

October 11, 2019

Ms. Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
Room 314G  
200 Independence Avenue, SW  
Washington, DC 20201

Re: Nursing Home Compare Changes

Dear Administrator Verma:

I am writing to you about the recent announcement to add a “consumer alert icon” on Nursing Home Compare (NHC) for skilled nursing centers that have received an abuse or neglect citation and capping the survey Five-Star rating at 2 stars. We appreciate you taking a personal interest in this issue and efforts to implement changes to prevent abuse and neglect. However, we feel these efforts may not be as effective without further changes to the survey system and how abuse and neglect is enforced.

We agree with your efforts to increase transparency around this topic. We support greater transparency and efforts to help prevent any abuse or neglect from occurring. However, we have concerns with the icon selected for use and the accuracy of the data. These could have potential unintended effects of creating unnecessary worry and concern among residents and their families and decrease access to care if patients avoid without current significant problems that continue to have an icon suggesting consumers avoid the facility. We did appreciate the comments in the press release that there “*are many factors that indicate a nursing homes quality*” and guidance on the NHC website that consumers need to make their own decisions and should not rely solely on the information on Nursing Home Compare.

The icon selected creates a strong visual recommendation “to stop and avoid” going to this nursing home. A red “stop sign” with a hand on it, is inconsistent with the message outlined in the press release that the information on the site should help “*consumers develop a more complete understanding of a facility’s quality*”. Such a symbol implies people should avoid the nursing home altogether rather than use the information as a warning or caution to investigate further as you point out in your example “*For example, a nursing home cited for an incident of abuse may have adequate staffing numbers and provide excellent dementia or rehabilitative care.*” As such, we would request that the symbol be changed to be more in align with the goals of transparency and warning to consumers to gather additional information. We recommend using a symbol to suggest either “caution” or need to investigate further, as you might see on the roadway or as you

do for Special Focus Facilities (SFF) (i.e., a yellow triangle with an exclamation point) would be more appropriate.

If a facility has corrected the deficiencies that led to the citation and is back in substantial compliance with CMS regulations, the icon should be removed as it suggests an ongoing problem. If a facility has corrected the issue, keeping the icon on NHC seems confusing and inconsistent with transparency efforts. We recommend that the icon be removed after a re-visit by CMS or the state verifies that the facility is in compliance with CMS regulations.

While we appreciate the policy importance to highlight past episodes of abuse or neglect resulting in harm (i.e. citations at a G or higher level), citations at a lower level not related to harm should not be used to assign a warning icon. Particularly given the enormous variation in the use of deficiencies cited at a scope and severity of D between states. For example, the proportion of facilities cited at a D level with an abuse or neglect citation (i.e. F-tags 600, 602 and 603 used to determine the icon), vary dramatically between states from 0% to 23% (see Figure 1). The proportion of all abuse or neglect citations for these three F-tags cited at only a D level also varies dramatically from 0% in Arkansas to 87% in Nevada (see Figure 2). This enormous variation is not explained by differences in rates of abuse or neglect between states but reflects the inconsistency in how CMS inspections and interpretations of abuse and neglect are made. This is consistent with the OIG findings that failure to report was “*that CMS guidance was not clear and, therefore, subject to inconsistent interpretation by SNFs.*”<sup>1</sup>

Often D level deficiencies for these three F-tags are not what most people would consider abuse or neglect, though they may represent quality of care concerns. For example, two examples of actual F-600 abuse citations demonstrate this concern. CMS cited a facility for F-600 at a D level because two wheelchair-bound residents with dementia exiting the dining room at the same time bumped into each other. Resident 2 reported she ran over Resident 1’s foot with her wheelchair and Resident 1 commented back to her so Resident 2 reached out to hit her upper thigh. The residents were immediately separated and assessed for injury. Neither resident recalled the incident and were not injured. A second facility cited at a D level for F-600 resulted because a resident had a fall with minor injury. The justification in the CMS citation stated “*Her care plan had indicated that a body pillow was to be used at all times while she was in bed for positioning and safety. Resident was found laying on the floor in front of her bed. Bed was in low position. Pull string alarm was sounding. The body pillow was not on. Interview with the director of nursing (DON) revealed: She had conducted an internal investigation with the direct care staff. She did not feel the certified nursing assistant (CNA) had been neglectful. The CNA had not placed the body pillow in the bed for positioning. The internal investigation had not been documented. Resident had been sent for x-rays. She had bruises on the right side of her face, hip, and knee. -All x-rays were negative for injury.*” Should episodes like these result in an icon? This raises serious questions about the accuracy of this

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<sup>1</sup> Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated. 06-12-2019 Audit (A-01-16-00509) pg 8.

