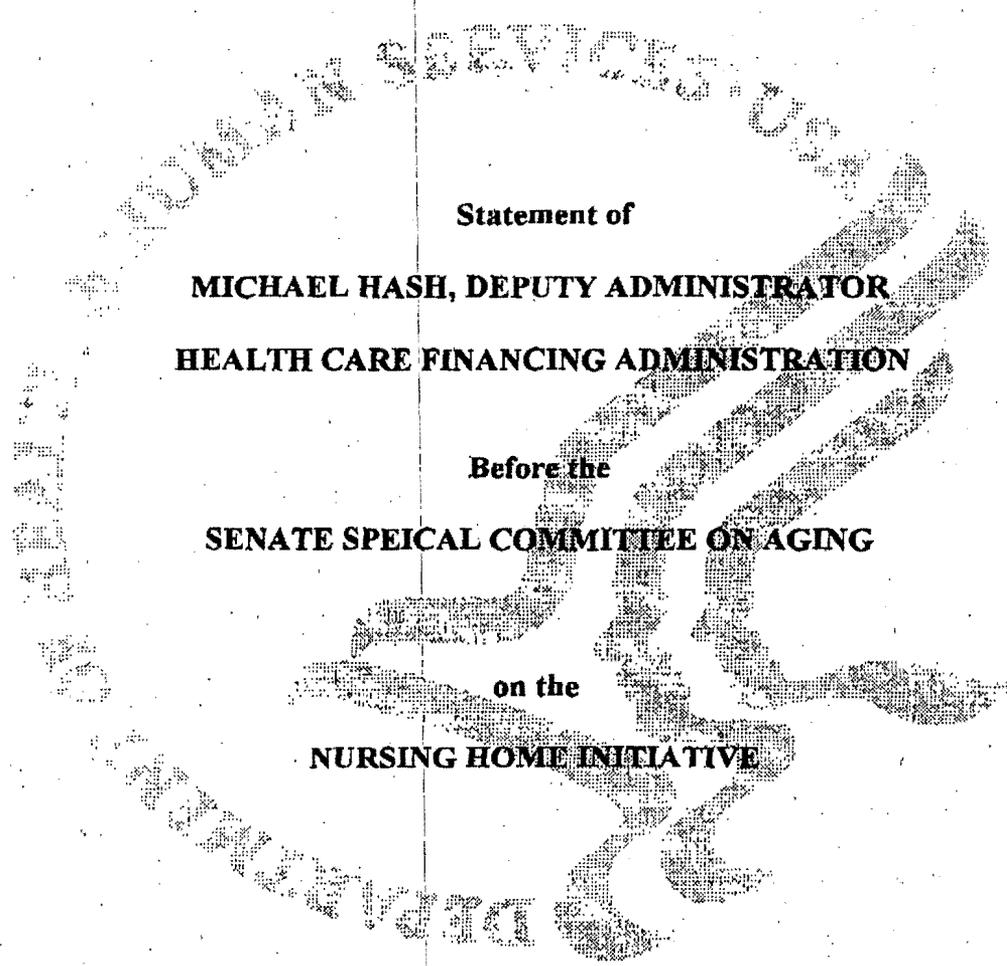


State Rankings by Median Staffing Level

Total Staff		Registered Nurses	
Rank	State	Rank	State
1	AK	1	AK
2	HI	2	ME
3	ME	3	HI
4	ID	4	DE
5	DE	5	WA
6	AL	6	NV
7	NV	7	NH
8	WA	8	MA
9	VT	9	WY
10	ND	10	MT
11	KY	11	CT
12	NC	12	PA
13	OH	13	RI
14	MA	14	SD
15	SC	15	ID
16	MT	16	CO
17	PA	17	OR
18	UT	18	WI
19	CT	19	VT
20	MD	20	OH
21	WY	21	NJ
22	CA	22	AZ
23	OR	23	NC
24	FL	24	MI
25	AZ	25	NM
26	NY	26	UT
27	NH	27	ND
28	MO	28	IL
29	MI	29	MD
30	WV	30	FL
31	CO	31	CA
32	NJ	32	NE
33	MS	33	KY
34	WI	34	NY
35	RI	35	IA
36	NE	36	KS
37	VA	37	IN
38	NM	38	MN
39	MN	39	WV
40	TX	40	SC
41	GA	41	VA
42	SD	42	MO
43	KS	43	MS
44	IN	44	AL
45	TN	45	TN
46	AR	46	TX
47	OK	47	GA
48	IA	48	OK
49	LA	49	AR
50	IL	50	LA



Statement of
MICHAEL HASH, DEPUTY ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION

Before the
SENATE SPEICAL COMMITTEE ON AGING

on the
NURSING HOME INITIATIVE

September 28, 2000



Testimony
Michael Hash, Deputy Administrator
Health Care Financing Administration
on
The Nursing Home Initiative
before the
Senate Special Committee on Aging
September 28, 2000

Chairman Grassley, Senator Breaux, distinguished Committee members, thank you for inviting us to discuss the quality of nursing home care and our progress in implementing our Nursing Home Initiative. We are releasing a report on this Initiative which shows measurable success in several areas. We also can clearly see the need to strengthen efforts in other areas.

* Key successes include:

- a substantial increase in the number of surveys conducted on nights and weekends;
- more citations are being made for substandard care and failure to prevent problems like bed sores;
- the vast majority of facilities with serious problems identified by surveyors are being referred for immediate sanctions;
- homes terminated from the Medicare and Medicaid programs because of quality problems are staying out until it is clear that they have made necessary corrections; and
- public response to our consumer education efforts is very positive, especially for our award-winning Nursing Home Compare website, which allows consumers to search by zip code or facility name for data on each facility's care and safety record, staffing levels, number and types of residents, facility ownership, and comparison to State and national averages.

Shortcomings where we need to strengthen efforts include:

- failure by about one third of States to promptly investigate serious complaints;
- weaknesses in some States' efforts to address levels of quality in "special focus" facilities, designated as such because of serious, repeated problems;
- failure by about one third of States to conduct surveys of every facility at least every 15 months, as required by law, and to submit data on survey findings in a timely manner; and
- Federal oversight of State survey activities.

We are working to address these shortcomings and build on our success. We also are working to further our groundbreaking research on the link between staffing levels and quality of care. The President has proposed \$1 billion over five years in incentive grants to help States explore innovative ways to raise staffing levels. This Committee, in particular, has been invaluable in helping us obtain the funding we need for our efforts to improve nursing home quality, and we look forward to working with you again to secure passage of this important legislation.

Also - Survey / Cert Budget -- working to secure full funding -- looks like we will get at least \$ million this year. See page 2.

Background

Protecting the 1.6 million residents in the nation's 17,000 nursing homes nursing home residents is a priority for this Administration and our Agency. In 1995, we began enforcing the toughest nursing home regulations ever. These new regulations led to several improvements, including reductions in improper use of anti-psychotic drugs and physical restraints. However, findings in our 1998 Report to Congress, as well as GAO investigations, made clear that problems persisted. State-run nursing home inspections were too predictable, with inspectors frequently appearing on Monday mornings and rarely visiting on weekends or evening hours, allowing nursing homes to prepare for inspections. Several States rarely cited nursing homes for substandard care. Residents were suffering from easily prevented problems such as bed sores, malnutrition, and dehydration. And they were experiencing physical and verbal abuse, neglect, and misappropriation of property.

★ To address these issues, in 1998 we launched the President's Nursing Home Initiative (NHI), and have been continually building on it since that time. The NHI includes many ongoing provisions to meet specific goals, such as:

- preventing dehydration, malnutrition, and abuse
- making inspections less predictable and helping States improve the quality of inspections;
- quickly investigating complaints alleging actual harm to residents; and
- cracking down on facilities with repeated violations by making them subject to greater scrutiny and immediate sanctions, and preventing those terminated from Medicare and Medicaid from immediately reentering the programs.

7
★ We have obtained essential support for the NHI by working with Congress. The overall amount provided to the Department for the NHI in FY 1999 was \$15.2 million, and in FY 2000 the total was \$79.7 million. For FY 2001, the President has requested a total of \$84.9 million. These totals have many components. For example, State survey agencies, which have the primary responsibility for conducting inspections and protecting resident safety, received \$8 million in FY 1999 to begin phase in of the NHI activities. For FY 2000, Congress increased funding to the State survey agencies by \$40.5 million for NHI activities. In FY 2001, the President is requesting \$55.4 million for the States for NHI activities.

In addition to providing investment funds for State activities, Congress also has increased funding to HCFA and the Department of Health and Human Services to support the NHI. The \$7.2 million provided to the Department in FY 1999 promoted quality assurance, increased federal oversight, and provided additional funds for reducing the backlog of appeals. In FY 2000, \$31.2 million is targeted towards these oversight activities.

It has now been two years since the NHI began. Many provisions are still being implemented, and it would be premature to draw definitive conclusions about the impact of various NHI provisions from the limited, preliminary data available to date. There also is substantial variation among States in all measures examined. However, the preliminary findings in our report will begin to help us identify where improvements are being made and where further efforts are needed.

Summary of Findings

Some NHI provisions have been implemented successfully in most States.

- State surveyors have nearly reached the goal of conducting 10 percent of such surveys on nights and weekends.
- They are identifying more substandard quality of care, with the average number of deficiencies found per survey up from 6.3 to 7.0, and the number of facilities cited for failure to prevent or care for bed sores up from 16.4 percent to 17.7 percent.
- They also are citing more nursing homes for abuse, with the total up from 7.5 percent in 1997 to 14.1 percent in 1999.
- Over 90 percent of facilities with severe deficiencies were referred for immediate sanction.
- Only 10 of 33 nursing homes involuntarily terminated from the Medicare program in 1999 had been readmitted. Those that were readmitted had remained out of the program an average of 5 months while they made corrections to come back into compliance.

However, more work is needed to successfully implement other NHI provisions.

- Not all States are using a streamlined process for investigating serious complaints. That may be because States and HCFA had different expectations about the support we would provide, but clearly the support we did provide was not sufficient.

Nevertheless, more than two-thirds of the States reported that they are investigating complaints alleging immediate jeopardy within 2 days and 13 States are investigating all complaints alleging actual harm within 10 days.

- Some States may not have fully implemented protocols for investigating "special focus" facilities, designated as such because of serious, repeated problems. Overall, however, this effort has helped to document serious problems. Ten percent of these facilities were removed from the Medicare and Medicaid programs or voluntarily withdrew, while another 25 percent improved sufficiently to now be considered in substantial compliance.
- About a third of States are not conducting surveys every 15 months, as required, or submitting data on survey findings in a timely manner. We have written these States urging them to come into compliance as a first step that could lead to significant sanctions.

Our report also examines resident characteristics that may indirectly reflect NHI interventions.

* Use of physical restraints has continued to decline, from 16.3 percent in 1997 to 11.1 percent in 1999. However, data on other measures are mixed and vary by data source, making it difficult to reach firm conclusions.

In addition, our report reveals the continuation of significant variation in the type and number of deficiency citations across States. For example, our report finds that there is variation across States in the numbers of citation for abuse, substandard quality of care, and pressure sores. Such variation could be attributed to differences across States in nursing home case-mix, actual quality of care, or surveyor practices. The inability to explain this variation makes it difficult to determine, with any degree of confidence, whether the quality of nursing home care is good or bad overall, or in any particular State.

* Finally, our report reviews other NHI consumer education efforts. Perhaps the most successful is our award-winning Nursing Home Compare website at www.medicare.gov.

