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March 14, 2008

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Mr. Kerry Weems
Acting Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Weems:

The Center for Medicare Advocacy (the Center) supports the Centers for Medicare & Medicaid Services' (CMS's) public disclosure of the names of nursing facilities that fail to provide care to residents in compliance with the Nursing Home Reform Law. Last month, CMS made two such disclosures – the complete list of Special Focus Facilities and, in connection with the solicitation for the Ninth Statement of Work for Quality Improvement Organizations, the names of 4000+ nursing facilities with high rates of pressure ulcers or physical restraints, or both.

While supporting public disclosure, the Center believes that disclosures need to be accompanied by clear explanations of what the lists mean and how residents and their families and advocates can best use them. CMS's explanations for both lists would benefit from additional clarification in order to be as useful as possible for consumers.

The Center for Medicare Advocacy Supports Strong Survey and Enforcement

Public disclosure is necessary, but not sufficient, to assuring that residents receive the high quality of care and high quality of life that they are entitled to receive under the 1987 Reform Law. In addition to public disclosure, the Center supports survey and enforcement processes that are meaningful and effective. We strongly endorse the language of the Reform Law, which says:

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

42 U.S.C. §§1395i-3(f), 1396r(f).

We are troubled by some recent CMS activities in the areas of survey and enforcement. One concern is the Civil Money Penalty Analytic Tool, Admin Info: 04-14 (June 22, 2007), that Regional Offices have been told to use in assessing civil money penalties (CMPs) recommended by states. This tool, which was not developed in any public process and which is not available on a public website, sets the base amounts for CMPs at very low levels and allows for upward revisions under limited and exceptional circumstances. The tool assures that CMPs will continue to be low, if not lower than ever. Such a result is contrary to reports issued by the Government Accountability Office over the past decade that have repeatedly found that CMPs are too low to affect facility behavior. Our concerns are set out in a Weekly Alert of February 21, 2008 (enclosed).

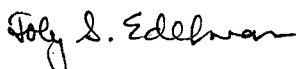
The Center for Medicare Advocacy Opposes the Request of the American Health Care Association for a Joint Press Conference with CMS to Highlight the Industry's Voluntary Improvement

The American Health Care Association has complained to you about the public release of the names of 4000+ facilities. In a February 26 letter, AHCA CEO Bruce Yarwood asked CMS to hold a joint press conference with AHCA and other provider representatives in order to "provide CMS a forum to highlight the significant quality improvement that [the industry is] making through providers' own efforts and in conjunction with *Advancing Excellence in America's Nursing Homes*."

We oppose this industry request. The Center does not believe that CMS should host a platform to praise the industry's campaign promising better care. The *Advancing Excellence* campaign actually undermines CMS's efforts to enforce federal standards of care and, in light of Mr. Yarwood's request, would now also disrupt CMS's efforts to be transparent and provide information about nursing home quality to the public. Moreover, industry efforts to improve care are not "voluntary." The federal standards of care are mandatory for facilities that choose to receive Medicare or Medicaid reimbursement, or both, as most facilities do. These standards require facilities to "provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident." 42 U.S.C. §§1395i-3(b)(2), 1396r(b)(2).

Thank you for your attention to our concerns.

Sincerely,



Toby S. Edelman
Senior Policy Attorney