<https://oig.hhs.gov/oas/reports/region1/11600509.asp>

information and using it to assign an icon for a year. As such, we recommend that CMS not use D level deficiencies until such time as the reporting across states is more consistent and accurate. Otherwise, some facilities will have an icon that does not warrant it, scaring consumers away from a facility that can meet their needs safely and others who should have an icon will not. This inconsistency of citations does not advance transparency or consumer choice.

Using the Five-Star rating system to punish facilities by reassigning stars for not following one or two specific CMS regulations undermines the system. CMS has numerous other enforcement mechanisms to penalize facilities and drive compliance. The Five-Star system is meant to provide information on a wide range of quality metrics (compliance with regulations, staffing levels and quality outcomes). By reassigning stars, the importance of other measures is dramatically diminished. This reduces transparency to the consumer by masking information for other important quality concerns from impacting the Five-Star rating. The capping of the survey component at 2 stars is the equivalent of assigning 2-4 times more survey points to these three citations; more than any of the other 246 citations and overwhelms the impact of staffing or quality. The capping of 2 stars results in over 95% of SNFs with a survey star rating of three or higher losing 1,2 or 3 stars in their Overall rating. It also:

- Undermines the importance of staffing levels, a key driver in the efforts to address abuse and neglect; and
- Undermines the importance of other CMS priority areas to improve resident safety such as infection control, antipsychotic use and prevention of hospitalizations and emergency room visits.
- Devalues improvements in these key areas.

As the Five-Star system has grown over time, the rating methodology has been appended and modified without any overarching framework or evidence basis. This ad hoc approach to changes results in a confusing rating methodology. We recommend that CMS seek guidance from National Quality Forum on Five-Star's rating methodology as done for other settings. The Five-Star rating system should be a source of quality information for consumer choice not an enforcement tool to drive compliance. As such, assigning a cap on the survey star rating should be dropped.

In addition, collecting and reporting on customer satisfaction will provide families and residents an opportunity to have their voice and opinion added to Nursing Home Compare. This would be a pro-active step to help combat abuse and neglect. Facilities with poor practices or staff who are not caring will receive lower satisfaction scores. The nursing home sector is the only provider group to NOT have customer satisfaction collected and reported by CMS. There are National Quality Forum endorsed satisfaction measures for nursing home residents and their families that most vendors in our sector have adopted, which could readily be used on Nursing Home Compare. This would be similar to how CMS mandates satisfaction collection in all other settings; having providers pay to contract with vendors to collect standardized information. There should be recognition for facilities taking appropriate actions for reporting, investigating and making changes when an episode of potential abuse happens. Currently,

there is no recognition for self-reporting and taking corrective actions. Particularly, when the episode of abuse happens related to resident to resident or family to resident that is unpredictable or a staff person who acts inappropriately despite all steps taken to train and support that individual. The primary recommended approach in the literature is the need to quickly identify potential abuse or neglect, report it to the appropriate authorities, investigate and take corrective actions. However, when facilities follow this recommended course of action, their efforts are not recognized. They are penalized compared to those who do not take such action. Rather than incenting self-reporting, adding the icon and dropping the star rating, regardless of actions taken by the facility, creates a disincentive to adopt the desired and expert recommended practices. We recommend that facilities who self-report, investigate and take appropriate actions be recognized by not receiving an abuse or neglect citation nor should they receive an icon. This would create an incentive to report, investigate and take action; the cornerstone of combating abuse and neglect.