Nursing Home Compare allows consumers to search by zip code or facility name for data on each facility's care and safety record, staffing levels, number and types of residents, facility ownership, and ratings in comparison to State and national averages. The site is recording 500,000 page views each month and is by far the most popular section of our website. In addition, we have revised our "Guide to Choosing a Nursing Home" booklet and video and have greatly expanded distribution. We have begun national education campaigns to raise awareness of malnutrition and dehydration, resident abuse, and the rights to quality care. And we have tested post cards that allow residents, families, and staff to submit anonymous complaints.

Next Steps

K We are committed to continuing to strengthen and build upon the NHI, and we will take several specific additional actions to do so. These include:

- Continuing to work to increase consistency in the survey process and in interactions between our Regional Offices and State survey agencies, including investigating the feasibility of conducting more Federal comparative surveys to determine the reliability of State deficiency citations;
- Developing and requiring continuing education for surveyors to bring consistency in how different deficiencies are categorized, and requiring periodic recertification of surveyors;
- Examining how to make optimal use of available remedies and the possible need for additional authorities;
- Implementing Standards of Performance for State survey agencies to provide a consistent basis for evaluating and comparing the performance across States;
- Enhancing monitoring efforts to more quickly detect and address concerns about States' compliance with special focus surveys, off-hour surveys, and annual surveys; and

- Refining data systems to allow better linkages between data sources, greater insights into variations, more timely access, and easier conversion to consumer-friendly formats.

Increased Staffing

We also will continue efforts to address the link between staffing levels and quality of care. We recently published preliminary findings that, for first time ever, demonstrated in a statistically valid way that there is a clear relationship between staffing levels and quality of care. The study found significantly more problems in facilities with less than 12 minutes of registered nursing care, less than 45 minutes of total licensed staff care, and less than 2 hours of nursing aide care per resident per day.

More than half of nursing homes do not meet these rates, and the troubling results suggest that many facilities may need to increase staffing levels. We are now working to expand and further validate our research, refine ways to adjust minimum staffing requirements for the types of patients in a given facility, and determine the costs and feasibility of implementing minimum staffing requirements.

Also to address these findings, the President has proposed legislation authorizing \$1 billion over five years in incentive grants to help States explore innovative ways to raise staffing levels. The proposal also includes enhanced requirements for reporting by individual nursing on their staffing levels, and a commitment to develop minimum staffing regulations within two years.

In addition, the President is proposing that facilities cited for violating care and safety standards be required to immediately pay civil money penalties. This is necessary because, currently, nursing homes often avoid payment for years while they pursue appeals. Under this proposal, fines collected would be used to partially finance the grant program for increasing staffing levels, and nursing homes that successfully challenge the fines would receive refunds with interest.

We are disappointed that the House Commerce Committee did not include these important provisions in its mark-up of the Beneficiary Improvement and Protection Act of 2000. We will continue to work with Congress to secure enactment of these proposals, as well as Administration proposals to establish criminal, civil, and injunctive remedies for patterns of violations that harm nursing home residents, and to require criminal background checks for nursing home employees.

Conclusion

States have generally implemented the NHI in ways that should lead to improvements in oversight and quality of care. There have been substantial increases in staggered surveys, a rise in citations for quality problems, and reductions in use of restraints. More work is needed in specific areas, such as implementing speedier complaint investigations. We are committed to continuing to work with residents and their families, advocacy groups, providers, States, and Congress to ensure that the NHI is fully and effectively implemented and that nursing home residents receive the quality care and protection they deserve. We greatly appreciate the additional support Congress has provided for the NHI, and the cooperation we have received from States, resident advocates, and nursing home providers. With continued cooperation and support, we are confident that the NHI will succeed in its goal to improve oversight and the quality of care for nursing home residents.

#



Nursing Home Staffing Levels Are Inadequate in Los Angeles County

Prepared for Rep. Henry A. Waxman

**Minority Staff
Special Investigations Division
Committee on Government Reform
U.S. House of Representatives**

July 25, 2000

Table of Contents

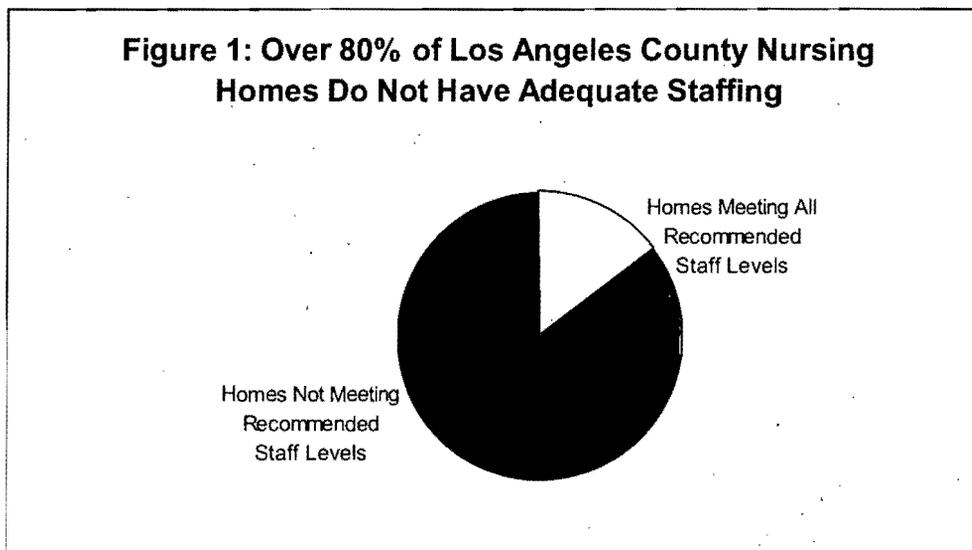
Executive Summary	i
I. Background	1
A. Conditions in Nursing Homes	1
B. The Importance of Nursing Home Staffing	2
C. Current Staffing Levels	3
D. Recommended Staffing Levels	4
E. The Purpose of this Report	5
II. Methodology	6
A. Determination of Current Staffing Levels	6
B. Comparison of Current Staffing Levels with Recommended Staffing Levels	7
C. Determination of Current Compliance Status	8
D. Interpretation of Results	8
III. Staffing Levels in Many Los Angeles County Nursing Homes Are Inadequate	9
A. Many Nursing Homes Do Not Meet the Recommendations of the Expert Panel on Nursing Home Care	9
B. Many Nursing Homes Do Not Meet the Recommendations of the Institute of Medicine	10
C. Many Nursing Homes Fail to Meet Both Sets of Staffing Recommendations	10
IV. Nursing Homes With Inadequate Staffing Are More Likely to Provide Inadequate Care.	11
V. Conclusion	12

EXECUTIVE SUMMARY

Many nursing homes in Los Angeles County are not providing adequate care for their residents. In November 1999, a study conducted at the request of Rep. Henry A. Waxman found that over 97% of nursing homes in Los Angeles did not meet federal health and safety standards during their most recent annual inspection. That study also found that almost one in five nursing homes in Los Angeles had been cited by state inspectors for violations that caused actual harm to residents.

This report, the second study on nursing home conditions in Los Angeles requested by Rep. Waxman, investigates a potential cause of these inadequate conditions. It examines whether nursing homes in Los Angeles have enough staff to care for their residents and whether insufficient staffing is linked to high levels of violations.

The report finds that the majority of Los Angeles nursing homes do not have adequate staff to care for residents. In 1998, a panel of nursing home experts recommended that nursing homes should have sufficient nursing staff to provide each resident the equivalent of over four hours of individual care per day, including over one hour of individual care by registered or licensed nurses. This report finds that more than 80% of the nursing homes in Los Angeles -- over 300 nursing homes -- do not meet these minimum staffing recommendations (Figure 1). These homes serve almost 28,000 residents.

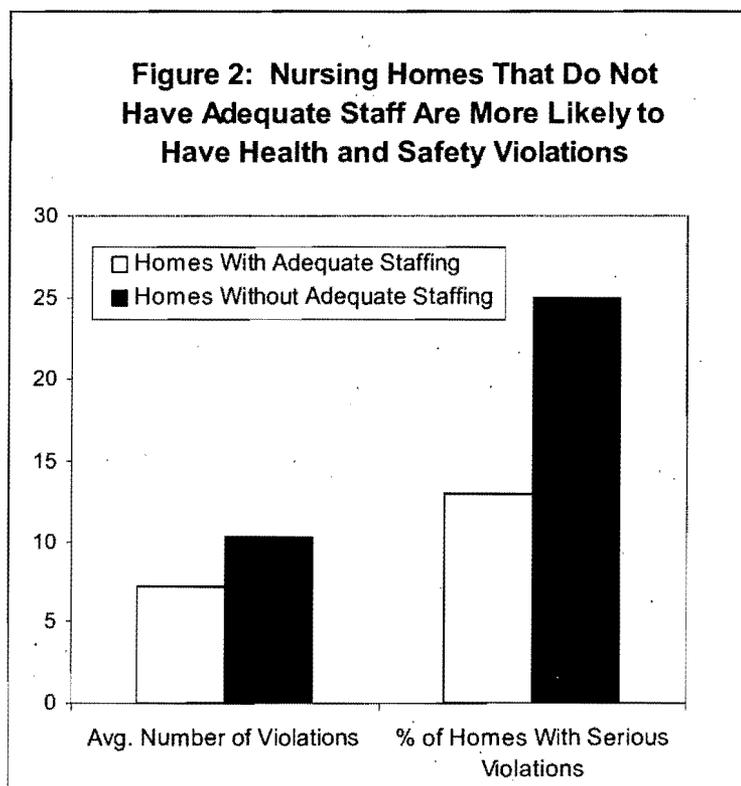


Many nursing homes in Los Angeles also fail to meet the staffing recommendations of the Institute of Medicine, which is a part of the National Academy of Sciences. In 1996, the Institute of Medicine recommended that a registered nurse be present in all nursing homes for 24 hours per

day, seven days per week. This report, however, finds that almost 30% of the nursing homes in Los Angeles -- over 100 nursing homes -- do not meet this recommendation. These homes serve over 6,000 residents.

The report finds that inadequate staffing correlates with poor conditions in nursing homes. The report uses data from the U.S. Department of Health and Human Services to compare conditions in nursing homes that meet the recommended staffing levels with conditions in nursing homes that do not meet these staffing levels. The report finds that homes that meet the recommended standards are more likely to provide better care.

Almost 100 nursing homes in Los Angeles fail to meet each of the recommended staffing levels. In the most recent annual inspections by state inspectors, these homes were cited for an average of 10.6 violations of federal health and safety standards. Moreover, 23% percent of these homes were cited for a violation that caused actual harm to residents. In comparison to nursing homes that met all of the staffing recommendations, the homes that failed to meet the recommendations had, on average, 40% more health and safety violations and were nearly twice as likely to be cited for violations causing actual harm to residents (Figure 2).



I. BACKGROUND

A. Conditions in Nursing Homes

America's aging population is increasing demands on nursing homes. The U.S. Department of Health and Human Services has estimated that almost half of all 65 year olds will use a nursing home at some point during their lives.¹ The population in nursing homes is expected to quadruple over the next 50 years, from 1.5 million today to 6.6 million by 2050.² The growing population in nursing homes increases the importance of ensuring that nursing homes provide a high level of care.

