Senate Finance Committee
Not Forgotten: Protecting Americans from Abuse and Neglect in Nursing Homes
March 6, 2019
Statement for the Record

Mr. Chairman and Mr. Ranking Member, LeadingAge appreciates the opportunity to submit this statement for the record of the Senate Finance Committee hearing, *Not Forgotten: Protecting Americans from Abuse and Neglect in Nursing Homes*.

The mission of LeadingAge is to be the trusted voice for aging. Our 6,000+ members and partners include nonprofit organizations representing the entire field of aging services, 38 state associations, hundreds of businesses, consumer groups, foundations and research centers. LeadingAge is also a part of the Global Ageing Network, whose membership spans 50 countries. LeadingAge is a 501(c)(3) tax-exempt charitable organization focused on education, advocacy and applied research.

Since its founding in 1961, LeadingAge has stood for quality nursing home care. We participated in the development of the Nursing Home Reform Act, enacted as part of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). We have worked with the Centers for Medicare and Medicaid Services on the development of regulations to carry out OBRA. We have taken leadership roles in numerous initiatives like Quality First and Advancing Excellence in America's Nursing Homes, designed to give nursing homes tools and accountability measures to improve care. We and our 38 state associations provide extensive educational resources for our nursing home members not only on regulatory requirements and how to comply, but also on the deeper and more extensive issues of developing sound and forward-thinking leadership, recruiting and retaining well-qualified staff, and best practices for meeting the challenges of caring for extremely frail and vulnerable people. Our goal is for every nursing home in the country to be a place where any of us would be willing to live if we needed the level of care nursing homes provide.

Some recent examples of quality enhancement efforts our members and state associations have initiated:

Safe Care for Seniors, a program spearheaded by LeadingAge Minnesota, is designed to eliminate preventable harm in the course of caregiving. Through both words and actions – and with the senior at the center of all they do – providers renew their commitment to give safe, quality care to ensure a high quality of life for those they serve. Providers, team members, residents and families partner together to promote a culture of safety that allows residents to thrive in a community built on safety, trust, dignity, and respect. Providers and individuals take a two-fold pledge to increase the safety of the people they serve. They promise to always treat the people for whom they care with respect and dignity, to take steps to get to know them as

individuals, and to speak up if they see something that may be unsafe or makes them feel uncomfortable.

Gayle Kvenvold, President and CEO of LeadingAge Minnesota put it this way: "…we began by asking this question: *what is in our power to do to bring about the best lives for our elders*? And that led us to renew our commitment to the heart and soul of our work – respect, safety and dignity for those we serve – and to commit as a statewide caregiving community and as LeadingAge Minnesota to some of the most meaningful work we will ever do. This is our calling, our commitment and our culture. Together we will prevent harm before it occurs and create a culture of safety. Together we will help those whose lives we touch, live their best lives." As the national partner of LeadingAge Minnesota, LeadingAge will seek to build on and promote the positive results of this initiative to our members in other states.

Another example involves two of our member nursing homes' collaboration with Altarum in its Program to Improve Eldercare. Altarum has received funding from civil monetary penalties collected by the state of Michigan for a three-year nursing home culture change initiative. LeadingAge members Martha T. Berry Medical Care Facility in Mount Clemens and Beacon Hill at Eastgate in Grand Rapids will be two of the six nursing homes participating in this initiative.

This "Accelerating Quality Improvement for Long-Stay Residents in Michigan Nursing Homes Using Culture Change" project will involve education and coaching from the Eden Alternative, a well-known proponent of fundamental nursing home organizational transformation toward truly person-centered services. Project participants will be trained in directing their organizations' operations to services oriented by resident choices and values. Altarum will monitor developments at the participating nursing homes, evaluate progress, and determine sustainability and economic impact. We and our members are excited by this opportunity to demonstrate the ways in which the principles of culture change can be put into practice and potentially replicated in other areas.