As you continue to focus on this effort, we urge you to consider standardizing the definitions, reporting requirements and enforcement actions across all provider types. Currently, the definitions and reporting requirements in CMS regulations vary or do not exist. We have summarized CMS's regulations on abuse and neglect in Table 1 below. As a result of this variation, providers such as physicians and nurses who work in different settings as well as CMS and state inspectors who may spend time in different settings all have to keep track of different definitions and reporting requirements. This leads to confusion and variation in reporting. In GAO's recent report, many of the cases presenting in the emergency room were not reported by the SNF or the survey agency personnel. Since there was no record of the cases in any of the abuse databases, the hospitals and emergency room personnel also failed to report because they are using a different definition and reporting requirements. If we are serious about addressing abuse and neglect as a nation, we need a standard definition, enforcement and reporting requirements for all settings to protect the elderly regardless of where they receive care. An examination of the abuse and neglect citations also indicate that abuse and neglect are different. Abuse commonly occurs between staff to resident or resident to resident and requires personnel actions and background checks to discover actions from other states; while neglect is often related to quality of care and systems issues rather than individual personnel. Each requires different actions to correct and prevent. We recommend that CMS separate reporting of abuse from neglect and characterize the types of abuse (e.g. resident to resident vs staff to resident), which is consistent with the recommendations in the OIG report<sup>2</sup>.

We stand ready to work with you and your team to combat abuse and neglect and further improve safety and quality of care for nursing home residents. We are concerned the current icon and 2-star cap will not achieve this shared goal without significant changes.

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<sup>2</sup> Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated. 06-12-2019 Audit (A-01-16-0509)  
<https://oig.hhs.gov/oas/reports/region1/11600509.asp>

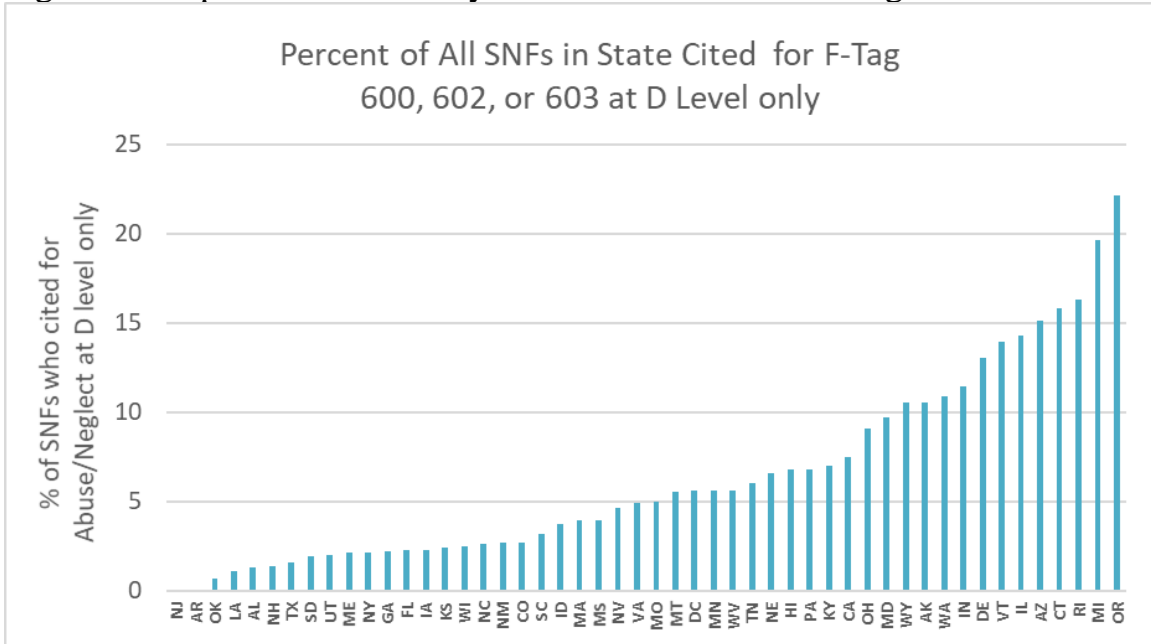
We appreciate your attention to our recommendations and would be happy to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Parkinson". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