Unfortunately, several recent studies have indicated that many nursing homes in the United States are failing to meet the federal standards established to protect and maintain the health, safety, and dignity of residents. In July 1998, Professor Charlene Harrington of the University of California-San Francisco, a leading nursing home expert, found that the current level of nursing home staffing is "completely inadequate to provide care and supervision."³ In 1999, the U.S. General Accounting Office (GAO), an investigative arm of Congress, found that "more than one-fourth of the homes had deficiencies that caused actual harm to residents or placed them at risk of death or serious injury."⁴ Later that same year, the Coalition to Protect America's Elders concluded: "Every day, thousands of frail elderly Americans are endangered by nursing home abuse and neglect that have reached epidemic proportions."⁵

The first study to investigate the conditions of nursing homes in Los Angeles County was released by Rep. Henry A. Waxman in November 1999.⁶ This report found that there are serious

¹HCFA Report to Congress, *Study of Private Accreditation (Deeming) of Nursing Homes, Regulatory Incentives and Non-Regulatory Initiatives, and Effectiveness of the Survey and Certification System*, §1.1 (July 21, 1998).

²American Health Care Association, *Facts and Trends: The Nursing Facility Sourcebook*, 5 (1999).

³Testimony of Charlene Harrington before the Senate Special Committee on Aging (July 28, 1998).

⁴GAO, *Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards*, 3 (Mar. 1999).

⁵Coalition to Protect America's Elders, *America's Secret Crisis: The Tragedy of Nursing Home Care*, 6 (Sept. 14, 1999).

⁶Minority Staff Report of the House Committee on Government Reform, *Nursing Home Conditions in Los Angeles County: Many Homes Fail to Meet Federal Standards for Adequate*

violations in many nursing homes in Los Angeles. The report found that 97% of nursing homes in Los Angeles violated federal health and safety standards in their most recent inspection. Moreover, the report found that almost one in five nursing homes in Los Angeles (19%) had been cited by state inspectors for a violation that caused actual harm to residents or placed them at risk of death or serious injury.⁷

Rep. Waxman's investigation reviewed a sample of state inspection reports to assess the severity of the violations cited by the state inspectors. This review indicated that the violations cited by state inspectors were for serious care problems, including failure to prevent or properly treat pressure sores, failure to prevent serious accidents, failure to properly clean and care for residents, failure to provide proper medical care, improper use of physical and chemical restraints, improper nutrition and hydration, and inadequate staffing.⁸

B. The Importance of Nursing Home Staffing

Nursing homes cannot provide a high level of care unless they have sufficient well-trained staff to care for their residents. Several studies have indicated that providing more and better trained staff has a positive impact on nursing home residents, reducing health problems and increasing quality of life. These studies have shown that increases in staffing result in decreased mortality, improvements in functional status, and for some residents, more rapid discharge from nursing homes to their community.⁹

Based on this evidence, the Institute of Medicine, which is part of the National Academy of Sciences, concluded:

The preponderance of evidence from a number of studies using different types of quality measures has shown a positive relationship between nursing staff levels and quality of nursing home care, indicating a strong need to increase the overall level of nursing staff in nursing homes.¹⁰

Other experts have reached this same conclusion. A recent study by professors at the University of California-San Francisco and the University of Wisconsin found that lower staffing

Care (Nov. 22, 1999).

⁷*Id.*

⁸*Id.*

⁹See Institute of Medicine, *Nursing Staff in Hospitals and Nursing Homes*, 147-155 (1996).

¹⁰*Id.* at 153.

levels were associated with higher levels of deficiencies in care.¹¹ And, in January, an expert panel on nursing home staffing found that:

The evidence shows that . . . nurse staffing levels are important factors in ensuring high quality of care in nursing homes. These findings, along with the evidence for poor quality of care in many nursing homes, support the need for increased minimum nurse staffing levels to improve quality of care.¹²

C. Current Staffing Levels

The staff that are most involved in direct care of residents in nursing homes are nursing assistants, licensed nurses, and registered nurses. There are wide variations in skills and training among these staff. Nursing assistants, who constitute the majority of direct care staff in most facilities, often receive little special training and earn close to the minimum wage.¹³ Registered nurses, who are often in a supervisory position, have obtained comprehensive training in resident care and basic medicine.¹⁴ Licensed professional nurses provide a level of care between the nursing assistant and the registered nurse. Licensed nurses generally undergo a 12-18 month period of training in basic bedside nursing in order to provide care under the supervision of a registered nurse.¹⁵

Under the 1987 federal nursing home law, all nursing homes must have a registered nurse on duty for at least eight hours per day, seven days per week, and a licensed nurse on duty 24 hours per day.¹⁶ These standards apply regardless of the size of the nursing home or the number of residents. The law does not specify minimum staff-to-resident ratios. Rather, each nursing home is permitted to determine for itself how many hours of nursing care it will provide residents each day.

Under these minimal federal standards, the level of nursing staff can vary widely in

¹¹Harrington, et. al., *Nursing Home Staffing and Its Relationship to Deficiencies* (Aug. 1999).

¹²Gerontologist, *Experts Recommend Minimum Nurse Staffing Standards for Nursing Facilities in the United States*, 5 (Jan. 2000).

¹³*Nursing Staff in Hospitals and Nursing Homes*, *supra* note 9, at 156.

¹⁴Training to become a registered nurse takes two to four years, and all registered nurses are required to take state licensing examinations. *Id.* at 69.

¹⁵*Id.* at 76.

¹⁶42 U.S.C. § 1396r(b)(4)(c)(i).

individual nursing homes. The average nursing home in the United States, however, has enough staff to provide each resident with 3.2 hours of individual care daily. This is equivalent to approximately one nurse or nursing assistant for every eight residents. Two-thirds of this resident care is provided by nursing assistants, with the remainder split between licensed and registered nurses.¹⁷

In California, there are state staffing requirements. However, these staffing requirements, which were adopted as part of the 1999 Budget Act, largely codify existing staffing levels. They require that homes provide 3.2 hours of nursing care per patient per day. Moreover, they allow nursing homes to count every hour worked by registered or licensed nurses as two hours of nursing care.¹⁸

D. Recommended Staffing Levels

In recent years, experts reviewing nursing home staffing have recommended that nursing homes increase their staffing levels. In 1996, the Institute of Medicine convened a Committee on the Adequacy of Nurse Staffing in Hospitals and Nursing Homes. This Committee established recommendations for the presence of registered nurses (RNs) in all nursing facilities.¹⁹ The Committee found that there was frequently no registered nurse presence during evening and night shifts in nursing homes. Due to the "fairly low level of education and high turnover rate among [nursing assistants] in nursing homes," the Committee concluded that "the knowledge and judgment of an RN is critical to recognize a crisis or a regression of a condition."²⁰ As a result, the Committee recommended that all nursing homes should have a registered nurse present at all times, night and day, and recommended that the current eight hour per day requirement be strengthened to require the 24-hour presence of a registered nurse.

In addition to its specific recommendation for the 24-hour presence of registered nurses, the Institute of Medicine also found that there was a "strong need to increase the overall level of nursing staff in nursing homes."²¹ The Institute did not, however, specify a recommended minimum staff-to-resident ratio, noting that, at the time, the research literature was not able to

¹⁷Charlene Harrington, et al., *Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 1992 Through 1998*, 60 (Jan. 2000).

¹⁸California Health and Safety Code § 1276.5(b)(1) (2000).

¹⁹*Nursing Staff in Hospitals and Nursing Homes*, *supra* note 9, at 154.

²⁰*Id.* at 153.

²¹*Id.* at 13.

provide a definitive optimal recommended ratio of staff to residents.²²

Two years later, a panel of nursing home experts again convened to address the issue of staffing and quality of care in nursing facilities.²³ This expert panel, which included researchers, administrators, consumer advocates, health economists, and other individuals with knowledge of nursing homes, also concluded that current staffing levels are inadequate and developed several recommendations for minimum staff-to-resident ratios for U.S. nursing homes.

The expert panel adopted a recommended minimum standard for care by all staff directly involved in caring for residents -- nursing assistants, registered nurses, and licensed nurses. The expert panel recommended that each nursing home have adequate staff to provide each resident with 4.13 hours of individual daily care.²⁴ This is the equivalent of approximately one staff member on duty for every six residents.

The expert panel also adopted a recommended minimum standard for skilled care provided by registered nurses and licensed nurses. The expert panel recommended that each nursing home have sufficient registered and licensed nurses to provide each resident with 1.2 hours of individual daily care.²⁵ This is the equivalent of one registered or licensed nurse on duty for every 20 residents. The expert panel also specified that these were minimal standards, based on homes with a standard mix of residents. According to the expert panel, "staffing must be adjusted upward for residents with higher nursing care needs."²⁶

E. The Purpose of this Report

Rep. Waxman represents California's 29th Congressional District, which includes parts of Los Angeles, Santa Monica, and West Hollywood. He requested this report as a follow-up to the November 1999 report he released on conditions in nursing homes in Los Angeles. He specifically requested that the report assess whether inadequate staffing is one of the causes of the poor conditions in nursing homes in Los Angeles.

²²*Id.* at 155.

²³*Experts Recommend Minimum Nurse Staffing Standards for Nursing Facilities in the United States, supra* note 12, at 5.

²⁴ *Id.* at 6. The expert panel on nursing home staff recommends an even higher level of direct care staffing (4.55 hours) when staff is required to spend time on nondirect resident care, such as administrative tasks.

²⁵*Id.* at 6.

²⁶*Id.* at 6. The panel also adopted several other recommendations, including standards for administrative staff, mealtime staff, and education and training for nursing home staff.

This report is the first of its kind in Los Angeles. It investigates current staffing levels in Los Angeles nursing homes and compares them to the recommendations of the 1998 expert panel and the Institute of Medicine. The report also evaluates whether inadequate staffing is correlated with higher rates of violations of federal health and safety standards.

II. METHODOLOGY

A. Determination of Current Staffing Levels

Data on the staffing levels in nursing homes in Los Angeles comes from the Online Survey, Certification, and Reporting (OSCAR) database, which is maintained by the Health Care Finance Administration (HCFA). HCFA is the agency within the U.S. Department of Health and Human Services which is charged with administering federal nursing home standards. The OSCAR database contains information on staffing levels and violations of federal nursing home standards for over 17,000 nursing homes in the United States.

Federal law requires that all nursing homes that receive payments from Medicare and Medicaid meet basic health and safety standards established by HCFA. In order to determine if homes are meeting these standards, HCFA contracts with the states to conduct annual inspections of nursing homes. As part of these inspections, data on staffing levels are provided by the nursing homes to the state inspectors. The nursing homes provide staffing information for the two weeks prior to the inspections. This information on staffing levels is then reported by the states to HCFA and entered into the OSCAR database.²⁷

The staffing data used in this report is the data contained in the most recent annual inspections for nursing homes in Los Angeles County. These inspections were conducted between March 1998 and March 2000. Prior to providing this data to the minority staff, HCFA staff analyzed the database and removed all staffing data that was erroneous or inconsistent or did not otherwise meet standards of accuracy.²⁸

²⁷According to some experts, this data may overestimate the number of staff involved in resident care. Researchers have suggested that nursing homes may increase their staff during the period around the survey, meaning that reported staffing levels would be higher than the staffing levels found at the nursing homes during most periods of the year. See *Nursing Home Staffing and Its Relationship to Deficiencies*, *supra* note 11, at 17.

²⁸HCFA analysts eliminated data from all nonhospital-based nursing homes with less than 50% occupancy, all facilities that reported more residents than beds, all facilities that reported more than 24 hours of daily care by registered nurses, licensed nurses, or nursing assistants, and the 2% of facilities that reported the highest staffing by registered nurses, licensed nurses, or nursing assistants.

B. Comparison of Current Staffing Levels with Recommended Staffing Levels

As discussed in part I, there are no federal standards that specify the number of hours of care that residents of nursing homes should receive. For this reason, this study compares staffing levels reported in the OSCAR database to staffing levels recommended by the 1998 expert panel on nursing home staffing and the Institute of Medicine. As summarized earlier, the expert panel recommended that nursing homes provide a minimum of 4.13 hours of nursing care for each resident each day. The panel also recommended that at least 1.2 hours of this care be provided by registered or licensed nurses. The Institute of Medicine recommended that a registered nurse be present 24 hours per day, seven days per week in all nursing homes.

