LeadingAge® Washington

January 16, 2020

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–2393–P
P.O. Box 8016
Baltimore, MD 21244

Dear Administrator Verma,

LeadingAge Washington represents 160 not-for-profit and mission-driven senior care and housing organizations around Washington State. Of those organizations, 44 are skilled nursing facilities, including Life Plan Communities (LPCs)/Continuing Care Retirement Communities (CCRCs). These organizations provide quality care for our state's most vulnerable seniors.

We write to you today with significant concerns regarding the Centers for Medicare & Medicaid Services (CMS) proposed rule, "Medicaid Program; Medicaid Fiscal Accountability Regulation," published on November 18th, 2019. If passed, the proposed changes to the provider taxes could have immense impacts on our state's nursing homes and LPCs/ CCRCs. Currently, in Washington State, nursing homes are in a volatile market due to Medicaid underfunding and regulatory pressures. It is estimated through 2018 cost report data that our current annual underfunding is $110 million, resulting in a $35 per patient day shortfall. Washington State currently has the worst net operating margin in the nation, with 2/3rds operating in the red. As a result, many providers have made the tough decision to close their doors or reduce their beds. They simply cannot afford another change, such as that proposed under the MFAR rule, which has the potential to increase their costs.

Washington is one of 18 states that provides an exemption to CCRCs and "CCRC like" communities. Currently, The MFAR proposal would jeopardize these tax exemptions because most CCRCs do not provide Medicaid services or have only a handful of Medicaid-funded nursing home beds. If removed, and the 30 currently exempted providers are required to pay the $23 per resident day tax, we estimate the total impact to our members to be almost $11 million. Due to the high number of private pay residents in these facilities, only half of the money paid in by members would be reimbursed; meaning LeadingAge Washington SNF

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members would lose nearly $5 million in uncompensated tax expense. Most CCRCs and "CCRC like" communities would not be able to absorb these new expenses and, by necessity, would pass these new costs on to privately paying residents. Alternatively, these once exempt SNFs could close their nursing home operations entirely.

Increasing, by $23 ppd or over $700 monthly, the cost of skilled care to residents paying privately is an unjust result. At a time when these elderly persons are most vulnerable, requiring skilled care and living on a fixed income, we are asking them to shoulder the burden of the state's obligation to pay sufficiently to cover the cost of care for low income individuals. This is patently unfair and this responsibility should fall evenly to all citizens in the state of Washington, not to a certain and particularly vulnerable population. Closing skilled nursing as a part of the care continuum is threatened under this rule. We need only look to our neighbor to the south, Oregon, as a very real example of decisions made when that state removed its CCRC provider tax exemptions. Nearly every CCRC closed the skilled nursing portion of their care continuum in an effort to avoid the expense burden and unfairly taxing their private pay residents.

Washington also allows a discounted tax rate of $1 ppd for skilled nursing providers who have a high Medicaid census, 32,000 Medicaid resident days or higher, as well as those who have 203 or more licensed beds. Many large bedded skilled facilities simply cannot afford to serve a high Medicaid percentage of residents without running the risk of closure given the shortfall in Medicaid funding. If we were no longer able to offer these facilities the lower tax rate, many, if not all, would face significant financial instability. These facilities would experience an increase in unreimbursed tax related expenses without an equal or greater benefit to the tax paid caused by an imbalance of Medicaid to private pay census.

Ultimately this proposal requires these communities and their residents to subsidize our state Medicaid program when they either do not, or only minimally, participate in the program. We cannot stress enough that Washington State skilled nursing providers cannot withstand yet another financial burden.

We also believe that overall the proposed provider tax language is vague and arbitrary making it difficult to more precisely determine facility specific impacts under the proposed rule. Because of the vagueness of the rule, we believe that sufficient notice is lacking and that any proposal to change the provider tax methodology is invalid. We also submit that CMS lacks an understanding of the potential financial implications for each state's Medicaid program or to individual providers and, therefore, is unable to determine small business impact as required to do under administrative law.

We strongly disagree with the proposed MFAR as it applies to provider taxes and we urge CMS to withdraw at least this portion of the rule. As written, the proposed rule will cause disruptions to the delivery of nursing facility care in certain communities within our state and it will unfairly burden vulnerable older persons needing skilled care.

Thank you for your consideration of our comments and the concerns raised.

Sincerely,

Deborah A. Murphy

Deborah A. Murphy, MPA, J.D.
President/CEO