

Nursing Home Regulatory Reform Proposal

LeadingAge Wisconsin is recommending legislation which would begin to address the failures of the nursing home survey and certification system that were so vividly depicted in *Broken and Beyond Repair: Recommendations to Reform the Survey and Certification System* ([www.leadingage.org/uploadedFiles/Content/Advocacy/Policy_Statements/SCTF_Report_FINAL\[1\]\[1\].pdf](http://www.leadingage.org/uploadedFiles/Content/Advocacy/Policy_Statements/SCTF_Report_FINAL[1][1].pdf)). The proposed legislation would consist of three components which are being recommended because we believe they not only would be of benefit to LeadingAge members nationwide and those they serve but also because they are the least contentious issues we could identify and thus provide the greatest possibility of acceptance. While we readily admit the possibility of such acceptance and success may be limited, we also submit these changes offer a much needed jumping-off point for any discussion of a nursing home survey and certification system which *Broken and Beyond Repair* clearly illustrates has failed.

The recommended legislation would include the following provisions:

- 1) An Institute of Medicine (IOM) study of the current nursing home survey and certification system which would provide a systemic review and evaluation of the effectiveness of a system that was created under the Nursing Home Reform Act provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). An IOM study published in 1986 was the catalyst for those OBRA '87 nursing home reform provisions. The IOM study language could be patterned after S. 3407, the "Improving the Quality of Care in Nursing Homes Act of 2010," introduced in the 2nd Session of the 111th Congress.
- 2) The Secretary of the Department of Health and Human Services (HHS) would be authorized to waive certain requirements of the nursing home survey and certification process in order to test and implement innovative alternatives to the survey process. The language could be patterned after Section 2(c)(1) and (2), "Promoting Innovation and Quality Improvement Through State Waivers," of H.R. 3437, the "Medicare and Medicaid Nursing Facility Quality Improvement Act of 2005" introduced in the 1st Session of the 109th Congress; and
- 3) The elimination of the nurse aide training prohibition for facilities with poor survey results, substituting in its place permissive language allowing the HHS Secretary, in consultation with the State, to disapprove nurse aide training and competency evaluation programs offered by a facility. The language could be patterned after Section 2(a)(1) and (2) "Incentives for Immediate Improvement and Protection of Needed Training Programs" and (b)(1) and (2) "Specified Remedies" of the same H.R. 3437 from the 109th Congress as noted above.

ADDENDUM

- 1) **IOM Study:** Under S. 3407, the “Improving the Quality of Care in Nursing Homes Act of 2010,” the Secretary of Health and Human Services (HHS) would be directed to enter into an agreement with the Institute of Medicine (IOM) to conduct a study of the following: A) The current structure and methods for surveying and evaluating nursing homes; B) The nature of the relationship between the Centers for Medicare and Medicaid Services (CMS) and nursing homes and how it affects efforts to improve quality; C) The relationship between the CMS and State agencies; D) The methodology used by the CMS to survey and evaluate nursing homes; E) An evaluation of how the States and the District of Columbia implement the Federal requirements and the resulting variations and differences; F) The objectivity and accuracy of the survey process and criteria used to assess nursing homes; G) The effectiveness of the current enforcement system in promoting and encouraging systemic organizational change leading to measurable and sustained quality improvement within the nursing home; H) Whether the current system effectively understands and measures nursing homes that are undergoing or have completed culture change activities; I) Whether the current system effectively allows States and other stakeholders to engage in innovative ways to pursue quality improvement; and J) Alternatives to the current system. S. 3407 directed the IOM to submit a report to the HHS Secretary and the Congress not later than 18 months after the date of the enactment of the Act that describes the results of the study and the IOM's conclusions and recommendations regarding changes in regulatory policies and procedures “to enhance the ability of the regulatory system to assure that nursing home residents receive quality care.” The bill also authorized the appropriation of “such sums as may be necessary” to carry out the Act.

- 2) **Survey Pilots:** Under H.R. 3437, the “Medicare and Medicaid Nursing Facility Quality Improvement Act of 2005”, the HHS Secretary was given waiver demonstration authority to promote innovation and quality improvement in the nursing home survey and certification process. The bill reads: “At the request of a State, but not to exceed a total of 3 States, the Secretary may waive provisions of this subsection relating to survey and certification procedures in order to test and implement innovative alternatives to the survey process otherwise applicable. The Secretary shall provide special consideration to the application of alternative procedures that increase the use of outcome measures, the incorporation of quality of life procedures, and improve consistency and accuracy in deficiency determinations and survey results. The Secretary shall approve a waiver request if applicant demonstrates significant potential for improving the quality of care, quality of life, and safety of residents. The Secretary shall only consider waiver applications under this paragraph from a State under this paragraph if the State has convened and consulted with appropriate stakeholders in the State, including representatives of nursing facilities, consumers groups, the State long-term care ombudsman, labor organizations (and where such organizations are not present in the industry, other employee representatives), and licensed health care providers, to assist in developing their alternative system. In determining whether to grant such waivers, the Secretary shall take into consideration the views of the stakeholders convened by the State.”

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LeadingAge Wisconsin is a statewide membership association of not-for-profit organizations principally serving seniors and persons with a disability. Membership is comprised of 190 religious, fraternal, private and governmental organizations which own, operate and/or sponsor 185 nursing homes, 9 intermediate care facilities for the intellectually disabled (ICF-ID), 182 assisted living facilities, 114 apartment complexes for seniors, and over 300 community service agencies which provide programs ranging from Alzheimer’s support, adult and child day care, home health, home care, and hospice to Meals on Wheels. LeadingAge Wisconsin members employ over 38,000 individuals who provide compassionate care and service to over 48,000 residents/tenants/clients each day.

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