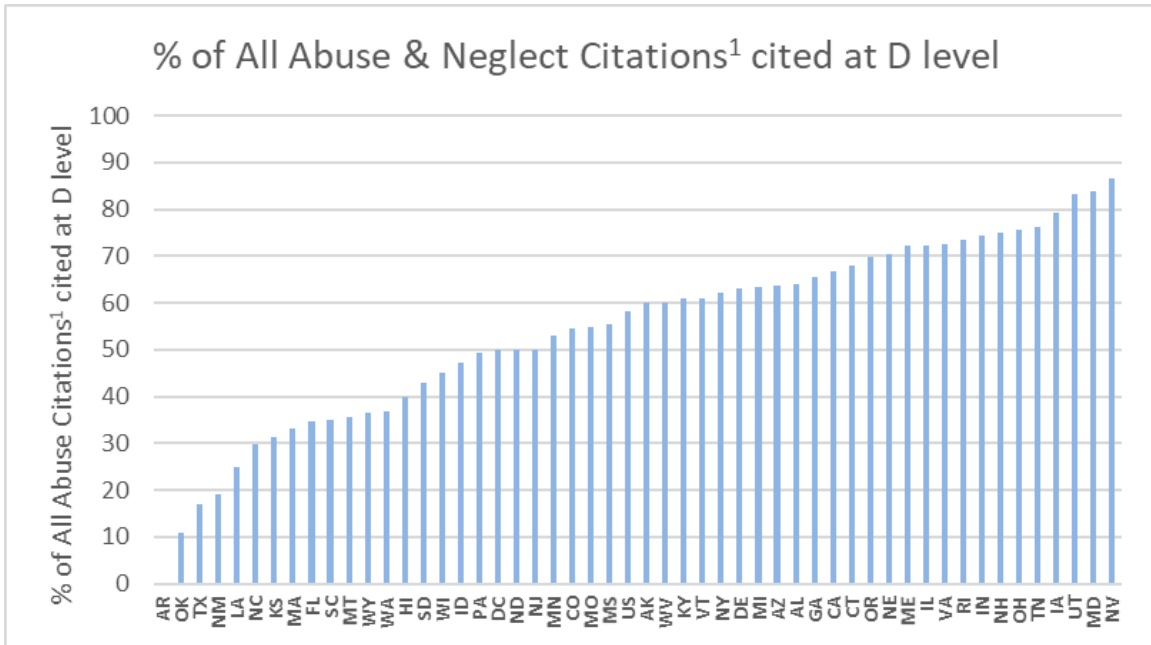
Mark Parkinson  
President and CEO

Figure 1. Proportion of SNFs by State cited for abuse or neglect at D level



Data source: CMS CASPER data for FY 2019.

Figure 2. Proportion of all abuse or neglect citations<sup>1</sup> cited at a D level by state



<sup>1</sup>Abuse or Neglect Citations restricted to F600, F602 and F603 used to determine icon; data source: CMS CASPER data reflecting Fiscal Year 2019.

Table 1. Variation in Abuse and Neglect Regulations by Provider Type

Setting	Regs state patient has “right to be free from abuse and neglect”	Abuse defined	Neglect Defined	Require reporting allegations of abuse or neglect
Skilled Nursing Facilities (SNF)	YES	YES	YES	YES
Hospitals <sup>3</sup>	YES	NO	NO	NO
Psychiatric Hospitals	NO	NO	NO	NO
Long Term Care Hospitals (LTCH)	YES	NO	NO	NO
Critical Access Hospitals (CAH) <sup>4</sup>	NO	NO	NO	NO
Home Health Agencies (HHA)	YES	NO	NO	YES <sup>5</sup>
In-Patient Rehabilitation Facilities (IRF)	YES	NO	NO	NO
Transplant Centers	YES	NO	NO	NO

<sup>3</sup> Swing beds in hospitals must meet the requirements for freedom from abuse, neglect, and exploitation as outlined in §483.12 (the SNF requirements of participation).

<sup>4</sup> Swing beds in CAHs must meet the requirements for freedom from abuse, neglect, and exploitation as outlined in §483.12 (the SNF requirements of participation).

<sup>5</sup> HHA staff who “in the normal course of providing services” identify, notice, or recognize incidences or circumstances of mistreatment, neglect, verbal, mental, sexual, and/or physical abuse, including injuries of unknown source, or misappropriation of patient property, must report these findings immediately to the HHA and other appropriate authorities in accordance with state law.