Data in the OSCAR database was reported for each nursing home in terms of the number of hours worked by registered nurses, licensed nurses, and nursing assistants divided by the number of residents. To compare staffing data for each individual home to the expert panel recommendations, the total time worked by registered nurses, licensed nurses, and nursing assistants was added together. If this sum was equal to or exceeded 4.13 hours per resident per day, then the nursing home met the expert panel recommendation for care by all nursing staff. The total hours worked by registered and licensed nurses were then added together. If this sum was equal to or exceeded 1.2 hours per resident per day, then the nursing home met the expert panel recommendation for care by registered and licensed nurses.²⁹

Because the data in the OSCAR database regarding staffing is provided in terms of total hours worked per resident per day by nursing staff, the database does not directly indicate whether individual nursing homes are meeting the Institute of Medicine recommendation that a registered nurse be present 24 hours per day. To assess whether nursing homes were meeting this recommendation, the report determined the total number of hours worked by registered nurses in each nursing home each day. This was determined by multiplying the number of residents in each home by the total time devoted to each resident by registered nurses. If the total hours of daily care provided by registered nurses met or exceeded 24 hours, the report treated the home as if it met the Institute of Medicine recommendation.³⁰

²⁹This study assumed that all of the reported work time by registered or licensed nurses and nursing assistants was spent directly caring for residents, not on administrative tasks. This assumption is likely to overestimate the actual time devoted to resident care. Because some nurses and nursing assistants spend time on administrative tasks rather than on individual resident care, the actual time devoted to resident care is likely to be less than reported in this study.

³⁰This approach may overstate the number of nursing homes in Los Angeles that are in compliance with the recommendations of the Institute of Medicine. A nursing home could provide 24 hours of care by registered nurses each day without providing this care around the clock. For example, a nursing home could have two registered nurses on the day shift, one on the evening shift, and none on the night shift. This home would have a total of 24 hours of care by registered nurses each day, but would still not meet the recommendation that a registered nurse be

C. Determination of Current Compliance Status

The report also used the OSCAR database to determine the number and type of health and safety violations at nursing homes in Los Angeles. As part of the annual inspections required by HCFA, state inspectors are required to document any violations of federal nursing home standards and to determine the scope and severity of these violations. The violations observed by the inspectors in each individual home are reported by the state to HCFA and compiled in the OSCAR database.³¹

To assess the relationship between staffing and nursing home conditions, the report compared the compliance status of homes that did and did not meet the staffing recommendations. Two types of comparisons were made. First, the analysis compared the average number of violations in homes that did and did not meet the staffing recommendations. Second, the report focused on the more serious violations observed by inspectors, those that caused actual harm to residents, and compared the percentage of homes with actual harm violations that failed to meet the staffing recommendations with the percentage of homes with actual harm violations that did meet the staffing recommendations.

D. Interpretation of Results

Because this report is based on recent annual inspections, the results are representative of current conditions in nursing homes in Los Angeles County. Conditions in individual homes can change, however. New management or enforcement activities can bring rapid improvement; other changes can lead to sudden deterioration. Staffing turnover in nursing homes is high, and the addition or subtraction of individual staff or individual residents could change staffing hours and staff-to-resident ratios in a short time. For this reason, the report should be considered a representative "snapshot" of overall conditions in nursing homes in Los Angeles, not an analysis of current conditions in any specific home. Staff-to-resident ratios could be higher or lower, and conditions could be better or worse, at any individual nursing home today than when the most recent annual inspection was conducted and the most recent staffing data was reported.

III. STAFFING LEVELS IN MANY LOS ANGELES COUNTY NURSING HOMES

present every hour of the day.

³¹In addition to tracking the violations at each home, the HCFA database compiles the following information about each home: the number of residents and beds; the type of ownership (e.g., for-profit or nonprofit); whether the home accepts residents on Medicare and/or Medicaid; and the characteristics of the resident population (e.g., number of incontinent residents, number of residents in restraints). To provide public access to this information, HCFA maintains a website (<http://www.medicare.gov/NHcompare/Home.asp>) where the public can obtain data about individual nursing homes.

ARE INADEQUATE

There are 431 nursing homes in Los Angeles that receive Medicaid or Medicare payments. For 373 of these nursing homes (87%), there is sufficient data in the OSCAR database to evaluate staffing.³² These homes serve a total of 30,878 residents. Medicaid pays for 21,040 of these residents. Medicare pays for 2,449 of these residents. These 373 homes receive approximately \$375 million in state and federal funding to care for these residents each year.

A review of these homes shows that the majority of the nursing homes do not meet recommended staffing levels and that there is a correlation between the level of staffing in a nursing home and the quality of care provided by that home.

A. Many Nursing Homes Do Not Meet the Recommendations of the Expert Panel on Nursing Home Care

The vast majority of Los Angeles nursing homes failed to meet the staffing recommendations established by the expert panel in 1998. Overall, 315 homes (84%) serving over 27,000 residents did not meet at least one of the expert panel's recommendations, and 271 homes (73%) did not meet both of the expert panel's recommendations.

The expert panel recommended that each home have adequate staff -- registered and licensed nurses and nurses assistants -- to provide 4.13 hours of daily care for each resident. In Los Angeles, the average home provided only 3.35 hours of daily care per resident. In total, 314 of the 373 nursing homes for which data is available (84%) failed to meet this expert panel recommendation. These nursing homes provide care for over 27,500 residents.

Staffing in many nursing homes fell far below the expert panel's recommended level. One hundred and sixty-four homes (44%) failed to provide an average of even 3.0 hours of daily care per resident, and 26 homes (7%) did not provide an average of even 2.0 hours of daily care per resident.

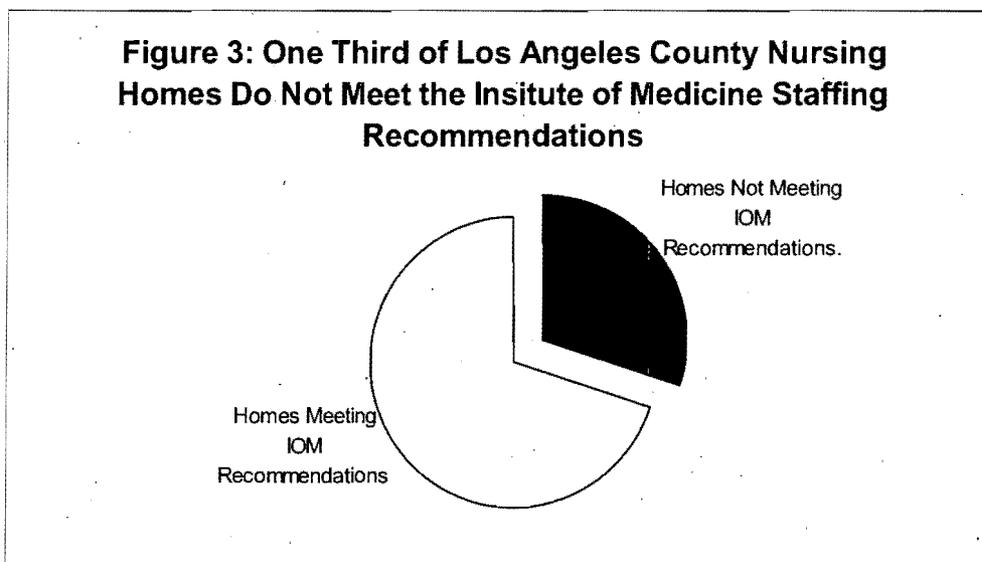
The expert panel also recommended that each home provide each resident an average of 1.2 hours of daily individual care by registered or licensed nurses. Seventy-three percent of nursing homes in Los Angeles (272 homes) failed to meet this recommendation. These nursing homes provide care for over 24,000 residents. Almost half of the nursing homes (180 homes) provided less than 1.0 hours of daily care by registered or licensed nurses per resident.

B. Many Nursing Homes Do Not Meet the Recommendations of the Institute of

³²For the remaining 58 homes, available data was erroneous or inconsistent or did not meet standards of accuracy. See *supra* note 28.

Medicine

Twenty-nine percent of the homes in Los Angeles -- 110 of the 373 homes for which data is available -- did not have adequate nursing staff to meet the Institute of Medicine recommendation that a registered nurse be present at all times (Figure 3). These homes serve 6,540 residents.



In some homes, the length of time that a registered nurse is present was significantly below the Institute of Medicine recommendation. Forty of the 373 homes in Los Angeles County (11%) did not have enough registered nurses on staff to maintain a 12 hour per day presence. And eight nursing homes in Los Angeles did not have adequate staff to even meet the current minimal standard embodied in federal law, which requires that a registered nurse be present for at least eight hours per day.

The average nursing home in Los Angeles County provided a total of 41 hours of care by registered nurses per day. However, the 113 homes that did not meet the Institute of Medicine recommendation provided an average of less than 14 hours of care by registered nurses per day -- significantly less than the recommended level.

C. Many Nursing Homes Fail to Meet Both Sets of Staffing Recommendations

Only 15% of nursing homes in Los Angeles -- 56 out of 373 -- met all of the recommendations for adequate staffing established by the expert panel and the Institute of Medicine. In comparison, more than one in four Los Angeles nursing homes -- 99 out of 373 -- failed to meet any of the recommendations for adequate nursing home staff. These homes that fail to meet any of the recommendations serve a total of 6,125 residents (Table 1).

Table 1: The Majority of Los Angeles County Nursing Homes Do Not Provide Sufficient Staff to Meet the Recommendations of the Institute of Medicine or the 1998 Expert Panel.

Status of Nursing Home	Number of Homes	% of Homes	Number of Residents
Nursing Home Meets All Recommendations	56	15%	2,880
Nursing Home Fails to Meet Expert Panel Recommendations	315	84%	27,928
Nursing Home Fails to Meet IOM Recommendations	110	29%	6,540
Nursing Home Fails to Meets Any Recommendations	99	27%	6,125

IV. NURSING HOMES WITH INADEQUATE STAFFING ARE MORE LIKELY TO PROVIDE INADEQUATE CARE

In Los Angeles, inadequate staffing is correlated with inadequate care. The report finds that nursing homes that did not meet the recommended staffing levels were more likely to violate federal health and safety standards than nursing homes that met the recommended staffing levels.

As discussed above, 99 nursing homes in Los Angeles did not meet either the expert panel staffing recommendations or the staffing recommendations of the Institute of Medicine. During the most recent annual inspections, state inspectors found, on average, 10.3 violations of federal health and safety standards at each of these homes. Moreover, 23% of these homes were cited by state inspectors for violations that caused actual harm to residents.

In contrast, 56 nursing homes in Los Angeles met all of the staffing recommendations. During the most recent annual inspections, state inspectors found, on average, 7.2 violations of federal standards at each of these homes. Moreover, only 13% of these homes were cited for a violation that caused actual harm to residents. Compared to the nursing homes that met both sets of staffing recommendations, the nursing homes that failed to meet the recommendations had over 40% more violations of federal health and safety standards. They were also nearly twice as likely to be cited for violations that caused actual harm to residents.

Similar correlations are present when the staffing recommendations of the expert panel are examined individually. For example, 272 nursing homes in Los Angeles did not meet the expert panel's recommendation to provide 1.2 hours of daily individual care by registered or licensed nurses. State investigators found an average of 12.1 violations in these homes, and cited 65 of these homes (24%) for violations that caused actual harm to residents. In contrast, 101 homes met this expert panel staffing recommendation. The homes that met the recommendation had an average of 9.2 violations per home, and only 17% of these homes had violations that caused actual harm to residents.

