

January 23, 2023



Administrator Brooks-LaSure
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

I write today to urge CMS to rescind the policy outlined in QSO-23-05-NH that involves posting citations actively under dispute on Nursing Home Care Compare. This policy change is deemed consistent with a commitment to transparency, but it threatens irresponsible use of critical information. We appreciate the push for transparency and accountability in nursing homes and support initiatives that will promote positive outcomes—posting disputed citations before resolution and finalization does not serve that purpose.

The Informal Dispute Resolution and Independent Informal Dispute Resolution (IDR/IIDR) processes allow nursing homes to dispute citations when there is credible evidence refuting surveyors' findings of noncompliance. Publicly posting these disputed citations on Nursing Home Care Compare before the dispute is resolved invalidates the process and the nursing home's right to appeal. As the saying goes, you can't un-ring the bell. Publicly disclosing citations on Nursing Home Care Compare that are actively under IDR/IIDR contributes to the public conversation in a way that cannot be undone, regardless of the outcome of the IDR/IIDR.

Potential residents and families researching nursing homes on Nursing Home Care Compare are likely in imminent need of nursing home placement and do not have 60 days or more to wait to see how a disputed citation is resolved. They will decide based on the information available. It will not matter if the citation is ultimately overturned – the resident or family member has long ago moved on and the nursing home has missed the opportunity to provide care and services to this individual based on erroneous or incomplete information.

Further, as CMS acknowledges, the IDR/IIDR process often exceeds the stated 60-day period. Some of our members report being engaged in this process for 12 months or longer. We understand the issue of outstanding findings of confirmed noncompliance, but system backlogs and protracted processes do not justify this policy change. Rather than “committing to transparency” by rushing to provide potentially inaccurate information to the public, CMS should commit to integrity by resolving systemic issues within the IDR/IIDR process that result in these delays.

LeadingAge also notes that refraining from publicly posting disputed citations on Nursing Home Care Compare does not withhold information. Survey results, including citations that the

nursing home is disputing through IDR/IIDR, continue to be posted in the nursing home and are available 24 hours a day to any visitor, staff, family member, or resident that enters the building. Compliance with this federal requirement is reviewed during standard surveys and complaint surveys (if applicable).

LeadingAge urges CMS to rescind this new policy and preserve the nursing home's right to informal dispute resolution. Transparency is most beneficial when the information is accurate and fair.

Sincerely,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith-Sloan
President and CEO

About LeadingAge: We represent more than 5,000 nonprofit and similar mission-minded aging-focused organizations that touch millions of lives every day. Alongside our members and 38 state partners, we address critical issues by blending applied research, advocacy, education, and community-building. We bring together the most inventive minds in our field to support older adults as they age wherever they call home. We make America a better place to grow old. For more information: www.leadingage.org

CC: Lee Fleisher