LeadingAge New York

September 5, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

RE: Nursing Home Staffing Ratings

Dear Administrator Verma:

We write on behalf of LeadingAge and LeadingAge New York regarding an August 14th letter to you from Senator Ron Wyden (D-OR), the ranking member of the Senate Finance Committee. In referencing a July 7th article in the New York Times entitled *'It's Almost Like a Ghost Town.' Most Nursing Homes Overstated Staffing for Years*[1], Senator Wyden's letter expresses concerns about the veracity of nursing home staffing data collected by the Centers for Medicare & Medicaid Services (CMS), and poses questions relating to development and use of the staffing measure in the Nursing Home Five Star Quality Rating System ("Five Star"). More recently, the Office of Inspector General of the Department of Health & Human Services has announced it is examining nursing staffing levels reported by nursing homes and CMS's efforts to ensure data accuracy.[2]

We are concerned that the methodology used by the Kaiser Health News (KHN)[3] to determine nursing home staffing levels – an analysis on which the New York Times article relies – differs in several material respects from the methodology used by CMS to calculate the staffing measure in Five Star. Furthermore, there are various other factors that have a material bearing on the questions and concerns expressed by Senator Wyden that we wish to address.

As you are aware, nursing homes are rated on the Five Star staffing domain based on two measures: (1) Registered nurse (RN) hours per resident day; and (2) total staffing (RN+ licensed practical nurse (LPN) + nurse aide hours) hours per resident per day. Other types of nursing home staff (e.g., housekeeping, activities, dining staff, etc.) are not included in the staffing rating. The staffing rating is derived from payroll data reported quarterly through the Payroll-Based Journal System (PBJ) and resident census data from Minimum Data Set, Version 3.0 (MDS 3.0) assessments. The nurse staffing hours reported through PBJ and the daily MDS census are both aggregated across each quarterly reporting period. The resulting hours per patient day are then compared to the hours of care that

[1] It's Almost Like a Ghost Town.' Most Nursing Homes Overstated Staffing for Years, New York Times, July 7, 2018, https://www.nytimes.com/2018/07/07/health/nursing-homes-staffing-medicare.html.
[2] CMS Oversight of Nursing Facility Staffing Levels, https://oig.hhs.gov/reports-and-publications/workplan/summary/wp-summary-0000319.asp.
[3] *Look-Up: How Nursing Home Staffing Fluctuates Nationwide*, Kaiser Health News, July 12, 2018, https://khn.org/news/look-up-how-nursing-home-staffing-fluctuates-nationwide/.

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would be expected based on the overall acuity level of each facility's residents calculated from the MDS assessments utilizing the Resource Utilization Groups (RUG), Version IV case-mix classification system.

We note the following major concerns relative to the KHN analysis and any conclusions drawn therefrom:

1. ***KHN omitted from their calculations the reported hours of RNs with director of nursing (DON) duties and LPNs with administrative duties.*** This is inconsistent with the Five Star staffing measure, which specifically includes hours associated with RNs with DON duties and LPNs with administrative duties. According to the PBJ instructions, "direct care staff" are those individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being.[4] CMS also recognizes that registered nurses, including DONs, may completely shift their primary role in a given day and take on resident care duties. In addition to being reflected in the most recent Five Star staffing ratings, these hours were reported in the PBJ public use files that KHN utilized in their analysis. Arbitrarily excluding these hours from any such analysis would be expected to materially affect reported nurse staffing hours, particularly for smaller facilities that regularly use administrative staff to provide direct care, and could make reported fluctuations in staffing seem higher than they are in reality.
    - *As an example, for Robert Lee Care Center in Robert Lee, Texas, the number of residents per nurse (i.e. RNs and LPNs, with no RNs, DONs or LPNs with administrative duties) for the best days and worst days was reported to be 86 and 2,374, respectively. If RNs that were DONs and LPNs with administrative duties were also counted, the best and worst days would have been 11 and 22, respectively.*

2. ***KHN utilized a different staffing measure than Five Star, revealing impossibly low ratios which should have been excluded as outliers.*** Five Star relies on case-mix adjusting the reported hours of RN, LPN, and aide time, divided by resident census, to yield hours per resident day for each staff type. CMS uses a set of exclusion criteria to identify facilities with improbable high or low hours per day. Contrast this approach with that of KHN, which was to calculate the number of staff per resident by dividing 24 by the reported staffing hours per resident day. This approach leads to nonsensical and misleading results, such as an 82-bed facility reported as having one nurse for every 500+ residents.
    - *As noted in the above example, the number of residents per nurse for Robert Lee Care Center for the best days and worst days was 86 and 2,374 respectively. Both of these numbers do not make sense as the number of certified beds in this facility is 70. Hours per resident day, as CMS has used, is a metric that is sensible even for low and high staffing numbers.*