Similarly, 314 nursing homes in Los Angeles did not meet the expert panel's recommendation to provide over four hours of daily individual care for each resident. State investigators found an average of 12.1 violations in these homes and cited 24% of these homes for violations that caused actual harm to residents. In contrast, 59 homes met this expert panel

staffing recommendation. The homes that met the recommendation had an average of 6.8 violations per home, and only 12% of these homes had violations that caused actual harm to residents.

There was no discernible correlation in the case of the Institute of Medicine's staffing recommendation. State investigators found an average of 10.1 violations in each of the 110 homes that did not meet the Institute of Medicine's staffing recommendation and cited 23% of these homes for violations that caused actual harm to residents. The 263 homes that met the Institute of Medicine's staffing recommendation had an average of 11.8 violations per home, and 22% of these homes had violations that caused actual harm to residents.

Tables 2, summarizes these results.

Table 2: Homes That Do Not Provide Sufficient Staff Are More Likely to Violate Federal Nursing Home Standards.

Recommendation	Status of Home	Average Number of Violations Per Home	% of Homes With Serious Violations
All Recommendations	Meets Recommendations	7.2	13%
	Does Not Meet Recommendations	10.3	23%
Expert Panel Recommendation for Care By Licensed or Registered Nurses	Meets Recommendation	9.2	17%
	Does Not Meet Recommendation	12.1	24%
Expert Panel Recommendation for Care By All Staff	Meets Recommendation	6.8	12%
	Does Not Meet Recommendation	12.1	24%
IOM Recommendation for 24 Hour Nurse Presence	Meets Recommendation	11.8	22%
	Does Not Meet Recommendation	10.1	23%

V. CONCLUSION

This is the second study of nursing homes in Los Angeles County conducted at the request of Rep. Waxman. The first study found widespread failures by nursing homes to provide adequate care for their residents. This report investigates one of the potential causes of this inadequate care: insufficient staffing. It finds that the majority of the nursing homes in Los Angeles County do not meet recommended levels of staffing and that this insufficient staffing is linked to poor resident care.

FAX COVER

**MINORITY STAFF
COMMITTEE ON GOVERNMENT REFORM
B350A RAYBURN HOUSE BUILDING
PHONE (202) 225-5051
FAX (202) 225-4784, 8185**

DATE: July 24, 2000

TO: Devorah Adler

FAX: 456-5557 PHONE: _____

FROM: Karen & Karen

SUBJECT: Nursing Home

NO. OF PAGES (INCLUDING COVER SHEET): _____

COMMENT:

gleason@ |
haas.
berkeley@eku
Don
Siegelman
Reedman

Press Advisory
July 24, 2000

For More Information:
Contact Phil Schiliro
(202)-225-3976

WAXMAN AND GEPHARDT TO INTRODUCE NURSING HOME BILL

**NEW STUDY ON STAFFING LEVELS IN LOS ANGELES NURSING HOMES
TO BE RELEASED**

Background. Nursing homes are in a state of crisis. Far too many nursing homes in the United States are violating federal health and safety standards. According to GAO, one in four nursing homes have violations that cause actual harm to residents, such as pressure sores, broken bones, severe weight loss, or even death.

Investigative reports in members' districts by the minority staff of the Government Reform Committee confirm that many nursing homes violate federal health and safety standards and that these violations often involve serious neglect and mistreatment of residents. Examples of poor care described in these reports include a nursing home in Los Angeles where state inspectors found over 60 residents suffering from bed sores; a nursing home in Chicago where state inspectors found dozens of residents in physical restraints, many in violation of federal requirements; and a nursing home in San Francisco where state inspectors found hundreds of ants crawling over an 83-year-old resident.

The Nursing Home Quality Protection Act. To address this crisis, Rep. Henry A. Waxman, Minority Leader Richard A. Gephardt, and other members will introduce the Nursing Home Quality Protection Act. This legislation will:

- Impose tougher sanctions on nursing homes that violate federal health and safety standards.
- Provide more funding for nursing homes to hire additional staff and provide better care for residents.
- Increase public disclosure about nursing home conditions by requiring HHS to post detailed information about nursing homes on the Internet.

Release of Los Angeles Staffing Report. Rep. Waxman will also release a new report on staffing levels in Los Angeles nursing homes. This report finds that (1) the vast majority of nursing homes in Los Angeles fail to meet recommended staffing levels and (2) inadequate levels of staffing in nursing homes in Los Angeles are correlated with higher levels of violations of federal health and safety standards.

Date, Time, and Place. The Nursing Home Quality Protection Act and the new Los Angeles staffing report will be released at a press conference at 2:30 p.m. on July 25, 2000, in HC-9 Capitol.

Congress of the United States

Washington, DC 20515

PROTECT OUR MOST VULNERABLE CITIZENS COSPONSOR THE NURSING HOME QUALITY PROTECTION ACT

July 24, 2000

Dear Colleague:

Our nursing homes are in a state of crisis. Far too many nursing homes in the United States are violating federal health and safety standards. According to GAO, one in four nursing homes have violations that cause actual harm to residents. And as a new federal study will show, many nursing homes have inadequate staffing.

We must not turn a blind eye to this crisis. We must take strong steps to insure that our most vulnerable citizens are treated with care, dignity, and compassion. This week we are introducing legislation to improve conditions in nursing homes. This legislation will:

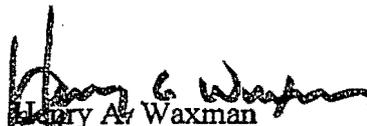
- Impose tougher sanctions on nursing homes that violate federal health and safety standards;
- Provide more funding for nursing homes to hire additional staff and provide better care for residents; and
- Increase public information about the quality of care provided by nursing homes.

We have a moral obligation to provide adequate care for vulnerable and frail seniors in nursing homes. If you would like to be an original cosponsor of this bill or have questions, please contact Matt Noyes at 225-3976.

Sincerely,



Richard A. Gephardt
Democratic Leader



Henry A. Waxman
Member of Congress

SUMMARY OF THE NURSING HOME QUALITY PROTECTION ACT

The Nursing Home Quality Protection Act of 2000 has three components. The bill:

- (1) imposes tougher sanctions on nursing homes that violate federal health and safety standards;
- (2) provides more funding for nursing homes to increase staffing and improve care for residents; and
- (3) increases public information about the quality of care provided by nursing homes.

Tougher Sanctions.

Under current law, nursing homes that violate federal health and safety standards are rarely fined. GAO has found that many facilities with serious violations exhibit a "yo-yo pattern" of noncompliance and compliance. These facilities correct documented violations in time to avoid paying fines, only to slip back into noncompliance as soon as the threat of sanctions is removed.

To address the deficiencies in the current enforcement system, the bill imposes a new set of sanctions that are immediate and certain. Nursing homes that violate federal health and safety standards must refund a portion of the federal Medicaid funds they receive. The amount of the required refund varies from \$2,000 for violations that have the potential to harm residents to \$25,000 for violations that place residents in immediate jeopardy. These refunds are automatic and will be withheld from future payments to the nursing home if they are not paid within 30 days. Nursing homes can appeal the refunds, but only after the refunds are paid.

Increased Funding.

The bill recognizes that some nursing homes need increased resources to hire more staff and comply with federal health and safety standards. For this reason, the bill reinstates the "Boren Amendment," which was repealed by Congress in 1997. Under the Boren Amendment, nursing homes are guaranteed "reasonable and adequate" reimbursements for providing quality care.

The bill also establishes a new grant program to help nursing homes hire and retain qualified staff. This grant program is funded from the refunds collected from nursing homes that violate federal health and safety standards. This program ensures that any payments collected from nursing homes under the bill will be used to improve the quality of care in nursing homes.

Increased Public Disclosure.

The bill requires the Department of Health and Human Services to post detailed information on the Internet about conditions in nursing homes. The information that must be made available to families through the Internet includes copies of inspection reports, summaries of enforcement actions taken against nursing homes, and new information about the staffing levels in nursing homes.

THE NEED FOR THE NURSING HOME QUALITY PROTECTION ACT

There is an urgent need for federal legislation to improve conditions in nursing homes. Investigations by GAO, Congress, and other experts have found that conditions in many nursing homes are abysmal; health and safety violations are widespread; and current staffing levels are inadequate.

Investigations by GAO.

The U.S. General Accounting Office (GAO), an investigative arm of Congress, has released a series of reports on nursing home conditions over the past two years. These reports have found that more than one-fourth of nursing homes have violations that cause actual harm to residents or place them at risk of death or serious injury. GAO found that these violations are serious, causing pressure sores, broken bones, severe weight loss, and even death.

Moreover, the GAO reports have shown that the current enforcement system does not succeed in holding nursing homes accountable because "sanctions initiated ... against noncompliant homes were never implemented in a majority of cases and generally did not ensure that homes maintained compliance with standards."

Investigations by Congress.

The Special Investigations Division of the Minority Staff of the House Government Reform Committee has initiated a series of investigations of nursing home conditions in members' congressional districts. Since November 1999, the minority staff has released reports on nursing home conditions in Los Angeles, Chicago, San Francisco, and other areas. These reports have confirmed that many nursing homes violate federal health and safety standards and that these violations often involve serious neglect and mistreatment of residents. The examples of poor care described in the reports include:

- A Los Angeles nursing home where state inspectors found over 60 residents suffering from bed sores;
- A Chicago nursing home where state inspectors found dozens of residents in physical restraints, many in violation of federal health and safety standards;
- A San Francisco nursing home where state inspectors found hundreds of ants crawling over the body and in and out of the mouth of an 83-year-old resident.

Investigations by Other Experts.

Many other studies have reached similar conclusions. For example: in July 1998, investigators from the University of California-San Francisco found that current level of nurse staffing is "completely inadequate to provide care and supervision"; in April 2000, HHS reported that the number of nursing homes cited for failing to prevent abuse of residents has doubled since 1997; and in a soon-to-be-released report, the HHS Secretary concludes that inadequate staffing is endangering the health of nursing home residents.

04/16/99 18:54 FAX

04/16/99 18:54 FAX

Long-Term Care Companies

One-Year Price Movements

<u>Company</u>	<u>Closing Price on 4/9/99</u>	<u>Closing Price on 3/9/98</u>	<u>%Decline</u>
Vencor	\$.75	\$10.38	(92.8%)
Sun Health	\$.88	\$18.88	(95.3%)
Advocat	\$ 1.94	\$ 9.00	(78.4%)
Mariner	\$ 2.31	\$19.38	(88.1%)
IHS	\$ 3.63	\$36.00	(89.9%)
Centennial	\$ 3.94	\$21.25	(81.4%)
Beverly	\$ 4.44	\$15.50	(71.3%)
Genesis	\$ 4.63	\$29.25	(84.2%)
NHC	\$ 7.69	\$34.75	(77.9%)
HCR/Manorcare	\$24.44	\$46.31	(47.2%)

SUMMARY OF RECENT FEDERAL STUDIES ON NURSING HOME QUALITY

Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards General Accounting Office, March 18, 1999

- “Surveys conducted in the nation’s over 17,000 nursing homes over a three year period [1995 to 1998] indicated that each year, more than one-fourth of the homes had quality deficiencies that caused actual harm to residents or placed them at risk of death or serious injury.”
- Forty percent of homes found to have caused resident deaths, placed residents in potentially deadly situations, or caused other serious harm were cited again for deficiencies (possibly different ones) that were just as severe or worse during their last inspection within the three year period studied.
- “Among those homes cited for deficiencies with the potential to cause more than minimal harm to patients, 77 percent of homes were cited for deficiencies (again, possibly different ones) at the same or higher level of severity during the most recent survey.”
- In order to determine what effect sanctions had on nursing home compliance, GAO studied 74 nursing homes across the country. The most common sanction ultimately imposed by HCFA was denial of payment for new admissions, which was imposed a total of 176 times on the 74 homes in the study.
- Current regulations allow homes to avoid penalties as long as they continue to correct their violations, and so denial of payment never took effect in 97 of the 176 instances in which it was imposed. Because of this, the threat of sanctions appeared to have little effect on deterring homes from falling out of compliance again.
- Deficiencies for which homes were cited include failure to prevent choking hazards, failure to provide proper incontinent care, resident abuse, accidents resulting in broken arms and legs, and failure to provide proper nutrition.

