January 13, 2020

Dear Senator/Representative,

You are receiving this letter because your state is one of eighteen that has a state tax policy in place that proposed federal regulation could jeopardize.

LeadingAge and the National Continuing Care Residents Association (NaCCRA) write today as the national associations representing continuing care retirement community/life plan community (CCRC) providers and residents regarding the proposed Medicaid Fiscal Accountability Regulation (MFAR). The Centers for Medicare and Medicaid Services (CMS) published the MFAR proposal on November 18 with the intent of promoting financial integrity in state Medicaid programs. While we appreciate CMS' efforts to do so, the MFAR proposal as written does more harm than good and would have dangerous implications for residents and providers of CCRCs.

On behalf of these communities and the older Americans who live there, we urge that you contact CMS and ask that the agency withdraw the proposed MFAR and/or revise any final version of MFAR to protect CCRCs and their residents.

About CCRCs

CCRCs (also called Life Plan Communities) are a critical component of the aging services system. There are about 2,000 such communities across the country. Collectively, these communities are home to more than 700,000 Americans who rely on CCRCs to provide them with a full range of housing and services as they age, from dining services and social activity through skilled nursing care. Almost all CCRC residents are older adults, with the average new resident being about 80 years old, and the vast majority pay for care in CCRCs out-of-pocket (e.g., not with Medicare or Medicaid dollars).

Almost 2 in 3 (65%) CCRCs are sponsored by a faith-based organization and most (79%) are nonprofit organizations. CCRCs often have nursing homes on-site, sometimes referred to as health centers. These nursing homes operate like any other nursing home and must comply with federal and state nursing home regulations.

The Proposed MFAR and CCRCs

Current federal Medicaid policy allows for states to assess provider taxes and to receive federal Medicaid matching funds for the revenue those taxes generate. Almost all states (45) assess some type of nursing home provider taxes. Depending on the state, the revenue these taxes generate may be used for quality incentive programs, supplemental payments to Medicaid providers and to help subsidize state Medicaid rates.

In order to receive federal funds, state provider taxes must be uniform and broad-based. States can receive a waiver for either of these components if the state tax policy passes statistical tests set forth by long-standing regulation. Among states that assess such taxes, LeadingAge has identified eighteen that exempt CCRCs from the tax program and/or levy a discounted tax upon these communities (see attached map). Your state provides a discounted provider tax rate to these communities.

Under the proposed MFAR, CMS would disallow federal matching funds for tax revenue that "burdens" the Medicaid program. Because most CCRCs do not participate in Medicaid or do so on a very limited basis, tax exemptions and discounts for these communities would not be compliant with the proposed regulation if CMS were to finalize it as written.

In other words, CMS is proposing regulations that would increase taxes on CCRCs in your state by requiring CCRCs to subsidize the Medicaid program even though they largely do not participate in that program and their residents pay with their own funds for their nursing home care.

The Proposed MFAR's Financial Impact on Older Americans and CCRCs

The implications of such a policy change would be disastrous for CCRCs and the older Americans who live there. Despite largely not participating in the Medicaid program, CCRCs in states with provider tax exemptions and discounts would likely have to pay new state taxes to subsidize the Medicaid program.

While the exact cost of these new taxes would vary by state and by community, it could easily become a new six- or seven-figure cost each year. Thus, the CMS MFAR proposal could lead to a major new financial burden on CCRCs, and older Americans could face higher out-of-pocket costs if those communities were to pass the cost to the consumer via higher entrance fees and/or monthly fees.

Or, of greater concern, these CCRCs may conclude that the operation of a nursing home within their continuum is not financially sustainable and – as several CCRCs already are – may choose to reduce or close their nursing home operation rather than incur the additional tax burden. This could significantly constrict the availability of high-quality nursing home beds at precisely the time when the demand is expected to increase exponentially. Once again, the older Americans whom CCRCs serve, who have been lifelong taxpayers and contributors to society, will pay the price.

We do not believe it's the intention of CMS or the administration more broadly to take regulatory action that would increase state taxes or the cost of nursing home care for private-pay residents. The proposed MFAR, however, would do just that in your state by disallowing long-standing provider tax exemptions and discounts for CCRCs. **Your state has already taken into account the important role that private pay nursing home residents play in supporting its long-term care system and determined that it was in the state's best economic interest to discount the provider tax rate for CCRCs.**

We urge you to contact CMS to express these concerns and ask that the agency either withdraw the proposed rule and/or make revisions to any final rule that would protect continuing care retirement communities and their residents. Comments are due to CMS via the Federal Register by February 1.

