May 26, 2020

Seema Verma
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma,

Our nation’s nursing homes are on the front lines of the response to the Coronavirus Disease 2019 (COVID-19) pandemic. One in six nursing homes have publicly reported COVID-19 cases.\(^1\) Further, there have been over 10,000 reported resident and staff deaths due to COVID-19 in post-acute and long-term care (PALTC) facilities in the 23 states that publicly report such data, representing 27 percent of all deaths due to COVID-19 in those states.\(^2\) COVID-19 places nursing home populations at significant risk due to their age and co-morbid conditions, which is exacerbated by personal protective equipment (PPE) and testing limitations.

The limitations and inconsistencies in data about the nursing home workforce during the COVID pandemic is a major area for concern. Our nation’s PALTC physicians and advanced practice clinicians (APCs) are working closely with nursing facilities across the country to mitigate the virus’s spread. These clinicians serve nursing home patients in two capacities – as medical directors who serve in an administrative and regulatory role overseeing clinical care, and as clinicians who provide primary care services to residents. Unlike a hospital setting, very few nursing home settings have physicians or APCs inside the buildings 24/7.

Unfortunately, public records regarding these physicians and APCs do not exist. As a result, federal, state, and local public health agencies have been unable to identify facility medical directors in order to provide assistance in the preparation for, as well as the response to, the COVID-19 pandemic. A clinician list would be of enormous value for public health agencies to address preparedness for influenza, norovirus, and other seasonal outbreaks as well as other emergency uses during the COVID-19 pandemic.

On behalf of residents in the nation’s 15,500 nursing homes, we are writing to ask that the Centers for Medicare and Medicaid Services (CMS) begin keeping a public record, by name, of medical directors and associate medical directors or other physicians being paid as administrative personnel in each nursing home. Under 42 CFR §483.70(h), CMS requires every nursing home

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to designate a physician to serve as medical director who is responsible for the implementation of resident care policies and the coordination of medical care in the facility.

CMS has no compliance mechanism for this legal requirement, for example, by requiring nursing homes to submit the identities of their medical directors to the CMS national, regional, or state offices, or to notify CMS when that position changes. While many nursing homes may engage their medical directors appropriately in carrying out the requirements of 42 CFR §483.70(h), some nursing homes may not, and others may have medical directors in name only.

While survey teams may verify during a survey that an individual nursing home has a named medical director, this does not allow for adequate regulatory oversight to ensure that the intent of the law is being fulfilled across many care communities at all times. The U.S. Department of Justice (DOJ) has brought several anti-kickback law violation actions against nursing home organizations and physicians who were engaged in “pay-for-referral” schemes under sham medical director agreements. For example, in 2015 DOJ announced a $17 million settlement with a group of seven nursing homes that falsely designated and paid several physicians as “medical directors” in return for patient referrals. Other corporations may have a single physician serving as medical director for ten or more of their facilities, which would not allow for adequate supervision of each facility.

A national database of medical directors and the nursing homes they serve would reveal a single nursing home with two, three, or more physicians named as medical directors; a large number of nursing homes with a single physician named as medical director; a nursing home where the medical director changes frequently each year; or a nursing home without a named physician medical director, particularly in nursing homes with significant incidence of COVID-19. This might be accomplished through the existing Payroll-Based Journal (PBJ) reporting system or by working with the states, some of which already maintain nursing home medical director registries. CMS has similarly published physician contact information in multiple contexts, including under the CPC+ demonstration program which publishes physician name and addresses online.

Nursing home residents and their families have a right to know the physician who is charged with the vital tasks of coordinating the medical care given in the facility and the implementation of resident care policies. Of note, a key role of the medical director involves implementing an effective antibiotic stewardship program and maintaining and improving staff understanding of, and compliance with, infection control procedures. The public needs and deserves access to immediate and adequate data about the clinicians who perform this vital role.

Thank you for your attention to this matter, and full and fair consideration of our request.

Sincerely,

Mike Levin
Member of Congress

Brian Fitzpatrick
Member of Congress
/s/ JOSH HARDER
Member of Congress

/s/ JODY HICE
Member of Congress

/s/ JACKIE SPEIER
Member of Congress

/s/ CONOR LAMB
Member of Congress

/s/ NYDIA M. VELÁZQUEZ
Member of Congress

/s/ ABIGAIL D. SPANBERGER
Member of Congress

/s/ JAN SCHAKOWSKY
Member of Congress

/s/ JUAN VARGAS
Member of Congress

/s/ SHEILA JACKSON LEE
Member of Congress