Complaint Investigation Processes Often Inadequate to Protect Residents General Accounting Office, March 22, 1999

- Serious reports alleging that nursing home residents are being harmed can remain uninvestigated for weeks or months, prolonging situations in which residents may be subject to abuse, neglect, preventable accidents and medication errors. Examples include:
A resident who had maggots in the sores on his feet was not sent to the hospital because the home’s director of nursing did not want the state agency to be notified by the hospital

and investigate the home. The state, which categorized the complaint as needing to be investigated within 45 days, had not yet been investigated by the time of the GAO visit, 105 days after it had been filed.

A resident at a Florida home died when her neck became pinned between the mattress and the bedrail. She was also stuck 10 days earlier, but a nursing home employee found her in time. The employee did not take steps to prevent the woman from getting pinned again, which eventually led to her death.

An alert resident who was placed in a nursing home for a two week stay to recover from hip surgery was transferred in less than three weeks to a hospital because of a rapid decline in the resident's condition. One of the members of the ambulance crew filed a written report stating that the resident had dried blood in his fingernails and on his hands, sores all over his body, smelled like feces, and was unable to walk or take care of himself. The state took more than 4 months to begin its investigation of this complaint.

A resident who had blood drawn was noted to have a badly bruised hand and elbow. A laboratory representative stated that "sometimes they have to get rough" in order to draw blood from residents. The complaint was not investigated until 37 days after it was filed.

Two patients died in a Florida nursing home, where a broken air-conditioning system left patients sweltering in 90 degree rooms for weeks. A state surveyor was notified of the problem but waited two weeks to investigate. During that time, two residents died of dehydration.

Quality of Care in Nursing Homes; An Overview

Office of the Inspector General, Health and Human Services, March 1999

- "According to survey and certification data, 13 out of 25 'quality of care' deficiencies have increased in recent years. They include a lack of supervision to prevent accidents, improper care for pressure sores, and a lack of proper care for activities of daily living."
- Complaints to nursing home ombudsmen have steadily increased since 1989, and complaints about resident care, such as pressure sores and hygiene, have been particularly prevalent.
- An audit of 8 nursing homes in the state of Maryland found that five percent of employees in those homes have criminal records.



U.S. Department of Justice

Office of the Deputy Attorney General

Nursing Home Quality Enforcement File

Washington, D.C. 20530

FAX TRANSMISSION SHEET

TO:

Chris Jennings

Phone:

Fax: 456-5557

FROM:

John T. Bentivoglio
Special Counsel for Health Care Fraud

Phone: (202) 514-2707

Fax: (202) 616-1239

DATE:

3-12-99

NUMBER OF PAGES (including this cover sheet):

MESSAGE:

FYI

Note: The information in this facsimile should be considered confidential.

**U.S. Department of Justice**

Office of the Deputy Attorney General

*Special Counsel for Health Care Fraud**Washington, D.C. 20530*

March 12, 1999

VIA FACSIMILE

Mike Hash
Deputy Administrator
Health Care Financing Administration
200 Independence Avenue, NW
Washington, DC 20201

Dear Mike:

Thank you for meeting with us today regarding various nursing home matters, including the Department's proposed nursing home legislation. We appreciate the concerns of the Department of Health and Human Services discussed at today's meeting and are hopeful that the compromises and suggestions we made at today's meeting adequately address these concerns. We continue to believe there is a serious gap in current law with respect to criminal and civil enforcement authority and want to craft legislation that is as effective as possible.

On the attached page, I have attempted to capture the suggestions we offered at today's meeting, along with several background items that help explain our positions.

I look forward to resolving these issues as quickly as possible

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Bentivoglio".

John T. Bentivoglio

cc: D. McCarthy Thornton
Chief Counsel
HHS Office of Inspector General

Comments and Suggestions on DOJ's Proposed Nursing Home Legislation

- The Department of Justice (DOJ) agrees with the Department of Health and Human Services (HHS) that HCFA needs new administrative authority to address quality of care problems involving nursing home chains and management companies and DOJ would be willing to support new authority for HCFA in this area.
- To address concerns about adequate communication and consultation between DOJ and HHS, the DOJ suggests adding the following language to the end of the legislation:

“Within 90 days of enactment of this section, the Attorney General and the Secretary of Health and Human Services shall enter into a Memorandum of Understanding to ensure adequate communication and coordination of enforcement actions initiated under this section.”

Notes:

1. This requirement would ensure that DOJ and HHS establish appropriate procedures and lines of communication with respect to nursing home enforcement activities. The MOU would require full concurrence from the Secretary of HHS.
 2. Under HIPAA, the Attorney General and Secretary of HHS were required to establish guidelines governing virtually every major aspect of the DOJ-HHS fraud-fighting relationship. These guidelines, which are approximately 25 pages, were completed within approximately 130 days (HIPAA was signed into law on August 21, 1996 and the guidelines were complete on or about January 1, 1997). Surely, guidelines addressing nursing home enforcement actions could be developed in 90 days after the date of enactment (particularly since there are ongoing negotiations over a revised nursing home MOU).
- To address the particular concerns about the injunctive relief provisions in the legislation, DOJ will commit to include -- in the MOU implementing this legislation -- a requirement of advance consultation with program agency officials in advance of any request for injunctive relief. In addition, DOJ would be willing to discuss appropriate dispute resolution mechanisms in the event of a disagreements (such as reiterating the present requirement that a decision to take legal action over the objection of a client agency requires approval from an official in Main DOJ).

Notes:

1. DOJ has had authority to enforce the Civil Rights of Institutionalized Persons Act (CRIPA) for more than 20 years. CRIPA authorizes DOJ to obtain injunctive relief against publicly operated facilities that violate constitutional or statutory protections of institutionalized persons (including cases involving publicly

operated nursing homes). The only relief available under CRIPA is injunctive relief. During this 20 year period, DOJ officials regularly have consulted with HCFA about actions brought under CRIPA and we are aware of no serious problems. While there are differences between the nursing home legislation and CRIPA, DOJ's track record under CRIPA should provide some comfort that adequate communication and coordination can be achieved.

- DOJ agrees with HHS that we need to spell out the definition of "harm" in the statute to ensure consistency with regulatory definitions and the like.
- With regard to the definition of "pattern" of violations, we agree with the comments of the HHS OIG that the current definition may be subjective and unwieldy. HHS OIG suggested a change to a numerical number of violations. This approach would provide greater clarity to the statute and make it a more effective enforcement tool. DOJ suggests that the current draft would be substantially improved if it were amended to delete the reference to pattern and insert "three or more" violations.

Notes:

1. Although moving from the term "pattern" to a numerical threshold of three violations would lessen the burden on the government, DOJ suggests retaining the requirement (spelled out in the current definition of pattern) that the three violations would still need to be linked in some way – i.e., that they are repeated, systemic, result from a common policy or practice, or the like. Even under a numerical threshold, the statute would be limited to the most egregious cases.
- 2.

HICFA comments on proposed nursing home legislation -

Include in the statute:

1. A requirement that an MOU have been agreed to before any enforcement under the statute.
2. "Nothing in this Act shall be construed as depriving the Secretary of Health and Human Services of any authority, including enforcement authorities, under the Social Security Act related to nursing homes."
3. No civil or injunctive action may be brought without having been referred by the Secretary of Health and Human Services.

The MOU should:

1. Key definitions of terms such as "harm," "pattern" and "widespread" should be consistent with HICFA definitions.
2. Specify procedures for cases that do not originate in HHS being reviewed by IHHS and referred to DOJ.

- Appeal early process

- Routine notify

- Kick Back → FETBSP ←

- From Dept by

- Transfer

primary

- early case studies
- more info

~~After side~~
Review - Malabar

Phases
Demographic impact - 1.5 million
Citations standards



President
George J. Kourpias

Executive Director
Steve Protulis

National Council of Senior Citizens

8403 Colesville Road, Suite 1200 • Silver Spring, Maryland 20910-3314 • (301) 578-8800 • Fax (301) 578-8999

Statement of Steve Protulis

Executive Director, National Council of Senior Citizens

and

Chair, Leadership Council of Aging Organizations

On behalf of the National Council of Senior Citizens and the Leadership Council of Aging Organizations, I applaud and commend the new steps announced by the President today to protect the rights and dignity of America's nursing home residents.

No role of government is as profound as its obligation to secure the lives of our most vulnerable citizens.

That obligation cannot be diluted, deferred or neglected. President Clinton has shown that he recognizes our duty to these citizens through the decisiveness of his actions today.

The nation's aging organizations pledge to support these initiatives at the national, state and community levels. We will demand compliance by the states and the operators, and we will support operators who provide good and decent care.

We pledge to work with nursing home residents and resident councils against abuse. We pledge to support efforts at the national and state levels to assure adequate income and good working conditions for the staff in long-term care facilities. It is often lower-wage workers who are most crucial to the lives of residents.

We urge the Congress to expand the Nursing Home Ombudsman Program, authorized by the Older Americans Act, so that no resident is without a community volunteer who can assist in day-to-day needs, reconnect with families and provide advocacy.

Three years ago, President Clinton preserved national nursing home standards and protections when he vetoed the 1995 reconciliation bill. Today, he moves that step forward by reaffirming his commitment to a fuller measure of justice for nursing home residents. Thank you, Mr. President.

July 21, 1998

PRESIDENT CLINTON ANNOUNCES INITIATIVE TO IMPROVE THE QUALITY OF NURSING HOMES

July 21, 1998

Today, the President announced tough new legislative and administrative actions to improve the quality of nursing homes. These actions include: ensuring swift and strong penalties for nursing homes failing to comply with standards, strengthening oversight of state enforcement mechanisms, developing a national registry to track and identify individuals with a record of abusing residents, and implementing unprecedented efforts to improve nutrition and prevent bed sores.

Background on Nursing Homes. About 1.6 million older Americans and people with disabilities receive care in approximately 16,700 nursing homes. Since the Health Care Financing Administration (HCFA) put new regulations in place in 1995, the health and safety of nursing homes has improved. For example, the inappropriate use of physical restraints has been cut by more than half and the number of nursing home residents receiving hearing aids is up 30 percent. But HCFA's ongoing review, as well as the report that HHS is transmitting to Congress today, shows that tougher enforcement is needed to ensure high quality care in all nursing homes. In response, the President is announcing a tough new initiative to crack down on poor quality nursing homes and ensure high quality care.

The President Is Sending Legislation to Congress This Week That Calls for:

- **New Criminal Background Checks.** An important way to improve the quality of nursing homes is to prevent personnel who have a history of resident and abuse from entering the system in the first place. The legislation the President is proposing would require nursing homes to conduct criminal background checks on all potential personnel.
- **National Abuse Registry.** Once inadequate personnel have been identified, they should be kept out of the system for good. The new legislation would establish a national registry of nursing home employees convicted of abusing residents.
- **Improved Nutrition and Hydration.** Currently, too few nursing home staff are available to help feed residents. To improve nutrition in nursing homes, this legislation would allow more categories of nursing home employees to receive training in and then to perform crucial nutrition and hydration functions.
- **Reauthorization of the Nursing Home Ombudsman Program.** The President also called on Congress to reauthorize the nursing home ombudsman program run by the Administration on Aging, which provides consumers with critical information on poor-quality nursing homes, including records of abuse and neglect.

