

United States Senate

WASHINGTON, DC 20510

February 14, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, Southwest
Washington, D.C. 20201

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, Southwest
Washington, D.C. 20201

Dear Secretary Azar and Administrator Verma,

We write with deep concern over a string of actions by the Centers for Medicare & Medicaid Services (CMS) that will inevitably weaken the safety of our nation's nursing homes and put patients, many of whom are elderly and wholly reliant on this care, at greater risk. These memoranda, released throughout the latter half of 2017, jeopardize long-term care by chipping away at important enforcement tools and delaying critical reforms. As such, we urge CMS to reverse its guidance on the appropriate use of civil monetary penalties (CMPs) and allow the important long-term care reforms promulgated in 2016 to move forward without delay.

On July 7, 2017, CMS released a memorandum intended to lessen fines against nursing homes that have not complied with health and safety standards.¹ On October 27, 2017, CMS released another memorandum that would significantly reduce civil monetary penalties for facilities that perform poorly.² Most recently, on November 24, 2017, CMS released yet another memorandum delaying significant enforcement remedies for a number of important regulations under Phase 2 of the Skilled Nursing Facility (SNF) and Nursing Facility (NF) Requirements for Participation³ that were set to go into effect just days later, one full year after they were announced. This 18-month moratorium forbids the imposition of fines or discretionary denials of new payments when nursing homes fail to meet certain basic and sensible requirements, such as ensuring there is adequate staff onsite, providing behavioral health services, using psychotropic

¹ S&C: 17-37-NH ("Revision of Civil Money Penalty (CMP) Policies and CMP Analytic Tool"), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-37.pdf>.

² S&C: 18-01-NH ("Revised Policies regarding the Immediate Imposition of Federal Remedies – FOR ACTION"), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-01.pdf>.

³ *Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities Federal Register*, 81 FR 68688, <https://www.federalregister.gov/documents/2016/10/04/2016-23503/medicare-and-medicare-programs-reform-of-requirements-for-long-term-care-facilities>

medications correctly, or simply having a plan in place to care for residents within two days of admission.⁴

The need to guarantee that the nursing home industry remains safe and sustainable for patients grows more urgent each day. It is now estimated that over half of Americans between the ages of 57 to 61 will spend at least one day in a nursing home during their lifetime.⁵ While we understand that many nursing homes diligently work to provide dignified, compassionate, and quality care to their patients, problems persist.

A report by the Department of Health and Human Services' Office of Inspector General (OIG) in 2014 found that, during a Medicare-covered stay, nearly a third of nursing home patients experienced an adverse event or an incident that led to temporary harm, with 59 percent of these events considered preventable. More alarming is that during the one month period that OIG reviewed, Medicare incurred a cost of \$208 million due to hospitalizations alone and found that adverse events contributed to 1,538 deaths, most of which had not been anticipated.⁶ Another study found that in 2015 more than one in five nursing homes had violations that caused harm or immediate jeopardy (defined as causing or likely to cause injury, harm, impairment, or death to a resident).⁷

It is abundantly clear that when health or safety is compromised, when errors occur, or in the worst cases, when patients are harmed, there must be a wide range of strong enforcement actions available to ensure that these adverse events are not repeated, precious federal dollars are not wasted, and most importantly, lives are not lost. That is why we are so alarmed that CMS seems intent on rolling back or delaying enforcement of regulations that are meant to keep nursing homes safe for the patients they serve. We will not and cannot accept CMS' actions that fail to keep nursing home held to the highest possible standards when it comes to patient care and safety, and we urge CMS to reconsider these policies immediately.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



AMY KLOBUCHAR
United States Senate

⁴ S&C: 18-04-NH ("Temporary Enforcement Delays for Certain Phase 2 F-Tags and Changes to Nursing Home Compare"), <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-18-04.pdf>.

⁵ RAND Corporation. *Average American's Risk of Needing Nursing Home Care Is Higher Than Previously Estimated*, (Aug. 2017), <https://www.rand.org/news/press/2017/08/28/index1.html>.

⁶ *Adverse Events in Skilled Nursing Facilities: National Incidence among Medicare Beneficiaries*, OEI-06-11-00370 (Feb. 2014), <https://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf>.

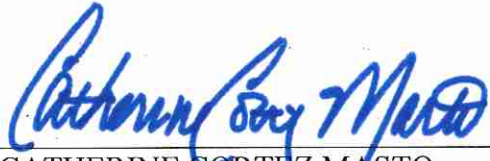
⁷ Kaiser Family Foundation. *Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 2009-2015*. Prepared by: Charlene Harrington, Ph.D. Helen Carrillo, M.S. University of California San Francisco and Rachel Garfield, <https://www.kff.org/medicaid/report/nursing-facilities-staffing-residents-and-facility-deficiencies-2009-through-2015/>



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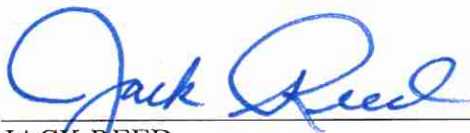
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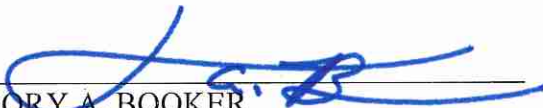
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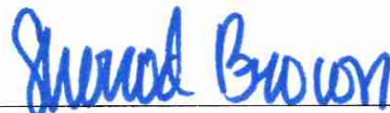
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