October 15, 2025

Dr. Dora Hughes
Director, Center for Clinical Standards & Quality
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

Dear Dr. Hughes:

We are writing to you today regarding the Centers for Medicare & Medicaid Services' (CMS's) contingency plan for survey and certification activities during the current federal government shutdown but first, allow us to express our gratitude for your work during the present time. We recognize that this is a stressful time full of uncertainty and we appreciate all that CMS is doing to continue essential operations despite the lapse in appropriations.

We commend the Directors of the Quality, Safety & Oversight Group and the Survey & Operations Group for their swiftness in distributing additional details through memo QSO-26-01-ALL on October 1. The memo provides very clear and thorough information for how survey and enforcement activities will proceed during this time. We believe CMS was intending to strike a judicious balance between the unavoidable impacts of a lapse in appropriations and the safety of Medicare beneficiaries. However, the current strategy has unintended consequences that outweigh perceived risks and that we feel must be addressed.

According to QSO-26-01-ALL, we understand that most survey and certification activities will be suspended during the government shutdown. This includes revisits – both desk reviews and on-site revisits – except for those required to prevent a termination from the Medicare program. We understand that revisits required to end per-day civil money penalties (CMPs) and denials of payment for new admissions (DPNAs) will not take place and that CMS will provide direction following the end of the shutdown for how these cases will be handled.

We do not believe that CMS intends for providers to be subject to the entirety of the penalty that accrues during the shutdown. In circumstances involving CMPs, the policies outlined in QSO-26-01-ALL do not pose significant consequences, as we assume that state survey agencies will be permitted to use Plans of Correction and other means to certify substantial compliance once the shutdown ends, ensuring that per-day CMPs are commensurate with the severity of deficient practice. However, these policies have outsized impacts in situations involving DPNAs. We know that mission-driven providers operate on slim margins and therefore are faced with difficult choices in these circumstances. They may be forced to deny admissions during a DPNA, since they will receive neither Medicare nor Medicaid payment, only resuming admissions once the state has certified that the provider is in substantial compliance and the DPNA has been lifted.

Under the current circumstances, providers who were under a DPNA at the time of the government shutdown continue this hold on admissions until the shutdown ends and the state agency can complete the revisit to certify substantial compliance. Given the unpredictability of shutdown duration and the inevitable backlogs in survey that will result, it could be several months before these providers resume admissions. Medicare beneficiaries needing post-acute and long-term care remain hospitalized,

contributing to bed shortages and emergency room crowding. Others are discharged to nursing homes located far from home and established support systems or, worse yet, are discharged home without the care needed because the nursing home, home health agency, or hospice of their choice is unable to accept new patients. Meanwhile, providers could be facing months of lost revenue, for which there is no recourse, with downstream effects such as downsizing and closures that result in further access issues.

Our nation's older adults deserve better. We ask CMS to consider these unintended consequences and revise survey and certification contingency policies relating to denials of payment for new admissions for all provider types. Suspend DPNAs as of October 1, 2025 through the duration of the federal government shutdown for providers whose deficient practices do not fall into the category of allowable revisits so these providers can resume admissions despite the suspension of revisit surveys. DPNAs could resume beginning the day after the federal government shutdown ends and proceed through normal regulatory processes of certifying substantial compliance and ending enforcement. In this way, Medicare beneficiaries can continue to receive the care they need in the environment of their choosing during this tenuous time.

We anticipate the concern that could arise from allowing new admissions with providers who have not been certified to be in substantial compliance. However, we note that the providers impacted by the requested change have not been determined to be unsafe. For example, the requested change specifically applies in situations where a deficient practice has occurred that is not at a level that has resulted in termination of the provider agreement or denials of payment for all Medicare and Medicaid beneficiaries. We remind CMS that per the policies outlined in QSO-26-01-ALL, the requested policy change would not apply in situations of immediate jeopardy, as immediate jeopardy requires the imposition of termination of the provider agreement and these revisit surveys continue during the shutdown. We further remind CMS that while state agencies will not be reviewing Plans of Correction during the shutdown, providers continue to be required to develop, submit, and implement Plans of Correction. The providers impacted by the requested change will have put in place strategies to correct the deficient practice that led to the DPNA while they continue caring for previously admitted beneficiaries and prior to any new admissions.

Thank you for your consideration of this issue. We share CMS's commitment to ensuring access to quality care for older adults and feel this change is necessary to honor that value. Please do not hesitate to reach out for further discussion.

Sincerely,

Jodi Eyigor

Jodi Eyigor
Senior Director, Nursing Home Quality & Policy

Cc: Will Harris, Deputy Director, Center for Clinical Standards & Quality
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