The President Also Announced New Administrative Actions To Improve the Quality of Nursing Homes. Today, the President announced a series of new penalties, new inspections, and tougher oversight that HCFA will implement immediately, including:

- **Immediate Civil Monetary Penalties on Nursing Homes That Violate Federal Standards.** To crack down on inadequate providers, HCFA will direct enforcement authorities to impose civil monetary penalties immediately upon finding that a nursing home has committed a serious or chronic violation. Under current practice, enforcement officials often give nursing homes numerous opportunities to come into compliance, rather than imposing immediate sanctions.
- **Tougher Nursing Home Inspections.** Starting today, HCFA will take several steps to strengthen states' inspection of nursing homes, such as:
 - Staggering survey times: The report that HCFA is transmitting to Congress finds that nursing home inspections are too predictable, allowing inadequate nursing homes to prepare for inspections. Enforcement officials will now stagger survey times and conduct some surveys on weekends and evenings.
 - Targeting chains with bad records: Federal and State officials will target nursing home chains that have a poor record of compliance with quality standards, to ensure these nursing homes receive frequent inspections.
 - Prosecuting egregious violations: HCFA also will work with the HHS Office of Inspector General and Department of Justice to refer egregious violations of quality of care standards for criminal or civil investigation and prosecution when appropriate.
- **Stronger Federal Oversight of State Nursing Home Enforcement Mechanisms.** HCFA will increase its oversight of state surveyors and take new tough actions against states that are failing to enforce standards adequately. It will:
 - Terminate Federal nursing home inspection funding to states with continual poor records. The report being released by HCFA finds that some states have cited few or no nursing homes for substandard care. In states where oversight is clearly inadequate, HCFA will terminate state contracts and contract with other entities to conduct Federally-required inspections.
 - Increase oversight of state inspections. HCFA will increase its review of the surveys conducted by the states to ensure thorough oversight, as well as provide additional training and assistance to state enforcement officials.
 - Ensure that nursing homes are in compliance with standards before lifting sanctions. HCFA will increase oversight of state enforcement officials to ensure that they will not lift sanctions until after an on-site visit has verified compliance.

- **Preventing Bed Sores, Dehydration, and Malnutrition.** HCFA will implement new oversight to ensure that nursing homes take actions to prevent bed sores, dehydration, and malnutrition. State surveyors will be required to monitor these activities and to sanction nursing homes with patterns of violations. HCFA also will work with the Administration on Aging, the American Dieticians Association, clinicians, consumers, and nursing homes to develop best practice guidelines to prevent malnutrition, dehydration, and bedsores.
- **Publishing Survey Results on the Internet.** To increase accountability and flag repeat offenders for families and the public, HCFA will, for the first time, post individual nursing home survey results on the Internet.
- **Implementing New Efforts to Measure and Monitor Nursing Home Quality.** In June 1998, HCFA began collecting information on resident care through a national automated data system, known as the Minimum Data Set. This information will be analyzed to identify potential areas of inadequate care in nursing homes and to assess performance in critical areas, such as nutrition, avoidable bed sores, loss of mobility, and use of restraints. This assessment will help HCFA and state surveyors to conduct thorough evaluations of nursing homes and detect problems early.

less than 1% of MY

~~SD~~

AL

DL

DE

~~SD~~

UT

United States Senate

Special Committee on Aging

Senator Chuck Grassley, Chairman



FOR IMMEDIATE RELEASE
WEDNESDAY, JULY 15, 1998
CONTACT: JILL GERBER
(202) 224-3932

GRASSLEY ALERTS PRESIDENT CLINTON ABOUT UPCOMING AGING COMMITTEE HEARING ON NURSING HOME NEGLECT IN CALIFORNIA

WASHINGTON -- Sen. Chuck Grassley, chairman of the Senate Special Committee on Aging, today alerted President Clinton about an upcoming Aging Committee hearing about neglect in some California nursing homes.

In a letter to the President, Grassley explained the hearing's origins and asked the President to give his immediate attention to the issue.

"I wanted to give the President as much notice as possible about our hearing," Grassley said. "We'll hear disturbing testimony about nursing home neglect in California. The federal government is ultimately responsible for the quality of nursing home care nationwide. I hope the President will respond accordingly."

The hearing will include testimony from family members of former nursing home residents, current and former nursing home employees and a top official of the General Accounting Office (GAO). The GAO official will present the results of the agency's nearly year-long investigation into allegations of neglect in California nursing homes. Last October, Grassley requested the GAO investigation after the allegations came to his attention.

Hearing: "Betrayal: the Quality of Care in California Nursing Homes"

Day 1: Monday, July 27, 1998

Time: 1 p.m.

Location: 216 Hart Senate Office Building

Witnesses: a former California nursing home resident, family members of former residents, current and former nursing home employees, and a current state employee

Day 2: Tuesday, July 28, 1998

Time: 10 a.m.

Location: 216 Hart Senate Office Building

Witnesses: representatives of the General Accounting Office and the Health Care Financing Administration and others

Note: Senator Grassley will hold media briefings before each day of the hearing. Those events will be announced shortly.

July 15, 1998

VIA Facsimile: 202-456-6221

**The Honorable William Jefferson Clinton President of the United States
White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500**

Dear President Clinton:

It is with great urgency that I write this letter to you on behalf of defenseless and vulnerable nursing home residents in the State of California. About one year ago, I received serious allegations regarding the quality of care in California nursing homes. In response to these allegations, I directed the General Accounting Office (GAO) to conduct an investigation into the veracity of these grave allegations affecting the lives of nursing home residents.

A short time ago, I received an initial briefing from the GAO regarding its almost year-long investigation. That briefing painted a dreadful and painful picture of the quality of care being provided to some California nursing home residents. To say that these findings are shocking and offensive is an understatement. Nursing home residents surely deserve better. They deserve adequate care, compassion and respect.

American taxpayers provide billions annually to ensure that senior citizens requiring nursing home care receive that care. To learn that we have apparently failed in this endeavor is simply unacceptable.

Mr. President, I am confident that you share my belief that we absolutely must do better. Your personal attention and immediate assistance will be greatly appreciated.

Sincerely,
Charles E. Grassley
Chairman

HHS NEWS

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

EMBARGOED FOR RELEASE 3 P.M. EDT.
Tuesday, July 21, 1998

Contact: HCFA Press Office
(202) 690-6145

CLINTON ADMINISTRATION ANNOUNCES NEW INITIATIVES TO IMPROVE THE QUALITY OF CARE IN NURSING HOMES

The Clinton Administration today announced a new nursing home care initiative to provide enhanced protections for nursing home residents and to target specific needed improvement in nursing home care.

Releasing an independent report that shows progress since strong nursing home enforcement regulations took effect in 1995, HHS Secretary Donna E. Shalala said additional steps will now be taken to address remaining problem areas, including those identified in the report.

The initiative announced today includes tougher enforcement of Medicare and Medicaid rules with strengthened oversight of nursing home quality and safety. Particular efforts will be aimed at preventing instances of bed sores, dehydration and nutrition problems.

"We must ensure that all Americans can rely on quality, compassionate care when they or a loved one requires nursing home care," HHS Secretary Donna Shalala said. "We have seen clear evidence of improvement, but we can and must do more to improve the lives of nursing home residents."

Since 1995, the Clinton Administration has been enforcing the toughest nursing home regulations in the history of Medicare and Medicaid. The new report to Congress notes significant improvements since 1995 in the quality of care delivered in nursing homes, including more appropriate use of physical restraints, anti-psychotic drugs, anti-depressants, urinary catheters and hearing aids. But the report also found a need for further improvements by states, nursing homes and others.

The steps unveiled Tuesday continue the Administration's efforts to improve the quality of life and care for nursing home residents. The Administration's initiative includes a wide range of new approaches to improve care:

- Nursing homes found guilty of a second offense for violations that harm residents will face sanctions without a grace period to allow them to correct problems and avoid penalties.

- More -

- 2 -

- Nursing home inspections will be conducted more frequently for repeat offenders with serious violations without decreasing inspections at other facilities. Inspection times will be staggered, with a set amount done on weekends and evenings.
- HCFA will instruct states to impose civil monetary penalties for each instance of serious or chronic violation. Until now, penalties have been linked only to the number of days a facility was out of compliance with regulations.
- Federal and state officials will focus their enforcement efforts on nursing homes within chains that have a record of non-compliance with federal rules.
- HCFA will provide additional training and other assistance to inspectors in states that are not adequately protecting residents. HCFA will enhance its review of the surveys conducted by the states and implement standard evaluation protocols.
- States that fail to adequately perform survey would lose federal funding for nursing home surveys. HCFA will contract instead with other entities to conduct survey and certification activities.
- HCFA will step up its review of nursing homes' ability to prevent bed sores, dehydration, and malnutrition. HCFA also will work with the Administration on Aging, the American Dietetic Association, clinicians, consumers, and nursing homes, to share best practices for residents at risk of weight loss and dehydration.
- State inspectors will review each nursing home's system to prevent, identify, and stop physical or verbal abuse, neglect, and misappropriation of resident property. A description of each nursing home's abuse prevention plan will be shared with residents and their families.
- HCFA will work with the HHS Inspector General and the Department of Justice to ensure that state survey agencies and others refer appropriate cases for prosecution under federal civil and criminal statutes, particularly cases that result in harm to patients.
- Individual nursing home survey results and violation records will be posted on the Internet to increase accountability and make information more accessible.

In addition to these administrative steps, the Administration will ask Congress for new legislative authority to help improve nursing home care and safety. Those requests include a requirement for criminal background checks of nursing home workers; allowing more workers with proper training to perform crucial nutrition and hydration functions; and to reauthorize a strong nursing home ombudsman program through HHS' Administration on Aging.

- More -

- 3 -

"We are confident that these actions will further improve the quality of residents' lives and our ability to detect problems with care in the future," HCFA Administrator Nancy-Ann DeParle said. "Nursing home residents will live with the dignity that they and their families deserve and expect." Resources for these efforts are included in the President's fiscal year 1999 budget request now pending in Congress.

About 1.6 million elderly and disabled people receive care in approximately 16,800 nursing homes across the United States. The federal government, through the Medicare and Medicaid programs, provides funding to the states to conduct on-site inspections of nursing homes participating in Medicare and Medicaid and to recommend sanctions against those that are violating health and safety rules.

###

Note: HHS press releases are available on the World Wide Web at: <http://www.hhs.gov>.

- More -

HHS FACT SHEET

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

July 21, 1998

Contact:

HCFA Press Office
(202) 690-6145

ASSURING THE QUALITY OF NURSING HOME CARE

Overview: *The Clinton Administration, continuing its strong commitment to ensuring high quality nursing home care for those who need it, announced new steps today to ensure that all nursing home residents are treated with dignity and compassion.*

Since 1995, the Administration has been enforcing the toughest nursing home regulations in the history of the Medicare and Medicaid programs. The Health Care Financing Administration has sharply increased the number of penalties levied on poor-quality nursing homes.

In a new report to Congress, HHS notes significant improvements in the quality of care delivered in nursing homes. But the report also finds a need for further improvement by States, nursing homes, and others. States have the primary responsibility for conducting on-site inspections of nursing homes and recommending sanctions on those who are providing poor quality care.

