



MAR 22 2016

Administrator
Washington, DC 20201

Katrinka Smith Sloan
President and CEO
LeadingAge
2519 Connecticut Ave, NW
Washington, DC 20008

Dear Ms. Sloan:

Thank you for your letter describing your concerns about the Centers for Medicare & Medicaid Services' (CMS) implementation of the Payroll-Based Journal (PBJ) program and the approach being utilized to collect staffing information from long term care facilities. The submission of staffing information is required by 42 C.F.R. 483.75(u), which implemented Social Security Act 1128I(j); section 6106 of the Affordable Care Act. Using the PBJ program to meet this reporting requirement will greatly improve the accuracy and transparency of staffing reporting.

We appreciate LeadingAge's attention to this program. As with many new programs, we anticipate the PBJ program will evolve over time. We seek to resolve many of these issues you raise, and more, as soon as possible. Since this program is new, we want to analyze the operations and data submitted, in order to make well-informed decisions about these issues to ensure the integrity of the program and equality among nursing homes. As we implement this program, we look forward to collaborating with LeadingAge and other stakeholders to improve the accuracy of the information collected, and the method by which it is submitted. We will be scheduling several meetings with LeadingAge and others, throughout the implementation, to obtain feedback to improve the program.

Enclosed, please find CMS's responses to your recommendations. Again, thank you for your letter, and we look forward to continued collaboration to help improve public reporting and transparency for consumers and nursing home residents.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew M. Slavitt", is positioned above the typed name.

Andrew M. Slavitt
Acting Administrator

Enclosure

LeadingAge Recommendations and CMS Responses

1. **Hours Worked Vs. Hours Paid:** Submission specifications must account for actual hours worked, including those by salaried/exempt staff who work more than the 35-40 hour, full-time basis for which they are paid. The PBJ must credit this time to accurately reflect direct care staffing and hours of care. LeadingAge recommends that CMS work with both providers and vendors to amend the PBJ process to permit Skilled Nursing Facilities/Nursing Facilities (SNFs/NFs) to report hours worked for all staff, including exempt employees, using the data from time and attendance records and accounts payable for contract employee billing and invoices.

CMS RESPONSE:

We agree that this is an important issue. As we work on implementing the PBJ program, one of our top priorities is to analyze methods to collect data about hours worked. The statute and regulations require staffing information to be submitted based on payroll and other verifiable and auditable data. Currently, we do not have a way to universally verify unpaid time. For example, while the majority of nursing homes have some type of automated time and attendance system, not all do. These automated systems may aid in verifying hours worked for some facilities. However, we believe we need to treat all nursing homes equally and allow all nursing homes to comply with the statute and regulation, regardless of what type of system a facility may or may not have. If CMS allowed the submission of hours worked data only by those facilities with a verifiable system, then the reported data may suggest staffing differences among facilities where none exist putting facilities without a verifiable system at a disadvantage.

Therefore, only hours paid must be reported at this time. However, we believe this is an important issue that requires significant analysis. In the early phases of implementation, we will be able to analyze this, collaborate with you and other stakeholders, and seek resolution.

2. **Labor and Job Codes:** The PBJ process must be able to acknowledge and reconcile the hours of care provided by these split and/or multiple-role employees and accept the direct care hours worked, as reported via home's time and attendance systems. While many SNFs/NFs, as well as CMS, will have to modify its systems to accurately capture the data for these individuals, it is essential that accuracy and accountability be common to both sides of the staffing collection and reporting equation.

CMS RESPONSE:

We agree that understanding when staff are dedicated to specific roles is important. The PBJ system allows for this distinction to be made on different days or within the same day. If the primary role of an employee changes from an administrative to a non-administrative job category, during a shift, facilities may report the multiple job categories for the employee. For example, a nurse who spends the first four hours of a shift as the unit manager, and the last four hours of a shift as a floor nurse. In these cases, facilities can report the time worked in two segments, with four hours as a nurse with administrative duties, and four hours as a nurse (without administrative duties).

We recognize that staff often engage in activities that may not align with their primary role (e.g., helping out others, completing paperwork, personal breaks, etc.). We do not

expect staff or facilities to track each activity within a shift (e.g., re-swiping in and out) or to reclassify the employee when there is no change in their primary role. This would add significant administrative burden and inconsistency among facilities. Facilities should report employees' hours based on the employee's primary role. When this policy was introduced to stakeholders, the reaction was that it is a fair and reasonable method. However, we are interested in continuing to discuss this issue with LeadingAge and other stakeholders to explore the issues and other options that may exist.

3. **Accounting for Contract Staff:** LeadingAge recommends that CMS work collaboratively with providers and vendors to establish parameters allowing for the collection and submission of aggregate data auditable back to the contractor/billing invoice for contract and agency staff job categories and classifications.

If the individual data requirements for contract and agency personnel are to be retained, CMS should develop a common template for providers and contractors to integrate and use within their systems to assure accurate accounting and tracking information.

CMS RESPONSE:

The regulation specifically requires the submission of data for agency and contract staff, and information on direct care staff turnover and tenure. Eventually, this information will be used to calculate staffing levels, and rates of turnover and tenure. While aggregate hours would allow CMS to calculate staffing levels (e.g., hours of care per resident per day), it would not allow CMS to calculate rates of turnover and tenure for these staff (the regulation does not exclude agency staff from this requirement). Therefore, facilities need to submit hours for agency and contract staff at the employee level.

We have released technical specifications that facilities and contractors can use to submit data in a common format. We have also learned that some facilities are integrating the tracking of contract staff within their systems to meet the submission requirements. Finally, we have posted some suggestions on how facilities can report contract staff hours on our website. That said, we acknowledge this is a new and challenging process, and we will continue to work with facilities to help them meet the requirement.

4. **Reporting Resident Census:** LeadingAge recommends amendment to the PBJ process for collection of census data to use of the average daily census for each month in each quarterly submission cycle.

CMS RESPONSE:

We agree that a facility's census can fluctuate within a month and the existing method for reporting census may lead to challenges when calculating an eventual quality measure. CMS is actively analyzing options in this area and we look forward to consulting with LeadingAge and other stakeholders to ensure that future quality measures accurately represent each facility's staffing.

5. **Voluntary Submission and Testing:** All nursing home providers should have the opportunity to test their respective payroll and time and attendance processes and gain familiarity with the CMS submission requirements.

Contingent on the outcomes and/or results of the voluntary submission period, CMS should consider postponement or a phase-in of mandatory submission date to resolve any identified problems or glitches.

LeadingAge respectfully requests that implementation of PBJ be deferred as necessary pending resolution of the above-detailed issues and concerns.

CMS RESPONSE:

We believe the voluntary submission period provides ample time for all facilities to test their submission process. Once the mandatory submission period begins on July 1st, we will provide feedback mechanisms to providers, such as warnings, that will help facilitate compliance with this requirement. However, we acknowledge that there is significant variation among facilities' ability to meet the requirement. As with other instances of noncompliance, CMS retains discretion on imposing certain sanctions. For example, as providers are adjusting to this new requirement, we may refrain from imposing enforcement remedies (e.g., for good faith efforts).