DATE

Eric Hargan Acting Secretary U.S. Department of Health and Human Services 200 Independence Avenue, S.W Washington, D.C. 20201

Seema Verma Administrator Centers for Medicare and Medicaid Services U.S. Department of Health and Human Services 200 Independence Ave., SW Washington, D.C. 20201

Dear Acting Secretary Hargan and Administrator Verma:

[Brief introduction of organization submitting comments, with explanation of why your organization is interested in the federal nursing home regulations.]

We are writing to express our opposition to the Centers for Medicare and Medicaid Services’ (CMS) efforts to revise the nursing home requirements of participation and delay their implementation. Such actions would harm residents’ rights, health and welfare. We request that CMS retain the regulations as issued in October 2016 and implement and enforce these requirements according to the originally mandated schedule.

The requirements of participation provide important new protections for residents; they will better ensure resident quality of care, quality of life and safety.

The revised rules were years in the making. CMS first began consulting with stakeholders in 2012 and provided multiple opportunities for groups representing a range of interests to express their perspective and concerns prior to issuing the proposed rule. When released, the proposed regulations received nearly 10,000 comments. CMS carefully reviewed and considered each of these comments. The proposed rules were evaluated and re-evaluated before they were issued.

Despite the improvement in care and safety these requirements will bring, there are ongoing concerted efforts to undo or weaken the regulations and delay their implementation. These include:

* A new proposed rule issued to rescind protections around forced pre-dispute arbitration.[[1]](#footnote-1) This rule not only permits arbitration agreements in which residents and their families sign away their constitutional right to a trial by jury before any dispute arises, it authorizes such agreements as a condition of admission. As a result, residents victimized by abuse or neglect would likely have no recourse for justice in the court system if they had signed a mandatory pre-dispute arbitration agreement authorized under the CMS proposed rule.
* A CMS request for stakeholder feedback on the elimination or modification of regulations related to the grievance process, including reporting of suspected abuse and neglect; the Quality Assurance and Performance Improvement (QAPI) process; and discharge notices to long-term care ombudsmen. Each of these provisions targeted to be re-evaluated or rolled back is important to residents and their families. The timeliness of reporting allegations of abuse is critical to preserving evidence and obtaining assistance for the victim; staff are often inadequately trained to manage conditions of mental illness and dementia; and grievances are regularly ignored and not acted upon by facility administration.

The agency also opened the door to wide scale removal or alteration of the regulations by asking for comments about changes in any other areas of the requirements of participation that would result in burden reduction and cost savings to long-term care facilities.[[2]](#footnote-2)

* A delay in enforcement of certain Phase 2 regulations, which we believe will impact their effective implementation.

These changes are being put forth under the umbrella of regulatory reform and to reduce the burden on providers. Most correspond directly to revisions that the nursing home industry has requested CMS make.

Residents should not have to wait any longer for these - and other - protections. Stronger regulations and timely implementation are needed now more than ever. The requirements of participation have not been updated since they were first issued in 1991. Since that time, the acuity level of residents has increased dramatically. Residents are more frail and dependent, and the majority have some form of dementia. Increased physical and cognitive impairments make residents more vulnerable to abuse and neglect, as evidenced by a CNN investigative report exposing widespread sexual assault in nursing homes across the country.[[3]](#footnote-3)

The continued prevalence of poor care nationwide also makes timely implementation of more robust rules imperative. Studies and reports continue to show the harm that nursing home residents experience. The U.S. Department of Health and Human Services Office of Inspector General (OIG) report released in 2014 found that approximately one-third of individuals discharged from a hospital to a skilled nursing facility were harmed, and that 59% of the time that harm was “clearly or likely preventable.” [[4]](#footnote-4) Another study found that in 2015 more than one in five nursing homes had violations that caused harm or immediate jeopardy (defined as causing or likely to cause injury, harm, impairment, or death to a resident).[[5]](#footnote-5) Now is not the time to lessen the oversight and monitoring of these facilities.

Finally, the natural disasters that hit nursing homes within the past several months provide compelling evidence of the urgent need for these stronger standards and for not postponing their implementation. The importance of rules requiring competent staff, sufficient training, and a well-developed facility assessment that determines what resources are necessary to care for residents during emergencies is underscored by the events stemming from Hurricanes Harvey, Irma and Maria and the tragic deaths in Florida.

CMS should be concerned about residents, not reducing provider burden. It is not acceptable for an agency whose mission it is to serve Medicaid and Medicare beneficiaries to place provider interests before resident interests.

The updated standards will better protect residents every day and in emergencies. We urge CMS to move forward with implementation of the nursing home rules as promulgated and within the mandated time frames.

Sincerely,

Your Name Your Title

1. Federal Register / Vol. 82, No. 109 / Thursday, June 8, 2017 / Proposed Rules [↑](#footnote-ref-1)
2. Federal Register / Vol. 82, No. 85 / Thursday, May 4, 2017 / Proposed Rules [↑](#footnote-ref-2)
3. Sick, Raped and Dying in America’s Nursing Homes. <http://www.cnn.com/interactive/2017/02/health/nursing-home-sex-abuse-investigation/> [↑](#footnote-ref-3)
4. *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries* (Feb. 2014) OEI-06-11-00370 [↑](#footnote-ref-4)
5. *Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 2009-2015*. Prepared by: Charlene Harrington, Ph.D. Helen Carrillo, M.S. University of California San Francisco and Rachel Garfield Kaiser Family Foundation [↑](#footnote-ref-5)