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September 19, 2018

**VIA ELECTRONIC TRANSMISSION**

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services

Dear Ms. Verma:

Thank you for your letter dated July 26, 2018, in response to my inquiry regarding the Timely Mission Nursing Home in Buffalo Center, Iowa. While many nursing homes provide excellent care, I remain concerned about CMS's efforts to ensure quality nursing home care to our most vulnerable citizens.

CMS defines the conditions of participation for Medicare and Medicaid and is the agency responsible for overseeing that nursing home residents receive quality care. CMS also depends upon the efforts of state survey agencies to verify that nursing homes meet federal standards for quality and safety. In order for such a system to work, there must be extensive communication and shared responsibility between federal and state partners.

Reports issued by the Department of Health and Human Services' Office of Inspector General (OIG) and the Government Accountability Office (GAO), along with press reports of abuse and neglect occurring in nursing homes, raise questions as to how well this shared responsibility is working. Over the past 20 years, GAO has reported on poor quality nursing home care and the lack of federal and state oversight of nursing homes.<sup>1</sup> In addition, OIG found that one-third of Medicare beneficiaries at nursing homes experienced some type of harm during their stay and nearly 60 percent of the events were either clearly preventable or likely preventable.<sup>2</sup> Finally, news reports have revealed that individuals with a history of settling claims of Medicare and Medicaid fraud have been able to continue to participate in CMS

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<sup>1</sup> *Examining Federal Efforts to Ensure Quality of Care and Resident Safety in Nursing Homes, Hearing Before the Subcomm. on Oversight and Investigations, H. Comm. on Energy and Commerce 115th Cong.* 3 (2018), available at <https://www.gao.gov/assets/700/694324.pdf> (Testimony of John E. Dicken, Director, Health Care, Gov't Accountability Office).

<sup>2</sup> U.S. Dep't of Health and Human Services, Office of Inspector General, OEI-06-11-00370, *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries*, Executive Summary (2014), available at <https://oig.hhs.gov/oei/reports/oei-06-11-00370.pdf>.

programs. That very example showed itself in Florida when some residents died in a nursing home that had been subjected to previous fines.<sup>3</sup> These outcomes are unacceptable.

An October 2015 GAO report and 2018 testimony updating that report, provides an overview of key trends in nursing home quality data, which GAO had concluded were “mixed results.”<sup>4</sup> GAO found that “data issues complicated CMS’s ability to assess nursing home quality trends.”<sup>5</sup> For example, the number of complaints and nursing home deficiencies reported varied by state due to different reporting mechanisms, which complicated nationwide comparisons.<sup>6</sup> In addition, GAO found that CMS did not regularly audit quality data such as nurse staffing and clinical data.<sup>7</sup> Although CMS has recently begun to audit nurse staffing, it does not have a plan to audit other quality data.<sup>8</sup> Without sufficiently reliable reporting data it is difficult to ascertain the accuracy of government findings which, in turn, creates challenges to creating and implementing necessary policy fixes.

Importantly, CMS has made efforts to provide additional guidance to nursing homes to help detect and reduce harm to patients.<sup>9</sup> Moreover, according to GAO, in November of 2017, the U.S. Department of Health and Human Services (HHS) implemented a new national electronic survey to better document nursing home deficiencies across the states. All of these efforts promise improved nursing home quality and I am anxious to see measurable outcomes and lasting results. With that in mind, please answer the following questions no later than October 3, 2018.

1. In addition to the new national electronic survey to document nursing home deficiencies, what other actions has CMS taken to improve the quality and timeliness of state reporting?

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<sup>3</sup> Megan O’Matz, Sun Sentinel, *Nothing stopped doctor from paying health care fraud fine, then buying a nursing home* (Nov. 25, 2017), <http://www.sun-sentinel.com/local/broward/fl-reg-jack-michel-nursing-home-20171120-story.html>.

<sup>4</sup> *Examining Federal Efforts to Ensure Quality of Care and Resident Safety in Nursing Homes, Hearing Before the Subcomm. on Oversight and Investigations, H. Comm. on Energy and Commerce 115th Cong.* 6 (2018), available at <https://www.gao.gov/assets/700/694324.pdf> (Testimony of John E. Dicken, Director, Health Care, Gov’t Accountability Office).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at Executive Summary.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> OIG made two recommendations to CMS: provide guidance to nursing home about detecting and reducing harm and to instruct state survey agencies to review facility practices for detecting and reducing harm. OIG said it had determined CMS had implemented these recommendations in August 2018. *Examining Federal Efforts to Ensure Quality of Care and Resident Safety in Nursing Homes, Hearing Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives* (2018), available at <https://oig.hhs.gov/testimony/docs/2018/dorrill-testimony090618.pdf> (Testimony of Ruth Ann Dorrill, Regional Inspector General, Office of Inspector General, Dep’t of Health and Human Services). Additionally, CMS has launched the Nursing Home Compare website and leads the National Nursing Home Quality Care Collaboration. <https://www.medicare.gov/nursinghomecompare/search.html>.

2. When will CMS evaluate the impact of the new national electronic survey? When complete, please provide the results of the survey.
3. With respect to the dependence on data collection to determine trends in the quality of nursing home treatment, please explain the most effective methods CMS believes are necessary to improve data collection and what steps CMS has taken to implement those methods.
4. What steps have been taken to make the Nursing Home Compare site more user friendly?
5. What authority does CMS have to prevent individuals or companies with histories of settling Medicare and Medicaid fraud claims from continuing to participate in government programs? Does CMS have the ability to monitor these individuals, companies and their facilities or completely expel them from the programs? If not, please explain what additional authorities are needed to prevent repeat bad actors from abusing government programs and patients.
6. In light of the HHS OIG's work in the nursing home space, does CMS regularly interact with the OIG to identify problematic facilities and work toward a proper patient-centered solution? Please describe your relationship with the OIG in that regard.

Should you have any questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary