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GOVERNMENT STANDARDS & QUALITY ASSURANCE

[CMS ADMINISTRATOR SEEMA VERMA DISCUSSES MEASURES FOR ENHANCING ENFORCEMENT, SPARKING CONCERNS ABOUT UPCOMING ROLLEBACKS](#)

On February 18, 2020, Seema Verma, the Administrator of the Centers for Medicare & Medicaid Services (CMS) published a [blog post](#) on CMS’s five part strategy to improve nursing home quality and safety. The focus of this post was on the second pillar of the initiative: **enhancing enforcement**. As Administrator Verma correctly states, “CMS bears the responsibility to develop and enforce quality and safety standards across the nation’s healthcare system . . . [e]very nursing home resident deserves to be treated with dignity and respect.”

While there may regional differences in the use of financial penalties, LTCCC respectfully urges CMS to not remedy this variation by dropping enforcement down to lowest common denominator

To meet these duties, CMS has conducted a comprehensive review of the nursing home enforcement mechanism and has or is undertaking several changes to improve nursing homes nationwide. For instance, CMS has implemented [additional enforcement remedies](#) against so-called “late adopters” (nursing homes with high rates of inappropriate antipsychotic drug use) and is requiring state survey agencies to conduct [at least 5 percent of their “off-hour” surveys](#) (i.e., weekends) at facilities with extremely low registered nurse staffing based on payroll based journal (PBJ) data.

Unfortunately, Administrator Verma’s blog post also notes that CMS is taking a “hard look” at fines for noncompliance. According to the Administrator, there is a high level of variation and inconsistencies among states regarding the use of civil money penalties (CMPs). Administrator Verma indicates that CMS will be issuing new policies to reduce regional variation. LTCCC is concerned by this announcement due, in part, on previous changes to the CMP Analytic Tool which weakened enforcement of the nursing home standards of care by making per instance CMPs (a one-time fine) the default CMP instead of per-day CMPs (a fine for every day of noncompliance), as [requested](#) by the nursing home industry. Writing about this change, [The New York Times](#) stated that “the change means that some nursing homes could be sheltered from fines above the maximum per-instance fine of \$20,965 even for egregious mistakes.”

While there may be regional differences in the use of financial penalties, LTCCC respectfully urges CMS not to remedy this variation by weakening enforcement penalties as was previously done by changing the CMP Analytic Tool. Facilities that voluntarily participate in the Medicare and/or Medicaid programs receive public funds for every day of a resident’s stay in exchange for providing care that meets or exceeds the federal standards. Thus, facilities must be held accountable to the public for every day of noncompliance. Only per day CMPs hold nursing homes accountable for each day that they fail to provide adequate care while receiving taxpayer dollars from the Medicare and Medicaid programs.

Lastly, Administrator Verma’s blog post notes that CMS has asked Congress for the authority to adjust the frequency of nursing home health inspections. **LTCCC strongly encourages Congress not to grant CMS the authority to roll back annual nursing home inspections.** CMS has previously indicated that, in order to focus on poorly performing nursing home, it would like to inspect so-called “top performing” facilities every 30 to 36 months (instead of annually as is currently required). However, numerous studies and reports indicate that residents at “top performing” facilities are not immune from experiencing abuse, neglect, and other forms of harm. According to a 2019 [Government Accountability Office \(GAO\) report](#), more than 1 in 5 nursing homes considered “above average” and “much above average” by CMS have been cited for abuse in a single year.

Decreasing the frequency of nursing home surveys is dangerous and creates more burdens for resident and families.

Decreasing nursing home survey frequency is dangerous and creates more burdens for residents and families. LTCCC asks that CMS use the authority already granted under the federal Nursing Home Reform Law to properly adjust the frequency of health inspections. The Reform Law provides for a more flexible survey process by allowing state survey agencies to adjust the timeframe of nursing home inspections by six months as long as the statewide average is 12 months. If a nursing home has a poor record of care, surveyors can inspect that facility annually on a nine-month cycle. Likewise, if a

nursing home has a strong record of care, then surveyors can inspect that facility annually on a 15-month cycle.

The initiatives identified in the CMS Administrator’s blog post are concerning. While CMS has implemented a few promising changes, our organization urges CMS to cease efforts that weaken or undermine the rights and protections of nursing home residents.

- For more information about CMS’s proposal to reduce the frequency of nursing home inspections, please read out issue alert, [Nursing Home Residents at Risk: Proposals to Reduce Survey Frequency for “Top-Performing” Nursing Homes are Dangerous.](#)

CMS ANNOUNCES CHANGES TO NURSING HOME COMPARE

On January 23, 2020, CMS Administrator Seema Verma published a [blog post](#) announcing upcoming changes to Medicare’s care compare websites, including [Nursing Home Compare](#). According to Administrator Verma, CMS is planning to launch a “simplified and consistent online experience to make it easier for consumers to find and compare care, while also meeting the needs of industry stakeholders who search data that are important to them.” CMS is also planning to update the data companion portal, [data.medicare.gov](#), which will be housed on CMS.gov when the changes are rolled out this spring.

[O]ur organization is concerned that CMS will use this opportunity to make changes that we believe would be disadvantageous to nursing home residents and families

LTCCC’s discussions with CMS officials indicate that all currently available information on Nursing Home Compare will, at least initially, remain available on the new website. Nevertheless, our organization is concerned that CMS will use this opportunity to make changes that we believe would be disadvantageous to nursing home residents and families, such as adding results from an inappropriately-administered resident satisfaction survey and making the self-reported quality measure more prominent on the website. LTCCC will continue to monitor CMS’s changes to the Nursing Home Compare website and will publish more information when the website is rolled out later this year. In the meantime, we encourage consumers to continue using Nursing Home Compare to assess a nursing home’s quality and safety.

CMS RELEASES TOOLKITS INTENDED TO IMPROVE SAFETY AND QUALITY IN NURSING HOMES

On February 14, 2020, the Centers for Medicare & Medicaid Services (CMS) announced the release of two toolkits as part of its strategic initiative to ensure safety and quality in nursing homes. The **Developing a Restful Environment Action Manual (DREAM) Toolkit** offers a non-pharmacological approach to promote high-quality sleep for residents living with dementia and provides nursing staff with education and person-centered, practical interventions. The **Head-to-Toe Infection Prevention (H2T) Toolkit** provides bedside staff with educational materials and practical interventions intended to prevent common infections through improvement of activities of daily living (ADL) care.

- The free toolkits are available for download on the [Civil Money Penalty Reinvestment Program \(CMPRP\) website](#). To learn more about non-pharmacological approaches to dementia care,

please see [LTCCC's fact sheet](#) and our [Dementia Care & Antipsychotic Drugging Advocacy Toolkit](#).

LTC NEWS & BRIEFS

LAWMAKERS MUST BE CAUTIOUS ABOUT RECOMMENDATIONS FROM A NEW INDUSTRY REPORT ON NURSING HOME CLOSURES

LeadingAge, a trade association for non-profit nursing homes, [released a report](#) on nursing home closures and trends that found more than 550 nursing homes—approximately four percent of all facilities certified to participate in Medicare and/or Medicaid—closed between June 2015 and June 2019. Other findings from the report include:

- Two-thirds of the closures involved for-profit facilities;
- Quality ratings were not associated with closures; and
- Closures occurred at the same rate in rural and urban areas.

LeadingAge, pointing to low occupancy and Medicaid reimbursement rates as factors in the closures, recommended that (1) states reevaluate Medicaid rate setting processes to ensure providers are reimbursed for their actual cost of care, and (2) the National Academy of Sciences launch a new study to evaluate the nursing home survey process, links to care outcomes, and alternative strategies for nursing home quality.

However, in a [joint statement](#), the **Long Term Care Community Coalition and the Center for Medicare Advocacy urge state and federal policymakers to be cautious about these recommendations**. First, our organizations do not believe that nursing homes should receive additional public funds without audits to determine how facilities spend public reimbursement and the implementation of a medical loss ratio ([MLR](#)) designed to hold nursing home operators accountable for taxpayer dollars. Second, we do not believe that another Institute of Medicine (IoM) study is necessary. Though LeadingAge's report suggests that some federal regulations are "unnecessarily burdensome" for providers, numerous studies have demonstrated the necessity of regulation in protecting vulnerable consumers, including a 2020 study published in [The Journal of Post-Acute and Long-Term Care Medicine](#) which determined that "much of the quality progress made in NHs [nursing homes] has been because of regulation and oversight over the years."