We appreciate your consideration of this request to protect older Americans living in CCRCs. If you have any questions, please don't hesitate to contact us or have your staff contact Marsha Greenfield (mgreenfield@leadingage.org) of the LeadingAge staff.

Sincerely

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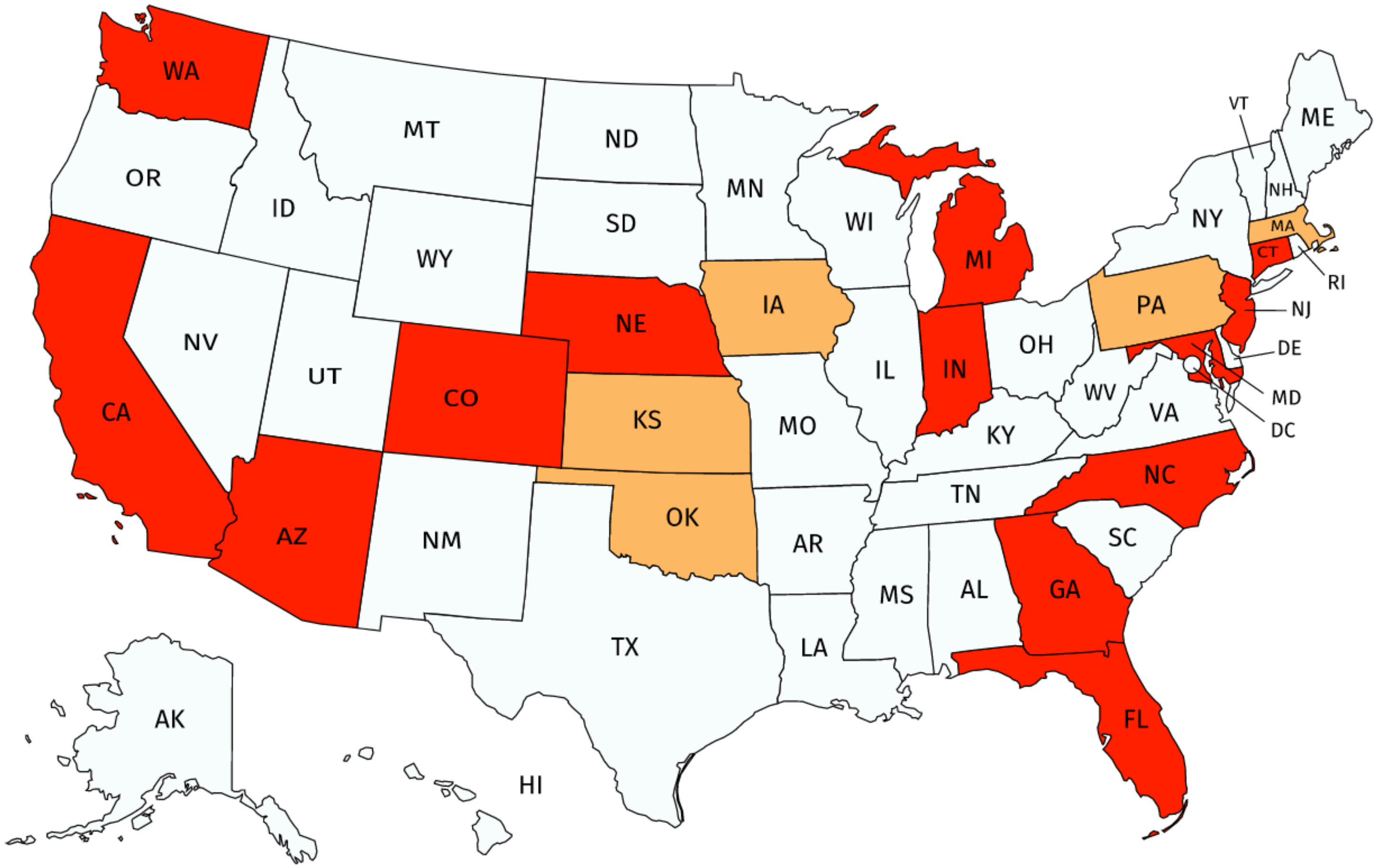
Map of States with Nursing Home Provider Taxes that Exempt or Provide Discounts to CCRCs

Under the proposed MFAR, CCRCs in these states could lose their provider tax exemptions and discounts, which could raise costs for older Americans who live there.



States with nursing home provider taxes that exempt CCRCs.

States with nursing home provider taxes that discount the tax rate for CCRCs.