



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

October 14, 2015

Andrew Slavitt, Acting Administrator
Centers for Medicare and Medicaid Services (CMS)
U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 445-G
Washington, D.C. 20201

Curtis Bramble
Senate President Pro Tempore
Utah
President, NCSL

Karl Aro
Director of Administration
Department of Legislative Services
Maryland
Staff Chair, NCSL

William T. Pound
Executive Director

Re: (CMS-3260-P) Proposed Rule--- Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care (LTC) Facilities; Proposed Rule

Dear Mr. Slavitt:

The National Conference of State Legislatures (NCSL), submits the following comments on the proposed rule published in the July 16, 2015 *Federal Register*, "*Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care (LTC) Facilities (CMS-3260-P)*". As the largest payer of long-term services and supports in the United States, state Medicaid programs have a shared interest with CMS to improve the quality and effectiveness of care and services delivered to residents of long-term care facilities. NCSL applauds CMS's efforts to focus services on resident specific needs, which has become more clinically complex and diverse over the years. In addition, the focus on improving quality and communication across the care continuum will serve to raise service standards and encourage the use of more cost effective delivery models.

NCSL asks that CMS give consideration to the following state concerns:

Implementation Concerns

In this joint federal-state venture, NCSL urges CMS to collaborate closely with states who have held the primary role in licensure and certification of long-term care facilities, and will play a major role in the implementation of the final rules. Collaboration with states, coordination, and timing will be essential if CMS is to achieve its goals-to consolidate and align the requirements for long-term care facilities in the Medicare and Medicaid programs.

NCSL also urges CMS to be mindful of the impact the proposed changes may have on long-term care facilities with limited existing resources, and how additional requirements may result in limitations to access of care in some areas. NCSL asks CMS to prioritize the proposed new staffing and facility requirements to ensure that facilities can improve care for maximum impact on improving the quality of care, and consider a phased in approach to implement these changes.

NCSL also asks that CMS offer technical assistance to states as they revise their survey and certification protocols for long-term care facilities, and to the facilities as they work to comply with the new standards.

Binding Arbitration Agreements §483.70(n)

The proposed rule only allows the use of a binding arbitration agreement by a long-term care facility if the resident enters into the agreement voluntarily, and it prohibits the use of an agreement as a contingency of admission to the facility. Alternative dispute resolutions (ADR) such as binding arbitration, require that both parties waive their rights to any type of judicial review or relief. It is important that consumers are informed about the potential impact of arbitration agreements. There is a

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need for HHS to develop a public information campaign regarding the inclusion of binding arbitration clauses in long-term care admission agreements and tools to help consumers understand the implications of the clauses and how it affects their consumer rights.

Comprehensive Person-Centered Care Planning §483.21

The proposed rule adds new language calling for a more comprehensive person-centered care planning approach, ensuring that the resident is the focus of care while he or she remains involved in the decision-making processes for their care. As part of these efforts, CMS is adding new language specifically requiring that services provided or arranged by a facility be culturally competent and trauma-informed. Clear references to the definition of “culturally competent” care exist throughout CMS’s regulatory framework, however the proposed rule provided little information clearly defining the meaning of “trauma-informed approaches” or to CMS’s meaning of which population would qualify as a “Holocaust survivor” in §483.21(b)(3)(iii).

NCSL requests that CMS provide additional clarification of the definitions of these two terms, as well as additional guidance on the essential elements of care that would be considered a “trauma-informed” approach.

We appreciate your consideration of our concerns, and look forward to further discussion of the issues. If you need additional information please don’t hesitate to contact me at rachel.morgan@ncsl.org or 202-624-3569.

Sincerely,

Rachel B. Morgan RN, BSN
Senior Committee Director
NCSL Standing Committee on Health and Human Services
The National Conference of State Legislatures