Our organizations respectfully urge state and federal policymakers to take steps to hold the nursing home industry accountable for the use of public funds and quality of resident care.

Our organizations respectfully urge state and federal policymakers to take steps to hold the nursing home industry accountable for the use of public funds and quality of resident care. Implementing an MLR and properly enforcing the standards of care are, we believe, the best places to start in respect to the achieving the recommendations made by LeadingAge.

STUDY FINDS SOCIOECONOMIC AND GEOGRAPHIC DISPARITIES IN NURSING HOME ACCESS

A study in *The Journal of Post-Acute and Long-Term Care Medicine* found that nursing homes with higher star ratings were less accessible for residents in socioeconomically disadvantaged counties. Analysis of ratings (overall, health inspection, nurse staffing, and quality measure) of more than 15,000 Medicaid/Medicare-certified nursing homes indicated that “residents in socioeconomically disadvantaged counties experience disparities in accessing nursing homes with higher star ratings.” The authors note that these areas may lack resources to adequately staff the facility and deliver quality care, and that issues are likely to persist for lower- and middle-class geriatric population given the current uncertainty around healthcare reform.

- To access LTCCC’s latest staffing report, based on data from the third quarter of 2019, please visit <https://nursinghome411.org/nursing-home-staffing-2019-q3/>.

STUDY EXAMINES POSTACUTE CARE IN INPATIENT REHABILITATION VS. SKILLED NURSING FACILITIES

A new study in *The Journal of the American Medical Association* found that inpatient rehabilitation facilities (IRFs) were associated with “substantially improved” outcomes compared to skilled nursing facilities (SNFs). Analysis of approximately 100,000 patients receiving post-acute care after experiencing a stroke indicated larger improvements for mobility and self-care in IRFs versus SNFs.

The study findings have significant policy implications, “[raising] questions about the value of any policy that would reimburse IRFs or SNFs at the same standard rate for stroke.” The 2014 Improving Medicare Post-Acute Care Transformation (IMPACT) Act requires establishment of a unified payment system for post-acute care. The Medicare Payment Advisory Commission has recommended that IRFs and SNFs explore similar episode-based reimbursement for a given condition as a step in that direction. However, as the study notes, these settings have different coverage criteria and have different standards of care.

“This finding raises questions about the value of any policy that would reimburse IRFs or SNFs at the same standard rate for stroke.”

- JAMA, 2019

LTCCC is extremely concerned about how patient care would be affected by a potential unified payment system. As the report states, “[i]n a unified payment system, there would be financial incentives to shift high-cost patients, such as patients with stroke and other complex medical conditions, to lower-cost postacute care options.” We urge policymakers to halt efforts to establish a unified payment system. While patient characterizes between the two settings may be similar, IRFs and SNFs provide different levels of care. Blending payment models, may put patients at risk of experiencing adverse events due to unmet care needs.

- For more information about the 2014 IMPACT Act, please see the Center for Medicare Advocacy’s alert, [“The Improving Medicare Post-Acute Care Transformation Act of 2014 \(IMPACT Act\) & Other Issues.”](#)

LTCCC REPORT ILLUSTRATES INHUMANE CONDITIONS IN NURSING HOMES

For far too many nursing home residents, adequate care and treatment with dignity are out of reach. Though nursing home standards are strong, the promise of those standards is frequently broken, and residents are subjected to inhumane conditions.

Over the years, numerous distraught family members have told us that “they wouldn’t treat a dog” the way their loved one was treated by their nursing home. A report in an industry publication discussed allegations that a nursing home “mogul” “sold his patients like cattle.” In addition to the decades of studies that have identified both the prevalence and persistence of substandard care, frequent reports in the news have shone a light on the abject neglect and inhumane treatment that nursing home residents too frequently face.

A new LTCCC report, [*Animal Care Standards vs. Nursing Home Resident Experiences: An Appraisal of the Extent to which Nursing Home Conditions Fail to Meet the Standards of Care for Animals in Zoos and Other Settings*](#), illustrates how systemic failures to hold nursing homes accountable for abuse and neglect too often subject residents to conditions that not only fall below the federal nursing home standards of care, but also below accepted standards for the humane treatment of animals.

