



January 24, 2017

To: Senate Finance Committee

Re: Hearing to Consider the Nomination of The Honorable Thomas Price to be Secretary of Health and Human Services

LeadingAge is a nonprofit aging services association. Our 6,000+ members and partners include nonprofit organizations representing the entire field of aging services, 39 state partners, hundreds of businesses, consumer groups, foundations, and research partners. Among our members, we count more than 2,000 nonprofit nursing homes, either as free-standing nursing homes, or as a component of a multi-level community. According to GAO, nonprofit nursing homes tend to have higher staffing ratios and are more likely to be higher quality as rated by the CMS 5-star system.

CMS recently issued a final rule implementing new requirements for participation for nursing homes in the Medicare and Medicaid programs. This 105 page rule adds new requirements, mandates previously voluntary provisions such as corporate compliance programs, and revises requirements currently in effect.

As you consider the nominations of Rep. Tom Price for Secretary of HHS and Seema Verma for Administrator of CMS, we urge you to address the following concerns.

LeadingAge strongly supports high quality for nursing homes and transparent standards. Our community-based, nonprofit providers are a vital element of the post-acute and long-term care continuum, and are often recognized as exemplars of person-centered care and quality. We support many aspects of these new regulations, including the focus on person-centered care. In fact, prior to the enforcement date of the new regulations, our members were actively engaged in the process of integrating the components of Compliance and Ethics, and Quality Assurance Process Improvement (QAPI) into their day-to-day operations.

However, we are gravely concerned about the broad scope of these new regulations (stated by CMS to be the most significant changes to nursing home regulation since 1991), as well as the incredibly short time frame by which providers must comply. We submitted extensive comments to CMS during the regulatory comment period on the content of the regulations including a particular concern about having sufficient time to implement. We are also participating as stakeholders in the various meetings and calls conducted by CMS. To date, the agency has not been responsive.

Specifically, we have particular concerns about the following aspects:

- 1) **Workforce:** Many sections of the regulations require new staffing or changes to the training and competencies of existing staff. Some of these went into effect November 28, 2016 less than 2 months after the final rules were published. Providers were expected to comply immediately with the requirements, but given little guidance as to these competencies. This left insufficient time for providers to develop the necessary skills training and assessments to comply with the new

requirements. And lastly, many rural communities have a workforce shortage and simply do not have sufficient numbers of workers to employ to meet these regulations.

- 2) **Delayed Guidance:** CMS normally develops written guidance explaining the regulations, provides definitions and instructions for implementation, and identifies resources for training. However, it has failed to do so for many of the new policies and procedures that went into effect in November, or for the new systems that must be in place later this year.
- 3) **Guidance Going Beyond Regulatory Language:** Where draft guidance has been shared with stakeholder groups, there is considerable concern that this guidance goes well beyond the scope of the actual regulations and thus creates a whole new set of compliance requirements for enforcement that are not defined in regulation. Guidance that exceeds the regulations but is enforced like regulations should not be enforceable.
- 4) **Timing:** As stated above, the extremely short time frames required for compliance create impossible burdens for many providers, particularly for those smaller and rural providers. The risk is therefore that many of these vital community-based homes will close, rather than face severe enforcement penalties. When these homes close, the negative impact on the community is widespread: Vulnerable residents often are displaced and providers – who are often the primary employer in that community – lose their jobs.

Implementation of broad regulations that impose unrealistic timeframes, fail to recognize the negative impact in a challenging workforce environment, and for which guidance and resources have not yet been thoroughly considered or shared with the very providers who will be expected to comply, can only set up providers for failure. This will negatively impact patients and communities for years to come.

We ask for a thoughtful evaluation of these new regulations and a realistic time frame by which providers are able to comply.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan
President & CEO
LeadingAge