

REFORM OF THE NURSING FACILITY AND ICF/MR OVERSIGHT SYSTEM TO FOCUS ON QUALITY IMPROVEMENT

Issue

Currently, the oversight and enforcement system used to regulate nursing homes, and ICFs/MR (Intermediate Care Facilities for persons with Mental Retardation), is outdated, inflexible, and in many cases actually impedes quality improvement. States have applied for waivers to improve the system, but have been turned down by the Department of Health and Human Services (HHS). The system must focus on achieving quality improvement for beneficiaries, with the government becoming a true stakeholder in assuring quality. Providers and patients need smarter regulation, not less regulation.

AHCA/NCAL Position

The American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL) advocate two concurrent approaches:

- Enact H.R. 787, which makes small changes in the current regulatory system to remove regulatory barriers to quality improvement. Several regulations actually impede quality care and even jeopardize patient safety.
- Allow states to implement innovations in oversight without facing certain denial of requests to approve state 1115b waivers. Current Medicare law does not provide for waivers to test or implement improved methods of measuring and improving facilities' regulatory compliance. CMS should be granted waiver authority under Medicare.

Background

The following are key areas in which incremental changes should be made to improve the quality of regulation and quality of care.

1. **ALLOW CONSULTATION** – Create a collaborative process in which providers and regulators work together toward quality improvement. Government inspectors should share the goals of improving quality of care and quality of life for our seniors and disabled – not just write tickets and issue fines. Authority must be given to inspectors to suggest improvements while retaining facilities' responsibility to correct noncompliance.
2. **ALLOW PROVIDERS TO FOLLOW PHYSICIAN ORDERS** – All too often, providers are cited for deficiencies when following the orders of the residents' physicians. Providers must be allowed to follow doctors' orders without fear of citation due to inspector misinterpretation or disregard of care that is in the patients' best interest. Less educated, unlicensed government surveyors should not be allowed to overturn the prescriptions and other treatments ordered by an MD.
3. **PREVENT CMS FROM CLOSING NURSE AIDE TRAINING PROGRAMS** – A severe shortage of nursing home workers exists, and it is predicted to escalate rapidly. Nevertheless, CMS terminates the in-house nurse aide training programs of facilities with certain deficiencies or enforcement actions for two years (long after all deficiencies have been corrected). This "punishment" only hampers providers' ability to fix the problem and hire and train adequate staff when needed to improve quality. Termination of nurse aide training must be an option only when noncompliance is still present. In

many states including CA, OR, MO, and others, it is estimated that 50% of all facility training programs have been terminated.

4. **REMOVE DISINCENTIVES TO IMPROVING FACILITIES** – Allow new owners to improve troubled facilities without threats of closure due to previous problems. Under current law any new owner who acquires a troubled facility inherits the track record, fines, enforcement penalties, and the termination status of the previous owner. This policy discourages companies from taking over and improving problem facilities. The government should work towards improving patient care -- not prevent it. Government should allow a new owner to start with a chance to improve care.
5. **PREVENT MANDATORY MEDICARE TERMINATION** – Current law dictates that facilities cited for substantial deficiencies must be found in compliance within six months or face mandatory termination of their Medicare certification. The effect of the interpretation of this rule has been that facilities are terminated when they fix all problems cited in the initial survey, but have additional, often very minor new deficiencies in follow-up surveys that occur within the 6-month period. Most cannot remain open without being paid, and therefore all residents are forced to give up their homes. The statute must be changed to allow other options to protect residents, and to give them and their families more voice in these decisions.

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