We also want to mention the work done by RiverSpring Health in Riverdale, New York. In addition to comprehensive services for its residents, RiverSpring maintains the Weinberg Center for Elder Justice, established in 2005 as this country's first shelter for victims of elder abuse. The Weinberg Center provides legal, social, and care management services to elders who have been victimized. At the Weinberg Center, elders who have experienced physical, emotional, or sexual abuse; neglect or abandonment; or financial exploitation can find shelter and help to regain control over their lives. Multi-disciplinary teams at the Weinberg Center provide trauma-informed care and services to help the older person recover, deal with legal issues, and often return to the community.

RiverSpring Health is part of the Shelter Partners Regional, National, & Global (SPRING) Alliance, a growing network of regional shelters supporting older people who have been victims of elder abuse. Several other LeadingAge members have joined the Alliance, including Eliza Bryant Village in Cleveland, Ohio; St. Elizabeth Community in Providence, Rhode Island; Lifespan in Rochester, New York; Jewish Senior Life in metropolitan Detroit, Michigan; and

Jewish Senior Services in Bridgeport, Connecticut. These organizations collaborate, sharing resources, technical assistance, and training to serve elders who have experienced abuse.

These are only some of the examples of the work LeadingAge members do every day to ensure the highest possible quality of care and quality of life for older people who need long-term services and supports. We make no apology for bad nursing home care. There is no excuse for abuse or neglect of older people whether they are living in nursing homes or in the larger community.

We understand and share the committee's concern about abuse and neglect in nursing homes. We also question the accuracy and adequacy of information now available to consumers through the Nursing Home 5-Star Quality Rating System on the Center for Medicare and Medicaid Services (CMS) website. As we have commented previously to Congress, the 5-Star system compares a nursing home's performance on quality measures, staffing, and health inspections only against the performance of other nursing homes in the same state. A 5-Star rating means only that a nursing home is performing much better than other nursing homes <u>within its state</u>. LeadingAge believes that this system of rating nursing homes does not give consumers as much information as they need and should have to pick the best nursing home for themselves or their family members.

The 5-Star system also grades nursing homes on a bell curve, which requires some nursing homes to be graded at the one- and two-star level and relatively few nursing homes to be graded at the four- or five-star level. No matter how well its nursing homes may perform, no state may have a preponderance of four- and five-star nursing homes.

While the 5-Star system was conceived as a tool to help consumers choose a nursing home, few consumers understand the actual meaning of the 5-Star ratings. In addition, the ratings have been applied to contexts for which they were never intended, such as partnership in accountable care organizations, inclusion in managed care plans, and distribution of revenues under state Medicaid value-based purchasing initiatives.

On June 27, 2017 CMS announced an 18-month freeze on the health inspections portion of nursing homes' 5-Star ratings. The committee has noted that the 5-Star freeze has prevented consumers from detecting deterioration in a nursing home's quality that may have occurred since the nursing home's last survey in 2017. By the same token, we have heard from several of our member nursing homes that have committed time and resources to improving quality but are still stuck with their ratings from two years ago. We urged CMS to provide updated information on Nursing Home Compare about improvements nursing homes achieve during the freeze period.

We also have recommended that CMS should take a national approach to rating nursing homes under the 5-Star system. In its November 2016 report, *Nursing Homes: Consumers Could Benefit from Improvements to the Nursing Home Compare Website and Five-Star Quality Rating System,* the Government Accountability Office said:

> According to CMS Five-Star System documentation, the rating system is not designed to compare nursing homes nationally. Instead, ratings are only comparable for homes in the

> same state. CMS made the decision to base the health inspection component on the relative performance of homes within the same state primarily due to variation across the states in the execution of the standard surveys. Because the health inspection component most significantly contributes to the overall rating, this means that the overall rating also cannot be compared nationally. However, the addition of national ratings would be helpful for consumers and we have previously made recommendations to CMS that would help decrease survey variation across states.

And the 5-Star rating system should not include a bell curve. Every nursing home should have the potential to achieve a 5-Star rating by providing the highest-quality services. Every nursing home should be a place where we would not be reluctant to live or have a family member go to live when that level of care and services is needed.

An incident to be discussed at the committee's hearing, of the death of an Iowa nursing home resident due to reported neglect and inadequate care, is disturbing. It is the kind of incident for which no excuses can be made.

