September 17, 2018

Kate Goodrich, MD
Director, Center for Clinical Standards and Quality
CMS Chief Medical Officer
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Dr. Goodrich,

On behalf of 18 member organizations that comprise the Advancing Excellence in Long-Term Care Collaborative, I am writing to you today to ask that CMS begin keeping a record, by name, of each of the designated medical directors and associate medical directors of the nation’s some 15,500 nursing homes, tied to the care communities they serve.

As you know, under the State Operations Manual (Appendix PP, §483.70(h) Medical director), CMS requires every nursing home to designate a physician to serve as medical director, to be responsible for the implementation of resident care policies, and the coordination of medical care in the care community.

Despite this requirement under law, CMS has not directed nursing homes, as a mechanism of compliance with this requirement, to submit to the CMS national, regional, or state office the name(s) of their medical directors, or to notify CMS when that position changes. While we believe that many nursing homes may indeed engage their medical directors appropriately in carrying out the requirements of §483.70(h), we are aware that other nursing homes may not, and still others may have medical directors in name only. A simple step toward closing this gap and, at a minimum, revealing inconsistencies in medical director coverage, is for CMS to maintain a current, national record of nursing home medical directors, tied to the care communities they serve.

The fact that survey teams verify during survey that an individual nursing home has a named medical director 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. As a single example (among many) of the consequences of this gap in oversight, I refer you to the Plaza Health Network (formerly Hebrew Homes Health Network) settlement with the U.S. Department of Justice (DOJ) in June 2015 of $17 million, the largest skilled nursing settlement for anti-kickback violations to date.

This lawsuit named a group of seven nursing homes based in Miami, Florida that designated physicians as “medical directors,” sometimes several of...
them for each nursing home, exclusively for patient referrals. To quote from the DOJ news release (emphasis added),

“From 2006 through 2013, Hebrew Homes allegedly operated a sophisticated kickback scheme in which they hired numerous physicians ostensibly as medical directors pursuant to contracts that specified numerous job duties and hourly requirements. The various facilities had several such medical directors under contract at any given time, paying each several thousand dollars monthly. The United States alleged that in reality these were ghost positions, and that most of the medical directors were required to perform few, if any, of their contracted job duties. Instead, they were allegedly paid for their patient referrals to the Hebrew Homes facilities, which increased exponentially once the medical directors were put on the payroll.”

We are concerned that CMS currently has no effective enforcement mechanism to prevent this or similar kinds of abuse of the law from taking place again. A national database of medical directors and the nursing homes they serve would at least reveal several conditions: (a) a single nursing home with two, three, or more physicians named as “medical directors”; (b) a large number of nursing homes with a single physician named as “medical director”; (c) a nursing home where the medical director changes frequently each year; or (d) a nursing home without a named physician medical director. The members of the Collaborative believe that this listing should also be made public, as a consumer resource in assisting families in selecting a care community for their loved ones.

This might be accomplished by means of the existing PBJ reporting system, or by working with the states. We are aware that some states (e.g., Colorado) are already naming the medical directors in the nursing homes in their state, so there is precedent for this at the state level. However, as nursing home organizations consolidate across multiple states, the variability in this makes this resource ineffective. Chief medical officers in nursing home organizations have communicated their frustration to us in not having ready access to a national listing of medical directors, to permit some oversight at the corporate level of the number of nursing homes each medical director is covering.

The members of the Collaborative are persuaded, through research as well as anecdotal evidence, that an actively engaged medical director, in addition to fulfilling the regulatory requirements of the role, can contribute significantly to important improvements in the nursing home environment. These include reducing staff turnover, empowering clinical staff to practice up to their full scope, implementing a robust, systematic QAPI process, overseeing a thorough facility assessment, including an assessment of clinical staff competencies, reducing avoidable hospitalizations, implementing an effective antibiotic stewardship program, improving staff compliance with seasonal immunizations such as flu vaccinations, improving medical staff management, and many others.

Of course, establishing and maintaining a national database of nursing home medical directors is not the only step needed to achieve these highly desirable outcomes. However, implementing such a requirement would be an important first step, and one that would send a strong signal to our nursing homes, as well as staff, residents and families, that the role of medical director is an important one, carries clear requirements, and cannot be subverted.
Thank you for your consideration of this request. Members of the AE Collaborative stand ready to advise and assist CMS in any and all appropriate ways to develop and implement the necessary infrastructure for such a database. Please contact me at claxton@paltc.org, or 410-740-9743, if you have any questions or need additional information.

Sincerely,

Christopher E. Laxton, CAE
Chair of the Board

---

Organizational Members

- AMDA – The Society for Post-Acute and Long-Term Care Medicine
- American Academy of Nursing
- American College of Health Care Administrators
- American Health Care Association
- American Geriatrics Society
- Gerontological Advanced Practice Nurses Association
- The Joint Commission
- Leading Age
- National Association for the Support of Long-Term Care
- National Association of Long-Term Care Administrator Boards
- National Certification Council for Activity Professionals
- The National Consumer Voice for Quality Long-Term Care
- PHI
- The Pioneer Network

Provider Members

- The Evangelical Lutheran Good Samaritan Society

Supporting Members

- Matrix Care
- Optum CCM
- Pathway Health