

September 20, 2017

Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
Department of Health & Human Services  
200 Independence Ave., SW  
Washington, DC 20201

Dear Administrator Verma:

The National Consumer Voice for Quality Long-Term Care, along with the undersigned organizations, call on the Centers for Medicare & Medicaid Services (CMS) to immediately implement the recommendations in the Department of Health and Human Services Office of Inspector General's (OIG) Early Alert and to institute prompt enforcement of the reporting requirements instituted by section 1150B of the Social Security Act.

On August 24, 2017, the OIG took the extraordinary measure of issuing an Early Alert regarding the reporting of abuse and neglect of nursing home residents.<sup>1</sup> The OIG found that:

“many incidents of potential abuse or neglect ... may not have been reported to law enforcement” as required under section 1150B of the Social Security Act”

“CMS has not taken any enforcement actions using section 1150B of the Act or used the penalties it contains since its effective date of March 23, 2011.”

The OIG concluded that CMS procedures are not adequate to ensure incidents of potential abuse or neglect are identified and reported. It recommended that CMS take a number of immediate actions to protect vulnerable nursing home residents.

We are greatly disappointed that CMS has stated it will wait for the OIG's final report before taking action.<sup>2</sup> The Affordable Care Act made the reporting requirements of section 1150B effective in March 2011, more than six years ago. The agency should have promulgated regulations many years ago, but instead waited until October 2016 to issue rules.

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<sup>1</sup> Early Alert: The Centers for Medicare & Medicaid Services Has Inadequate Procedures to Ensure That Incidents of Potential Abuse or Neglect at Skilled Nursing Facilities Are Identified and Reported in Accordance With Applicable Requirements (A-01-17-00504) Department of Health and Human Services Office of Inspector General. August 24, 2017.

<sup>2</sup> Ricardo Alonso-Zaldivar, Government probe: Abuse in nursing homes unreported despite law. Associated Press (August 28, 2017).

Over these six years, nursing home residents continued to be abused and neglected.

- In 2015, more than one in five facilities received a deficiency for actual harm or jeopardy.<sup>3</sup>
- An Office of Inspector General study released in 2014 found that one-third of residents who entered a skilled nursing facility following hospitalization were harmed within 15.5 days of admission and that almost 60% of that harm was preventable.<sup>4</sup>
- Over 50% of nursing home staff admitted to mistreating older patients within the prior year in one study. Two thirds of those incidents involved neglect.<sup>5</sup>
- According to a 2017 CNN report, sexual assault “is more widespread than anyone would imagine. Even more disturbing: In many cases, nursing home and government officials who oversee them are doing little – or nothing – to stop it.”<sup>6</sup>

Yet despite the continued prevalence of abuse and neglect, CMS further delayed implementation of the reporting requirements. First, the agency chose to classify the 2016 regulations implementing section 1150B as “Phase 2,” pushing the effective date to November 28, 2017. And when the regulations finally go into effect this fall, CMS may render them almost meaningless by restricting enforcement remedies. According to its June 30, 2017 Survey and Certification memo,<sup>7</sup> instead of utilizing civil money penalties, denial of payment and/or termination, CMS will “educate facilities about certain new Phase 2 quality standards by requiring a directed plan of correction or additional directed in-service training.” CMS has not yet identified which Phase 2 requirements will be affected.

All these delays are unacceptable. Nursing home residents are among the most vulnerable individuals in the country. The majority have some type of physical and/or cognitive impairment that prevents them from protecting themselves from harm or even telling someone about abuse or neglect. This extreme dependence and vulnerability means that residents must rely on nursing home administration, employees, and contractors to protect them. And when a possible crime occurs, those individuals must call the police, just as they would if they suspected a crime had occurred outside the nursing home doors. These are the very reasons why the Nursing Home Transparency and Improvement Act, passed as part of the Affordable Care Act in 2010, requires any suspicion of a crime against a nursing home resident be reported to law enforcement as well as the state survey agency.

Because the Secretary’s statutory responsibility under the 1987 Nursing Home Reform Law is to assure that the enforcement of nursing home standards is “adequate to protect the health, safety, welfare, and rights of residents,”<sup>8</sup> we urge CMS to:

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<sup>3</sup> Harrington, C., Carrillo, H., and Garfield, R. Nursing Facilities, Staffing, Residents and Facility Deficiencies, 2009 through 2015. (2017) Washington, DC., The Kaiser Commission on Medicaid and the Uninsured.

<sup>4</sup> Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries. Department of Health and Human Services Office of Inspector General. February 2014. OEI-06-11-00370.

<sup>5</sup> Ben Natan, M. & Lowenstein, A. (2010). Study of factors that affect abuse of older people in nursing homes. Nursing Management, 17(8), 20-24. See [www.ncbi.nlm.nih.gov/pubmed/21229867](http://www.ncbi.nlm.nih.gov/pubmed/21229867)

<sup>6</sup> Sick, Dying and Raped in America’s Nursing Homes. CNN. March 17, 2017.

<http://www.cnn.com/interactive/2017/02/health/nursing-home-sex-abuse-investigation/>

<sup>7</sup> S&C:17-36-NH. June 20, 2017. <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-36.pdf>.

<sup>8</sup> 42 U.S.C. §§1395i-3(f)(1), 1396r(f)(1), Medicare and Medicaid, respectively

- Immediately implement the recommendations in the OIG Early Alert, and
- Ensure that the reporting provisions under the Requirements of Participation are enforced without delay.

Unreported abuse cannot continue with impunity. Nursing home residents cannot wait any longer for the requirements to report to law enforcement to be fully implemented and enforced.

We are happy to discuss this with you further, and can be contact at 202-332-2275, x205, or [rgrant@theconsumervoice.org](mailto:rgrant@theconsumervoice.org).

Sincerely,

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