3. ***KHN categorized nurse time differently than is done in Five Star.*** As previously noted, Five Star staffing ratings are based on a per day measure of total nursing hours and an RN hours per day

[4] *Electronic Staffing Data Submission Payroll-Based Journal (PBJ) Frequently Asked Questions*, CMS, Sept. 2017, https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/NursingHomeQualityInits/Downloads/PBJ-Policy-Manual-FAQ-09-26-17.pdf

measure. RNs have a separate measure, since they are responsible for the overall delivery of care to the residents and provide oversight to both LPNs and aides. Contrast this approach with that of KHN, which combined RNs and LPNs into a single category and separately analyzed aide time. Not only does this approach ignore the reality that RNs have a very different role than LPNs, it results in flawed comparisons (as reported in the New York Times article) between CMS staffing ratings and KHN's reported fluctuations in daily staffing.

- *Again, using Robert Lee Care Center as an example, if CMS' categorizations of RN and Total Nurse Staffing were used, the best and worst days for RNs would be 30 and 670 respectively. While 670 is still not a sensible number based on the facility's 70 certified beds, it is at least consistent with how CMS currently groups the staff types. See the third bullet below for more on this issue.*

4. ***The purported comparison between self-reported hours and payroll-based hours is unreliable.*** The Five Star staffing rating continues to be based on the two measures noted above (i.e., total nursing hours per resident day and RN hours per resident day) and is case mix adjusted to reflect resident care needs. However, it has been significantly revised such that comparisons between the two methods are unreliable:
    - The previous system relied upon the CMS-671 form which captured staffing over a two-week snapshot based on the timing of the facility's survey. A two-week period is subject to seasonality and other factors that can lead to variation. Contrast this to the current method, which is based on quarterly PBJ data collection. Measuring staffing over different time periods and resident census at different points in time would be reasonably expected to produce varying results.
    - There are differences in the hours counted in the two respective systems. For example, under the previous system, overtime hours worked by salaried staff (such as nurses) were reflected in the staffing measures. Under the new system, any unpaid hours (e.g., hours worked in excess of the standard workweek) are excluded.
    - In the previous system, LPNs with administrative duties could be counted under the RN hours, while this is not the case in the new PBJ system. As an example, for Robert Lee Care Center, if the RN group contained RNs, RN DONs, and LPNs with administrative duties, the best and worst days for the "RN" group would be 11 and 22 respectively. If the aide group included LPNs and the other aide staff types, the best and worst days would be 8 and 11 respectively.
    - In its PBJ public use file, CMS acknowledges that "There may be some instances where data submitted by a facility may not be a full representation of the hours staff actually worked. There may be some erroneous reporting as some providers continue to fine-tune their data submissions."[5] Reporting dynamics associated with a relatively new process could affect comparisons to the previous system.
    - Staffing measures based on the data from the CMS-671 form relied on the resident census for a single date as reported by the facility on the CMS-672 form. Staffing measures based on PBJ data include the census for each day in a quarter based on MDS submissions.

[5] *Payroll-Based Journal Public Use Files: Technical Specifications*, CMS, July 2018.

- In the previous system, actual staffing per resident day was compared to expected staffing based on the RUG-III case-mix classification system. As part of the transition to PBJ staffing data, CMS converted to the RUG-IV system to calculate acuity-adjusted staffing levels. Not only would this change in the adjustment methodology be expected to result in changes to facilities' staffing ratings, simply ignoring case-mix adjustment in any such comparisons (as the KHN analysis did) would lead to inaccurate conclusions about the level of a facility's staffing as well as any comparisons among facilities.

LeadingAge NY represents over 400 not-for-profit and public providers of long term care and senior services throughout New York State, including over 200 nursing homes. Our national affiliate, LeadingAge, is an association of 6,000 not-for-profit organizations – including over 2,000 nursing homes – providing long term care services and supports throughout the United States.

Together with LeadingAge, we continue to support the change to reporting staffing data based on payroll. However, the PBJ collection method is still relatively new, and its use in Five Star is quite recent, revealing data issues which have resulted in understated staffing levels being posted for some facilities. Understaffing and inaccurate reporting should be addressed, and the PBJ system is a step in the right direction to improve the quality of the reporting. As CMS and facilities gain more experience with the new system, inaccuracies in reporting and compilation should be reduced resulting in more stable and representative staffing figures.

Thank you for considering our input. If you have any questions, please contact Jim Clyne at (518) 867-8383 or jclyne@leadingageny.org.

Sincerely,

James W. Clyne, Jr.
President/CEO

Katie Smith Sloan
President and CEO

cc: Hon. Ron Wyden, US Senate
Daniel R. Levinson, Office of Inspector General, DHHS