Examples from report:

- **Animal Care Standard:** An elephant’s skin must be thoroughly inspected on a daily basis and cared for as needed through bathing, removal of dead skin, and treatment of dry skin or other skin problems. The elephant’s skin should be supple and free of dead skin buildup, and not cracked or dry.
- **Nursing Home Standard:** All residents must receive care to ensure that they do not develop pressure ulcers unless the individual’s clinical condition demonstrates that they were unavoidable. A resident with pressure ulcers must receive care, consistent with professional standards, to promote healing, prevent infection, and prevent new ulcers from developing.
- **Actual Nursing Home Resident Experience:** Several residents at a Tennessee nursing home were harmed after the facility failed to prevent and treat their pressure ulcers. One resident, who had not received body audits for 35 days, developed a Stage 4 pressure ulcer on their left.
- **Nursing Home Stats:** Over 93,000 U.S. nursing home residents currently have pressure ulcers.

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NEW BOOK DETAILS PITFALLS OF PRIVATIZATION IN NURSING HOMES

In [*The Privatization of Care: The Case of Nursing Homes*](#), Patricia Armstrong, Hugh Armstrong et al. document a disturbing trend toward privatization in nursing home settings across the world and explore how privatization has affected residents, families, and staff. Released in October, *The Privatization of Care* features contributions from an international team of long term care experts including renowned nursing home researcher Charlene Harrington, a nurse and professor at the University of California, San Francisco (UCSF). The book has garnered praise for bringing valuable insights and frameworks that help deepen the understanding of long term care sectors across the world.

LTCCC IN THE MEDIA

- In September, LTCCC Executive Director Richard Mollot and Policy Counsel Dara Valanejad published an article in Bifocal, [Proposed Nursing Home Regulations Could Put Residents at Risk](#), arguing against the CMS's proposed rule that would roll back many of the minimum standards of care in the federal regulations. "[T]he Trump administration is now advocating for Congress to decrease the frequency of standard nursing home inspections for so-called "top-performing" facilities from annually to every three years. This likely would be disastrous for residents and their families."
- Mr. Mollot spoke about antipsychotics during an [NPR segment on the proposed rollbacks](#). "What [the physician] said was that no other insurance company would ever accept that a doctor didn't have to see a patient before continuing a prescription for medicine. But CMS is saying now that that's OK for nursing homes in this very vulnerable population. And people die from this. They're affected so catastrophically."
- Mr. Mollot spoke to *The Buffalo News* for a [report about a maggot infestation](#) found on a nursing home resident's body. Mr. Mollot: "Sadly, this nursing home has a long history of these types of violations, which raises serious questions about what is being done to truly hold it accountable for substandard care and resident harm. In the absence of meaningful fines or penalties, there is little to stop a facility from relapsing, putting current and future residents at risk."
- Mr. Mollot [testified at a mid-November U.S. House Ways & Means Committee hearing](#), "Caring for Aging Americans," criticizing the use and overuse of antipsychotic medications and pushing for better enforcement of minimum care standards to stop repeated incidents of abuse, neglect and crimes against residents. "Some nursing homes honor their promises to residents and families but far too many do not," [Mr. Mollot said, according to McKnight's](#).

FREE LTCCC RESOURCES

LTCCC's resources are free to use and share. To access all of our materials, please visit our homepage www.nursinghome411.org. We thank the [Fan Fox & Leslie R. Samuels Foundation](#) and [The New York State Health Foundation](#) for supporting the development of these resources.

To sign-up for updates & alerts, please visit www.nursinghome411.org/join/ or call 212-385-0355.

LTCCC LEARNING CENTER

[LTCCC's Learning Center](#) offers visitors resources and tools designed for resident-focused advocacy. The Learning Center displays LTCCC's most recent and most relevant materials, including easy-to-use [record-keeping forms](#), [handouts](#), and [fact sheets](#), that residents, families, ombudsmen, and nursing home staff can utilize when advocating for the rights and protections of a resident.

LTCCC WEBINARS

LTCCC conducts [free monthly webinars](#) on a variety of timely nursing home topics, ranging from the survey process to resident rights. Recordings of past webinars are available on [LTCCC's YouTube](#) page.

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Note: This document is the work of the LTCCC. It does not necessarily reflect the views of the Department of Health, nor has the Department verified the accuracy of its content.