded and Congress on the hunt for legislative savings, the question is when, not if, CMS's minimum nurse staffing rule is killed, eliminating the overhang and potential cost burden for **nursing homes** [ENSG, PACS, privately held **Providence**] and **post-acute care REITs** [SBRA, OHI, LTC, CTRE]. We suspect resolution in the industry's favor within the next 2-3 months. While we have long thought [[here](#), [here](#)] that, under a GOP trifecta, Congress would likely repeal the rule, the courts remain a viable alternative for elimination.

Nursing homes and PAC REITs nevertheless remain at risk due to the congressional crosshairs on Medicaid. Despite President Trump's vow to "love and cherish" this program for the poor, reforms are likely to serve as budget offsets for an extension of expiring tax cuts (e.g., work requirements, federal contribution cuts, provider tax limits, per-capita caps, etc.). While these do not target nursing homes directly, pressures on state financing could lead to payment cuts / freezes, reduced enrollment, and narrowed coverage of nursing home services.

Federal Lawsuit: AHCA v. Becerra

- We think Judge Matthew Kacsmaryk of the US District Court for the Northern District of Texas, a Trump appointee, is likely to side with the American Health Care Association (AHCA) – the nursing home lobby – and vacate the 24/7 requirement for registered nurses (RNs) and the minimum hours-per-resident-day requirements for total staffing, RNs and nursing aides.
- A ruling on the motion for summary judgment could occur within the next 2-3 months, if not sooner, should the judge decide not to hold oral arguments and purely rule on the briefings.
- The final briefings of the motion for summary judgment were filed January 17, and there is not yet any indication of a hearing being scheduled. While that can still be done at any time, the more time that elapses without a hearing being scheduled the more likely it is that a judge will rule on the briefings.
- Judge Kacsmaryk is said to be a conservative / textualist regarding statutory interpretation, and he is known not to shy away from controversial issues or nationwide "remedies" like vacating federal rules. As such, we see him as sympathetic to industry arguments that CMS failed to heed the statute's text and instead relied on more general authority to impose stringent staffing requirements, while also violating the "major questions" doctrine with no clear congressional directive.

Beth Steindecker

202-935-0946

beth.steindecker@capitolpolicypartners.com

The Ensign Group Inc (ENSG)

Price:	\$144.72
52-Week High:	\$158.45
52-Week Low:	\$113.27

PACS Group, Inc. (PACS)

Price:	\$14.36
52-Week High:	\$43.92
52-Week Low:	\$12.54

Sabra Healthcare REIT Inc (SBRA)

Price:	\$16.80
52-Week High:	\$20.03
52-Week Low:	\$12.83

Omega Healthcare Investors Inc (OHI)

Price:	\$37.60
52-Week High:	\$44.42
52-Week Low:	\$27.53

LTC Properties Inc (LTC)

Price:	\$34.34
52-Week High:	\$39.89
52-Week Low:	\$30.30

CareTrust REIT Inc. (CTRE)

Price:	\$26.48
52-Week High:	\$33.15
52-Week Low:	\$20.10

Should a ruling come in the next 1-2 months, however, we should note that it would likely deprive Congress of the estimated \$22B in 10-year savings that could otherwise be used for a mid-March healthcare extenders package or extension of the Trump tax cuts. It is unclear to what extent Congress could book those savings if the rule's vacatur is under appeal, which is itself a dubious prospect under following the change in administration.

Legislative Repeal of Nurse Minimum Staffing Requirements

- Following November's GOP sweep, we have thought CMS's nurse minimum staffing rule is not long for this world given Republican (and some Democratic) opposition and the \$22B in offsets it could provide for other priorities.
- Recall that House Republicans included repeal in its circulated list of savings options, and senators asked HHS nominee Robert F. Kennedy Jr. about his support for eliminating this rule, bolstering our view.
- With government funding set to expire on March 15, a healthcare "extenders" package at that time will likely be the first available legislative vehicle, which we think is also likely to resurrect several other items that were abandoned from the December continuing resolution (e.g., PBM reforms).
- Alternatively, repeal could be added to a reconciliation / tax cut package, but Republicans have yet to coalesce around their strategy on those issues (i.e., one bill versus two), which will affect the substance and timing of what can be included.
- If a single bill approach is adopted – encompassing immigration, border, defense, energy, and taxes – the timing for action is likely much later this year, given the difficulties we suspect the GOP will have in reaching unanimity.
- If these efforts are separated into two distinct reconciliation bills, however, repeal of the nursing home rule could either be added to the initial tranche (immigration, border, defense, and energy), with enactment likely in 1H25, or paired with other healthcare savings to offset extension of the Trump tax cuts, where we think enactment is unlikely before Q4.

DISCLOSURES AND DISCLAIMERS

Analyst Certification

The analyst, Capitol Policy Partners, primarily responsible for the preparation of this research report attests to the following: (1) that the views and opinions rendered in this research report reflect his or her personal views about the subject companies or issuers; and (2) that no part of the research analyst's compensation was, is, or will be directly related to the specific recommendations or views in this research report.

Analyst Certifications and Independence of Research.

Each of the Capitol Policy Partners analysts whose names appear on the front page of this report hereby certify that all the views expressed in this Report accurately reflect our personal views about any and all of the subject securities or issuers and that no part of our compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views of in this Report. Capitol Policy Partners (the "Company") is an independent equity research provider. The Company is not a member of the FINRA or the SIPC and is not a registered broker dealer or investment adviser. Capitol Policy Partners has no other regulated or unregulated business activities which conflict with its provision of independent research.

Limitation Of Research And Information.

This Report has been prepared for distribution to only qualified institutional or professional clients of Capitol Policy Partners. The contents of this Report represent the views, opinions, and analyses of its authors. The information contained herein does not constitute financial, legal, tax or any other advice. All third-party data presented herein were obtained from publicly available sources which are believed to be reliable; however, the Company makes no warranty, express or implied, concerning the accuracy or completeness of such information. In no event shall the Company be responsible or liable for the correctness of, or update to, any such material or for any damage or lost opportunities resulting from use of this data. Nothing contained in this Report or any distribution by the Company should be construed as any offer to sell, or any solicitation of an offer to buy, any security or investment. Any research or other material received should not be construed as individualized investment advice. Investment decisions should be made as part of an overall portfolio strategy and you should consult with a professional financial advisor, legal and tax advisor prior to making any investment decision. Capitol Policy Partners shall not be liable for any direct or indirect, incidental or consequential loss or damage (including loss of profits, revenue or goodwill) arising from any investment decisions based on information or research obtained from Capitol Policy Partners.

Reproduction And Distribution Strictly Prohibited.

No user of this Report may reproduce, modify, copy, distribute, sell, resell, transmit, transfer, license, assign or publish the Report itself or any information contained therein. Notwithstanding the foregoing, clients with access to working models are permitted to alter or modify the information contained therein, provided that it is solely for such client's own use. This Report is not intended to be available or distributed for any purpose that would be deemed unlawful or otherwise prohibited by any local, state, national or international laws or regulations or would otherwise subject the Company to registration or regulation of any kind within such jurisdiction.

Copyrights, Trademarks, Intellectual Property.

Capitol Policy Partners, and any logos or marks included in this Report are proprietary materials. The use of such terms and logos and marks without the express written consent of Capitol Policy Partners is strictly prohibited. The copyright in the pages or in the screens of the Report, and in the information and material therein, is proprietary material owned by Capitol Policy Partners unless otherwise indicated. The unauthorized use of any material on this Report may violate numerous statutes, regulations and laws, including, but not limited to, copyright, trademark, trade secret or patent laws.