

October 14, 2019

Seema Verma, MPH  
Administrator  
Centers for Medicare and Medicaid Services  
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Dear Administrator Verma:

LeadingAge urges CMS not to implement the Consumer Alert icon that was [announced on October 7](#). This icon will complicate what is already a stressful, emotionally-fraught process for consumers – picking the right nursing home for a loved one.

CMS states that the icon will be implemented to “increase transparency” and “help consumers make informed choices about their healthcare.” The icon will fail in this endeavor. It provides no information other than to shout, “Stop! Do not proceed!”.

In addition, the icon is a disservice to nursing homes, including LeadingAge’s 2,000 not-for-profit homes, because it perpetuates a culture of blame. We will never achieve the kind of transparent information system we all want for consumers until we create a quality assurance program that can discern between a citation for harm that is the result of intentional mistreatment and harm that is the unintended consequence of a misguided action.

Consider this example: A resident who is care-planned to require a 2-person assist for transfers was transferred by one nurse aide. No fall occurred and the resident did not complain of pain or discomfort at the time of transfer. Approximately five hours later, the resident complained of pain and was transferred to the hospital for assessment. The resident was determined to have a fracture and the facility was cited at harm-level under F600.

Compare that to a facility where a resident is harmed due to intentional mistreatment by a staff member. Both facilities will be cited for abuse and marked with the Consumer Alert icon. The vast differences between these two instances of “abuse” will be lost on consumers. A red stop sign is a red stop sign. LeadingAge urges CMS to reverse its decision to use this icon. The icon does little to inform consumers; the opportunity for misinformation and misunderstanding is rampant.

Abuse and neglect must never be tolerated in any setting. Our members support transparent information to help consumers make the best choice possible when selecting nursing home care for their loved ones.

A LeadingAge Minnesota analysis of state (Minnesota) data over the past two years indicated that 12% of substantiated nursing home maltreatment reports fell into the abuse category. The vast majority of maltreatment instances were the result of unintentional harm, as in the case above. While this should not minimize *any* instance, the data demonstrate that we need a better way to discern the difference.

Nursing homes are a crucial component of the long-term care continuum. We, along with others in our field, believe that this red hand stop icon will do more than warn consumers about issues – even if they

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are temporary – at a provider. It will signal to consumers that the nursing home provider is designated by CMS as being untrustworthy, and not recommended for use.

Our members persevere in the face of tremendous challenges, from workforce shortages to limited Medicaid reimbursement for services performed. Adding a label such as this could be devastating to some providers. Surely an effort aimed at providing transparency to consumers is not also intended to push providers closer to the edge of viability. What will those who need nursing home services do then?

Our nonprofit members are committed to improving quality of care and quality of life for older adults, as demonstrated by the significant time, expense and staff attention devoted to the new requirements of participation. LeadingAge has been an active advocate of changes to reporting staffing data; we have also led efforts to reduce the use of antipsychotics and increase person-centered care, among other initiatives.

Prevention of elder abuse has been a focus for many years. In the 1980s, we supported and promoted “Untie the Elderly,” an effort aimed at providing alternatives to tying nursing home residents down – a practice that has all but ended. We’ve partnered with the Center for Advocacy for the Rights and Interests of the Elderly to promote staff training programs among nursing home providers. Initiatives by LeadingAge members, such as our Minnesota state partner’s “Safe Care for Seniors,” program, designed to eliminate preventable harm in the course of caregiving, or the launch and promotion of the Harry and Jeannette Weinberg Center for Elder Justice by LeadingAge New York member Hebrew Home at Riverdale, are but a few examples of our commitment to eliminating elder abuse.

Our members are on the front lines of providing care in a complex regulatory environment and we are all willing partners with CMS to devise new tools and solutions to increase consumer transparency and deliver the highest quality care for the loved ones we serve.

We urge CMS to continue its efforts to make Nursing Home Compare more intuitively useful and less complicated for consumers. Adding this “red alert” warning system is a step in the wrong direction.

Sincerely,



Katie Smith Sloan  
President & CEO  
LeadingAge