



June 26, 2017

Seema Verma, Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
ATTENTION: CMS-1679-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

RE: CMS-1679-P

Dear Ms. Verma:

I am writing on behalf of LeadingAge Wisconsin to convey my thoughts and concerns regarding CMS-1679-P. LeadingAge Wisconsin is a statewide Association representing not-for-profit nursing homes, assisted living facilities and other community-based providers in Wisconsin. The Association also has a number of for-profit long-term care providers who have joined LeadingAge Wisconsin as subscriber organizations. The Association represents 212 skilled nursing facilities in Wisconsin.

We appreciate your request for comments from stakeholders about the cost and regulatory burden associated with provisions of the final revised Requirements of Participation (RoPs) for nursing homes as promulgated in October 2016. Our national association, LeadingAge, has submitted thirty-three pages of detailed comments on the RoPs regulations and our State Association fully supports their comments. I would like to offer further comments on why the Centers for Medicare and Medicaid Services (CMS) should step back and reevaluate the depth, scope and cost of these regulations.

Our nursing facilities were expected to implement phase one of the revised RoPs with minimum guidance from CMS. According to the CMS leadership in 2016, the estimated cost to implement phase one was \$55,000 for each nursing facility. Based on feedback from our membership, CMS dramatically underestimated the financial and operational cost of compliance with the RoPs. The additional staff needed and the extra demands on current staff to meet the most comprehensive revision of the nursing home rules since 1991 will greatly exceed \$55,000 per nursing facility. Wisconsin nursing homes have found many provisions of phase one of the regulation to be counter-productive to providing quality care, as they have had to redirect staff and resources away from patient care and quality of life activities to work on these compliance measures.

*LeadingAge Wisconsin requests CMS to suspend and delay phases II and III of the rule until your agency has evaluated which provisions of the rule are essential, cost-justified and should be pursued. Also, we ask CMS to provide full regulatory guidance at least six months prior to implementation and enforcement of the essential provisions of the rule. In short, Wisconsin's nursing homes, already struggling due to Medicaid's significant underfunding of the cost of care and an unprecedented workforce crisis, are overwhelmed by the seemingly endless stream of new federal regulations that cause facility staff to shift their attention from resident care to regulatory compliance activities (writing new policies and procedures, documenting day-to-day activities, sending meaningless notifications to outside parties, etc.).*

As you know, nursing homes will be surveyed under a new CMS long-term care survey beginning in November 28, 2017. Additional facility resources will be expended to update policies and procedures and review new interpretive guidance; facilities also will be required to learn the new F-tags since the new survey process will collapse some of the existing tags while other tags are expanded. Further, nursing homes will be required achieve full regulatory compliance with the Emergency Preparedness Final Rule that becomes effective on November 15, 2017. It is wholly unreasonable to expect facilities keep their caregiving focus while they are bombarded by the constant cascade of new regulations, requirements and mandates.

In weighing your decision to suspend phase two and three of the RoPs, please keep in mind the following:

### **Medicaid Underfunding**

**Historically inadequate Medicaid payment rates have virtually blocked long-term care providers' ability to attract and retain a workforce, which is essential to meet the ever-escalating care and service needs of Wisconsin's aging population.**

- **Nation's Worst:** An April 2016 national study by Eljay/HHC ranked Wisconsin's Medicaid nursing home payments as the worst in the country when comparing payment rates to allowed Medicaid costs incurred by nursing facilities.
- **Mounting Deficits:** Wisconsin nursing facilities experienced a **\$345.5 million "Medicaid deficit"** in 2015-16. The Medicaid deficit is the difference between the costs facilities incurred caring for their Medicaid residents and the reimbursement they received for providing that care.
- **Facility Losses:** The average Wisconsin nursing facility in 2015-16 **lost \$58.46 per day** for each Medicaid resident they served, for an average annual Medicaid loss of more than \$1.0 million.

## Work-Force Crisis

Wisconsin faces a crisis in the shortage of available frontline caregivers with fewer people choosing to work in long-term care facilities and/or remain in the field. [\*The Long-Term Care Workforce Crisis: A 2016 Report\*](#), the largest survey of Wisconsin's nursing and assisted living facility providers in the state's history, included the following key findings:

- **1 in 7** direct caregiver positions in Wisconsin's nursing and assisted living facilities currently are vacant, with more than **11,500** job openings in LTC facilities (i.e., nursing facilities, community-based residential facilities, residential care apartment complexes, and adult family homes) across the state.
- Nursing facilities had vacancy rates of **12.6%** for registered nurses (RN), **12.1%** for licensed practical nurses (LPN), and **14%** for certified nurse aides (CNA), the primary caregivers in nursing facilities.
- **50%** of respondents said they received no applications for vacant positions.
- **70%** of respondents reported there were no qualified applicants for their caregiver openings.
- In attempting to cope with these shortages, LTC providers said that **84%** of the time they have been forced to use overtime, double shifts and/or other strategies to fill open hours, all of which not only are expensive but can lead to caregiver burnout and jeopardize quality.
- **18%** of respondents stated they had been forced to limit admissions in the past year.
- **Fewer Caregivers:** Nurse aide applicants have dropped dramatically – a **17% drop** between 2013-2015. In addition, there was a **10% drop** in nurse aide certification renewals from 2014 to 2015. Fewer people are choosing to become CNAs and fewer people are remaining in that field, a frightening prospect for LTC providers who rely on CNAs to provide the bulk of care in their facilities.

In conclusion, on behalf of over 200 skilled nursing facilities in Wisconsin, we respectfully request that CMS suspend and delay phases II and III of the final revised Requirements of Participation (RoPs) for nursing homes as promulgated in October 2016. Our provider community would very much appreciate the opportunity to redirect limited resources to residents in need of our care and services.

Thank you for the opportunity to comment on CMS-1679-P.

Sincerely,



John Sauer  
President/CEO