The National CONSUMER VOICE for Quality Long-Term Care formerly NCCNHR

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November 19, 2018

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-3346-P
Baltimore, Maryland 21244

Re: Opposing Weakening of Nursing Home Emergency Preparedness Regulations; CMS-3346-P; Proposed Changes to 42 C.F.R. § 483.73

Dear Administrator Verma:

The National Consumer Voice for Quality Long-Term Care (Consumer Voice) and the undersigned organizations are writing to oppose the proposed changes to the emergency preparedness rules for nursing homes (Requirements for States and Long Term Care Facilities, 42 C.F.R. § 483.73) and to ask the Centers for Medicare and Medicaid Services (CMS) to withdraw the proposal.

The Consumer Voice is a national organization that advocates for quality of care and quality of life with and on behalf of nursing home residents and other long-term care consumers. Our membership is composed of residents of long-term care facilities, home care consumers, family members, long-term care ombudsmen, citizen advocacy groups, and individual advocates. We have over 40 years' experience in the nursing home arena.

We are in regular and direct contact with nursing home residents, their families and advocates such as the long-term care ombudsmen and know first-hand how vulnerable nursing home residents are. Many are dependent on staff to help meet their most basic daily needs, like walking and toileting. In times of natural disasters or other emergencies, they depend on staff for their very survival.

For that reason, nursing home emergency programs and staff training are literally a matter of life or death. They ensure facility administration and staff are well prepared to keep residents safe and respond in an integrated, coordinated way with state and local public health departments and emergency management agencies during a disaster or emergency situation. The ongoing need for strong emergency preparedness rules is clearly demonstrated by the very recent evacuation of three nursing homes in California due to wildfires, and those in the southern states as a result of earlier hurricanes.

The current emergency preparedness provisions represent years of study and review by federal agencies, nursing home providers, emergency preparedness experts, advocates, and others following the horrendous impact of Hurricane Katrina on vulnerable and frail nursing home residents. In the preamble to the current regulations, CMS states that the regulations are based on lessons learned from the past and today's proven best practices.

Yet less than a year after their implementation, CMS is proposing to change these requirements - not based on recommendations from emergency management experts, but to "relieve burden" on nursing home providers. The emergency preparedness standards already represent the minimum steps a nursing home must take. In fact, the Senate Finance Committee Minority report, "Sheltering in Danger"[1] clearly documents that these minimum provisions leave dangerous gaps in resident protection and should be strengthened. To require **less** to relieve provider burden would jeopardize resident health and safety.

Fear of poor disaster preparedness is well-expressed by Penny Shaw, a Massachusetts nursing home resident of 16 years:

> *I feel strongly this change would put myself and other nursing home residents across the country at great risk of harm, and possibly death, from inadequate disaster planning. While I have been living in my facility, we have experienced several natural disasters - severe snowstorms, a mild hurricane with power loss and my knowledge of a four-foot-high flooding in the next town. I understand the importance of nursing home disaster planning, preparedness, appropriate response and timely recovery activities.*

The areas of the rule that would be changed - the emergency plan, the communication plan, the policies and procedures, the training and testing program, and training - are the essential parts of a facility's emergency program. The program can only be effective if each of these components is strong. We discuss below our concerns related to these five elements.

Staffing: An overarching concern

Turnover rates among both staff and administration are recognized as significant issues in nursing homes across the country. The largest percentage of nursing home employees are nursing staff, and the turnover rates for clinical care in nursing homes ranges from 55-75%, with rates for certified nursing assistants reaching nearly 100% in some cases.[2] There is often frequent turnover in leadership and management positions as well. If review and update of the emergency program and training are only conducted biennially, many employees are likely to never participate in an emergency drill or receive more than an initial training after hiring. In addition, there will be relatively few staff with enough longevity and experience to properly evaluate and adjust the emergency program components. Consequently, nursing homes will be less ready and prepared for an emergency.

Emergency plan

We are very concerned that a facility would only be required to review and update its emergency plan every two years rather than annually for several reasons. First, the plan is designed to address the hazards identified through a risk assessment. These risks do not remain static and can evolve quickly. Second, a facility's plan must address the resident population. This includes, but is not limited to, the number of residents as well as their diagnoses, physical and cognitive abilities, and overall acuity. The resident population can change in a short period of time as facilities make business decisions such as increasing their number of Medicare beds for rehab. Finally, there are other significant aspects of a facility - like staffing levels - that can change rapidly.

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[1] Sheltering in Danger. Investigative Report by the Minority Staff of the U.S. Senate Committee on Finance. November 2018. file:///C:/Users/Admin/Documents/Emergency-disaster%20preparedness/Sheltering%20in%20Danger%20Report%20(2%20Nov%202018).pdf

[2] The Turnover Challenge in Skilled Nursing Facilities. Healthstream. September 11, 2017.

Waiting two years to update a plan means it is likely to not reflect important changes in both the facility and its environment – changes that make a plan less responsive and effective. Because the plan guides and directs the facility's response to an emergency or disaster, a flawed, inadequate plan can have catastrophic results for the safety and welfare of residents.

In addition, CMS is proposing to eliminate the requirement that the emergency plan include documentation of efforts to contact local, tribal, regional, State and federal emergency preparedness officials and a facility's participation in collaborative and cooperative planning efforts. The agency states that such a requirement is burdensome and can be removed because the rule still calls for a process of cooperation and collaboration.[3] We disagree. Contact and collaboration are critical for the emergency plan to succeed. Simply requiring a process is not enough. Without documentation, there is no way to determine if the facility has actually attempted to contact and collaborate with emergency preparedness officials.