The case to some extent illustrates the challenges faced by rural long-term care providers and by people living in rural areas who need long-term care. According to news reports, Patricia Blank's mother, Mrs. Virginia Olthoff, lived at the Timely Mission Nursing Home in Buffalo Center, Iowa.

Buffalo Center is a town of 891 people, whose population is both aging and declining, according to census data. The town is 86 miles from the nearest moderate-sized city, Rochester, Minnesota. Timely Mission is the only nursing home in Buffalo Center, and the town has no home health care provider or hospital. Timely Mission has 46 beds certified for Medicare and Medicaid but currently has 38 residents, giving it an 82% occupancy rate.

During 2018, LeadingAge held town hall conversations in every state where we have members. Overwhelmingly we heard from our members, especially in rural areas, about the difficulties they have recruiting and retaining staff. This is true not only of certified nursing assistants, the backbone of the long-term care system, but also administrators, nurses, social workers, pharmacists, mental health professionals, and other essential care providers. We would note that, according to news reports, Timely Mission had no administrator at the time the incident in question occurred.

Concern reportedly has been expressed that as a result of care deficiencies that resulted in Mrs. Olthoff's death, CMS assessed a fine of $77,462. Questions have been raised as to whether the amount of that fine was appropriate, given the egregious circumstances in this case, and whether a much heavier fine should have been imposed, for example by using the per-day calculation CMS has used in the past.

Again, we make no excuses for bad care. However, we think the impact of steep fines on small, stand-alone nursing homes needs to be considered. The fine CMS assessed on Timely Mission likely had a measurable impact on the nursing home's finances. A fine approaching $1 million,

which might have been assessed under the per-day method of calculation, almost certainly would have caused the facility to close.

And what of that? Do we care whether an underperforming small nursing home in a rural area gets closed as a result of fines for care deficiencies? We think the committee should care. Because what happens to the 36 people now living at Timely Mission if it closes down? Where are they supposed to go? Alternative nursing home care is many miles away; home care services are even more distant. Maybe we should all be responsible for contributing to constructive solutions that improve care and preserve the ability of rural Americans to have access to nursing home services if they need them.

What happens to the people who work at Timely Mission if it closes? In many rural communities, the local nursing home is the primary source of employment. If another provider were to take Timely Mission's place, who would the new provider be able to recruit to provide the long-term services and supports residents of the area will need as they age?

LeadingAge represents many rural long-term services and supports providers who do an outstanding job in caring for their residents and clients. Residents of rural areas need and deserve the highest quality of long-term services and supports. But the challenges of financial and human resources that generally prevail in the long-term services and supports field are magnified in rural and frontier areas where the working-age population is declining, the aging population is growing, and health, long-term care, and human resources are few and far between. This is a concern not only for us as providers but also for those representing individuals and families who need long-term services and supports.

We need to consider whether the imposition of fines that might amount to several times a nursing home's annual revenues is the best or only way to ensure quality. We would note that the Nursing Home Reform Act of 1987 provides an array of remedies for care deficiencies in addition to civil monetary penalties; these remedies include directed plans of correction, in-service trainings, and appointment of temporary management. A recent *Health Affairs* article, *The Future of Nursing Home Regulation: Time for a Conversation?* by David Stevenson comments that:

> [I]t is important to note that there is relatively limited evidence about whether penalties effectively deter poor-quality care and what their optimal level or form might be.

We believe it is time to forge a new path forward: one of close collaboration between providers, policymakers, regulators and consumers that will better help providers meet the challenges faced to achieve the type of care older adults need as they age. Nursing homes play a critical role in our healthcare system and will continue to do so. This is not an us versus them situation. We – providers, policymakers, consumers and elected officials -- are all in this together. We ask for an honest conversation on how all providers, and rural ones in particular, can attract and retain the staff they need; a clear assessment about the true costs of care, and how the nursing home oversight system can effectively promote systemic organizational change leading to measurable and sustained quality improvement within nursing homes. We owe it to older adults and those who care for them to figure this out.