

Regulatory Reform



Issue

Quality the public can trust is the core of LeadingAge's mission, to be the trusted voice for aging in America. LeadingAge and its members have a long history of initiatives, including *Advancing Excellence* and *Quality First*, which have achieved measurable improvements in the quality of aging services. These initiatives emanate from the longstanding nonprofit values of our members.

However, some federal regulations have had unintended consequences for the effective delivery of aging services. We urge Congress and the Administration to take the following steps to reduce the burden of excessive and counterproductive regulation.

Solutions

Executive Actions:

- Delay, for at least one year, the nursing home Requirements of Participation [final rule](#) which began to go into effect on November 28, 2016. This comprehensive revision of the nursing home oversight structure affects every aspect of nursing homes' operation. The Centers for Medicare and Medicaid Services (CMS) underestimated the cost of compliance, which is proving overwhelming for nursing homes. The rule should be reevaluated as to which provisions are necessary and productive before it moves forward.
- More fundamentally, the current nursing home oversight system should be reviewed to consider if an approach based on quality improvement could produce better results than the current enforcement and punishment-based system. We recommend that a neutral, respected body such as the National Academy of Medicine (formerly the Institute of Medicine) be directed to study the nursing home regulatory system and develop a more equitable, quality-based approach.
- In the meantime, states should be allowed to pilot test alternative survey systems with federal oversight.

Alternatives could include allowing high-performing nursing homes to be eligible for Medicare/Medicaid through deemed status through a respected private-sector accreditation entity like the Joint Committee. Another cost-effective alternative would be to permit longer intervals between surveys for high-performing nursing homes.

- There is bipartisan interest in supporting family caregivers who provide a wide range of long-term supports and services to seniors and people with disabilities. We recommend establishing an office in the domestic policy office of the Presidency to address issues of caregiving and services.

Regulatory Changes:

- Suspend the Medicaid [restriction](#) on coverage of home- and community-based services that has created obstacles for seniors living in campus-based settings. The regulation should be revised to define "community" to include campus-based independent and assisted living.
- Revise and simplify the [payroll-based journal reporting system](#) ("PBJ") that nursing homes must use to report on their staffing levels.
- Discontinue the Medicare home health prior authorization initiative (pre-claim review) in Illinois, Florida, Texas, Michigan, and Massachusetts, as this prevents beneficiaries from getting appropriate home health on a timely basis.
- Rescind the category of "observation stays" that CMS created, which denies Medicare beneficiaries coverage for post-acute care. CMS has the authority to count all nights that a Medicare beneficiary spends in a hospital as "inpatient" for purposes of eligibility for Part A post-acute care coverage.



- Revisit the CMS nursing home 5-star rating system, especially by changing the current practice of “grading on a curve” to a system of performance benchmarks that would enable all nursing homes to achieve a 5-star rating. This would result in a rating system that would ensure the same level of quality from state to state by defining performance and holding providers accountable.
- Until this new system is in place, CMS should suspend using 3-star or higher status as criteria for ACOs, hospitals, and health systems participating in bundled payment initiatives to refer their patients for post-acute skilled nursing care.

Legislative Changes:

- Amend the Medicare and Medicaid statutes to repeal nursing homes’ automatic loss of authority to train certified nursing assistants because of penalties imposed under the survey process.
- Repeal Title VII of the Bipartisan Budget Act of 2015 that immediately doubled civil monetary penalties and other fines/penalties in all healthcare and employment regulations; rescind automatic escalators to civil monetary penalties and other fines/penalties. These increased penalties are having a devastating impact on facilities.
- Exempt health care providers from the Service Contract Act, ensuring that they will not be considered federal contractors subject to minimum wage, paid sick leave, and other mandates created by executive order.
- Contracts with the Veterans Administration should be treated as provider agreements, like Medicare and Medicaid.

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