Policies and Procedures

We urge CMS to continue to mandate the review and update of policies and procedures every year, and not every two years as proposed. The facility's policies and procedures support the successful execution of its emergency plan. Many factors can cause policies and procedures to become outdated or ineffective, thereby jeopardizing the facility's ability to carry out its plan. For example, policies and procedures must address the safe evacuation of residents, which includes transportation and evacuation locations. The companies with which nursing homes have arranged for transportation during an emergency could go out of business in less than two years, while variables such as openings and closings of hospitals, medical facilities in the area, and community centers may alter evacuation locations. Failure to review and update the policies and procedures to reflect these changes means that there may not be sufficient transportation to evacuate all residents or incorrect information about where to take them when disaster strikes.

Communication Plan

The communication plan is a vital component of a facility's emergency program. Such a plan allows the facility to coordinate with others and to adjust dynamically to changes brought on by a situation. It is how facility staff know who to contact, what their contact can do, how to reach them, and when to do so. Given its tremendous importance, the time frame for re-examining and updating the plan should not be extended to two years.

The plan ensures that the facility has a system to contact appropriate staff; attending physicians; other long-term care facilities; federal, state, tribal, regional or local emergency preparedness staff; and others to provide continuity and coordination of resident care. This information must remain current. Because the individuals and entities included in such a plan can change frequently, failure to update the plan at least every year could result in faulty and inaccurate information and the inability to reach the people/agencies needed to protect resident health and safety in the event of a disaster.

Training and testing program

The emergency plan, communication plan, and policies and procedures cannot just be words on paper. The training and testing program increases the likelihood that staff are familiar with and know how to

[3] 83 Federal Register at 47714.

carry out these plans and policies/procedures. It promotes consistent and appropriate staff behavior during an emergency.

As Ms. Shaw comments:

> *"Having a plan alone for emergencies is not enough. The plan must be practiced and tested to be effective. This will help check to see if the facility has sufficient resources for an emergency of any kind, and the ability to respond to the unexpected. Participation of staff in various scenarios is designed to practice response arrangements and validate plans. With annual emergency preparedness trainings and full scale exercises, there is the potential to build the skills and knowledge of emergency preparedness processes. Imperfect drills are training opportunities to minimize harm and improve resident outcomes. Skills get rusty."*

We urge CMS to maintain the requirement for annual review and updating of the training and testing program. To be effective, staff must be up-to-date on what to do in an emergency. Training, drills and exercises prepare staff, management, and others in the facility for a disaster. Further, they give the facility a chance to identify problems in a low-stakes setting so the emergency program can be modified and improved to better keep residents safe.

Going two years without evaluating and revising the training and testing program delays necessary and critical modifications that leave the facility ill-equipped and improperly prepared for an emergency that can occur at any moment.

Training

We strongly oppose revising the emergency preparedness rule to permit ongoing staff training to be conducted at least every 2 years instead of every year. Although initial training would continue to be required, training, to be effective, must be ongoing to maintain a high level of awareness, knowledge and experience with how to respond in an emergency. Annual training better ensures that staff are sufficiently trained, familiar with the policies and procedures, and held responsible for knowing these requirements.

Two years is far too long to go without a refresher training; it is not realistic to think that individuals will retain the same amount of knowledge and skills from their initial training throughout a two-year period. As noted in the June 2015 issue of Occupational Health & Safety:[4]"… people lose emergency skills quickly unless they are refreshed and repeated at regular intervals…. When the goal is readiness to save lives, it is essential that employees engage in regular training where the core principles of basic training are continually repeated and revisited."

Under the current federal Requirements of Participation for nursing facilities, nurse aides must receive annual in-service training that includes resident abuse prevention and dementia management. Since natural disasters and other emergencies create situations where all staff must draw on and apply knowledge and skills gained from their training to save lives, it makes no sense that their training should be less frequent than what an aide receives for resident abuse prevention.

[4] Keeping Employees' Emergency Skills Current. Occupational Health & Safety. June 1, 2015.

Conclusion
CMS is wrong when it says that its proposal would balance patient safety and quality with broad regulatory relief for providers. Any weakening of regulations already deemed "wholly inadequate" by the Senate investigative report would be harmful to residents.

Based on her first-hand knowledge and experience, Ms. Shaw stresses the importance of annual review and updates of the emergency program and yearly training:

> *Critical emergency resources - policies, procedures, communications networks - which might be needed from other organizations during an event - need to be current. Updating them only once every two years, would be risky for residents' health and safety…. I feel strongly it is essential that emergency preparedness plans be developed, reviewed and approved annually. Knowledge and access to information and resources, skills, abilities, planning and organizational routines should be a continuous process of self-assessment of the standards for emergency plans and strategies to manage crises. Formal written emergency plans to anticipate problems need to be up to date. Teamwork - staff engagement and involvement - to develop the ability to respond to the ever changing conditions of adverse events and to provide - resident safety, mitigation of resident harm and minimal loss of life for nursing home residents like myself and others - should be done annually.*

Considering the great risks nursing home residents face during emergencies, we cannot afford to go backwards. We therefore urge CMS to withdraw its proposed rule and maintain the current emergency preparedness standards.

Thank you for the opportunity to submit these comments.

Sincerely,

Lori Smetanka, J.D.
Executive Director

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National Organizations
Alliance for Retired Americans
Center for Medicare Advocacy
Elder Justice Coalition
National Association to STOP Guardian Abuse (NASGA)
National Committee to Preserve Social Security and Medicare
National Council of Gray Panthers Networks
PHI

State Organizations & Individuals

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