As part of its new initiative, the Administration will work with the States to improve their nursing home inspection systems; crack down on nursing homes that repeatedly violate safety rules; require nursing homes to conduct criminal background checks on all new employees; reduce the incidence of bed sores, dehydration, and malnutrition; and publish nursing home quality ratings on the Internet.

Background

About 1.6 million elderly and disabled people receive care in approximately 16,800 nursing homes across the United States. The Federal government, through the Medicare and Medicaid programs, provides funding to the States to conduct on-site inspections of nursing home participating in Medicare and Medicaid and to recommend sanctions against those homes that are violating health and safety rules.

Clear Evidence of Improvement, But Problems Persist

According to a new report to Congress, there is clear evidence that current regulations are improving the health and safety of nursing home residents. Specifically:

- The overuse of anti-psychotics is down from about 33 percent before nursing home reform was implemented to 16 percent now;
- Use of antidepressant is up from 12.6 percent to 24.9 percent, a rate more commensurate with the estimated nursing home prevalence of depression;

- 2 -

- The inappropriate use of physical restraints is down, from about 38 percent to under 15 percent;
- The inappropriate use of indwelling urinary catheters is down nearly 30 percent; and
- The number of nursing home residents with hearing problems who receive hearing aids is up 30 percent.

While there are improvements attributable to the new regulations, the HCFA report makes clear that several areas require greater attention. Among those findings are:

- State-run nursing home inspections are too predictable. Inspection teams frequently appear on Monday mornings and rarely visit on weekends or during evening hours. This allows nursing homes to prepare for inspections.
- Several States have rarely cited nursing homes for substandard care, an indication that their inspections and enforcement may be inadequate;
- Nursing home residents continue to suffer unnecessarily from such clinical problems as pressure or bed sores, malnutrition and dehydration. These can be prevented with proper care; and
- Residents continue to experience physical and verbal abuse, neglect, and misappropriation of residents' property.

New Administrative Enforcement Actions

As part of its strategy for continuous quality improvement in nursing homes, the Administration is adding new enforcement tools and strengthening Federal oversight of nursing home quality and safety standards. Resources for these activities are included in the President's fiscal year 1999 budget request currently before the Congress.

Stronger Enforcement Actions. HCFA will take several steps to toughen enforcement of nursing home safety and quality regulations; They are:

- Nursing homes found guilty of a second offense for violations harming residents will have sanctions imposed and will not receive a "grace period" that allows them to correct problems and avoid penalties;
- HCFA will permit states to impose civil monetary penalties for each instance of serious or chronic violation. Until now penalties have been linked only to the number of days a facility was out of compliance with regulations.
- Nursing home inspections will be conducted more frequently for repeat offenders with serious violations without decreasing inspection frequency for other facilities;
- Nursing home inspection times will be staggered, with a set amount to be done on weekends and evenings and;
- Federal and State officials will focus their enforcement efforts on nursing homes within chains that have a record of noncompliance with Federal rules.

- 3 -

Stronger Federal Oversight of State Inspections. To target States with weak inspection systems, HCFA will:

- Provide additional training and other assistance to inspectors in States that are not adequately protecting residents;
- Enhance Federal review of the surveys conducted by the States. Standard evaluation protocols will be implemented in every State this fall;
- Ensure that State surveyors enforce HCFA's policy to sanction nursing homes with serious violations and that sanctions cannot be lifted until after an onsite visit has verified compliance; and,
- Terminate Federal nursing home survey funding to States that fail to adequately perform survey functions or fail to improve inadequate survey systems. HCFA will then contract with other entities to conduct nursing home survey and certification activities in those States.

Preventing Bed Sores, Dehydration, and Malnutrition. HCFA will step up its review of nursing homes' ability to prevent bed sores, dehydration, and malnutrition. Nursing homes with patterns of serious violations will be sanctioned. HCFA also will work with the Administration on Aging, the American Dietetics Association, clinicians, consumers, and nursing homes, to develop a repository of best practice guidelines for residents at risk of weight loss and dehydration.

Combating Resident Abuse. State inspectors will review each nursing home's system to prevent, identify, and stop physical or verbal abuse, neglect, and misappropriation of resident property. A description of each nursing home's abuse prevention plan will be shared with residents and families. HCFA will also ask states to direct nursing homes to inquire about criminal convictions when interviewing potential personnel.

Prosecution of Egregious Violations. HCFA will work with the HHS Inspector General and the Department of Justice to ensure that state survey agencies and others refer appropriate cases to DOJ for prosecution under federal civil and criminal statutes, particularly cases that result in harm to individual patients. The OIG will also work with HCFA to conduct training for and provide technical assistance to Federal survey and certification staff and HCFA contractors on how to make appropriate referrals to the OIG.

Publishing Survey Results on the Internet. Individual nursing home survey results and violation records will be posted on the Internet to increase accountability and flag repeat offenders for families and the public.

Continuing Development of Minimum Data Sets. In June 1998, HCFA began collecting information on resident care through a national automated data system, known as a Minimum Data Set. This information will be analyzed over time, to identify potential areas of unacceptable care in nursing homes. HCFA will eventually use this data to assess nursing home performance in such areas as avoidable bed sores, loss of mobility, weight loss and use of restraints. This assessment will help HCFA and state surveyors better identify nursing homes for immediate onsite inspections, detect and correct systematic problems early, and ultimately help nursing homes improve quality.

New Legislative Actions

In addition to the administrative steps described above, the Administration will ask Congress to help improve nursing home care and safety in the following ways:

- 4 -

Criminal Background Checks. Ask Congress to establish a national registry of nursing home employees convicted of abusing residents and to require nursing homes to conduct criminal background checks on all potential personnel.

Nutrition and Hydration Therapy. Ask Congress to allow more types of nursing home employees, with proper training, to perform crucial nutrition and hydration functions.

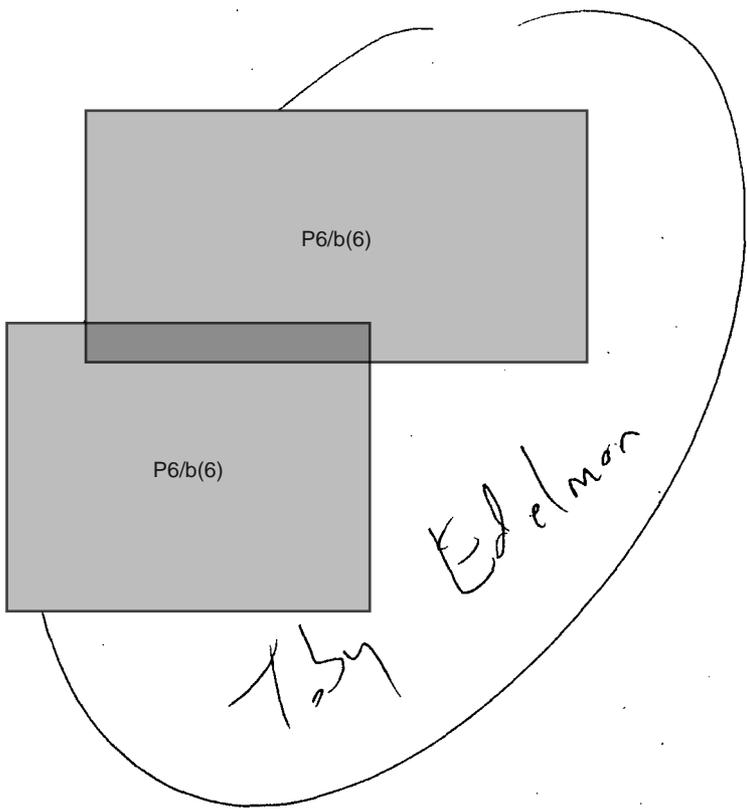
Nursing Home Ombudsman Program. Ask Congress to reauthorize a strong long term ombudsman program through the Older Americans Act, administered by the Administration on Aging. Ombudsmen are an excellent source of information about poor-quality nursing homes and abuse or neglect of patients.

User Fees. In the President's FY 1999 Budget, HCFA requested legislation to collect a fee from Medicare providers and suppliers requesting participation in Medicare both for initial surveys and for recertification surveys. Under this proposal, HCFA would establish fee amounts that reflect the unit cost of a survey and the appropriate and reasonable costs incurred by State survey agencies for fee collection and associated activities. The fee amount would vary by state, since survey costs also vary by state. The user fee amount will include the Federal government's costs as well as those of the States. The fees received from this activity would be credited to HCFA's program management appropriation. The fee for initial surveys will be payable by the entity at the time of the survey. Fees for recertifications shall be deducted from amounts otherwise payable from a Trust fund to such entity.

Public vs. Private Accreditation

Finally, at Congress' request, the HCFA report also evaluated whether private accreditation of nursing homes would be preferable to the current system of public accreditation. HCFA secured an independent evaluation by Abt Associates, to assist in preparation of that portion of the report. The report concludes that the private Joint Commission on Accreditation of Healthcare Organizations (JCAHO) survey process was not effective in protecting the health and safety of nursing home residents. According to Abt Associates, granting "deeming" authority to JCAHO would place nursing home residents at serious risk. For example, in more than half of 179 cases where both HCFA and JCAHO conducted inspections of the same nursing homes, JCAHO failed to detect serious problems identified by HCFA.

###



430

LLUC HULN



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

JUN 3 1998

The Administrator
Washington, D.C. 20201

Note To: Kevin Thurm
Deputy Secretary

DRAFT

Nursing Home
Quality File

Subject: Nursing Home Enforcement Initiative

When we met on December 15 regarding nutrition in nursing homes and enforcement issues, you asked that we convene a group of people from the Department to discuss HCFA's plan and how they could help us. Our meeting in late January with the Department staff was a positive one. We discussed their comments to our strategy paper as well as other suggestions HCFA could include. Representatives from ASPE, ASL, ASMB, OIG and OGC participated. A copy of the revised paper and time table are attached.

As you know, I have also met with a large group of consumer and nursing home ^{advocate} groups, as well as with industry representatives. I think we need to move forward with our initiative to improve enforcement. In addition, a series of other things related to nursing homes have arisen which will require some response on our part within the next year. These include the three studies, one report to congress, and a potential congressional hearing.

HCFA Report to Congress on Feasibility of Deeming and Evaluation of the Nursing Home Survey and Enforcement Process.

Currently under HCFA internal review is a comprehensive Report to Congress on the feasibility of deeming in nursing homes and evaluating the effectiveness of the nursing home survey and enforcement process. Except for the issue of deeming, our proposed strategic plan addresses many of the issues addressed in our Report to Congress.

Other Studies

Government Accounting Office (GAO) - The GAO is conducting two studies related to nursing homes. The first is a study of deaths in California purported to have occurred as a result of poor nutrition and dehydration. GAO expects a preliminary report in late summer. The second is a study of the nursing home enforcement process. GAO has included the States of Michigan, Texas, California, and Pennsylvania in their study. From some of the questions asked by GAO, we surmise that the issue of Federal oversight will be one of study's findings. While our strategic plan touches on Federal/State operations, we are also considering changes to HCFA's Federal oversight functions on a separate track.

Page 2

Special Senate Committee on Aging - HCFA staff has also been involved in a couple of meetings with staff from the Special Senate Committee on Aging. Early indications are that they expect to hold a hearing on the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) survey and enforcement program sometime this summer.

National Senior Citizens Law Center - A paper prepared by the National Senior Law Center and funded by the Commonwealth Fund, entitled "What Happened to Enforcement" is a precursor to a study now being conducted in Michigan, Georgia, New York, Texas & Washington. Although a release date for the study has not been set, we expect the study to criticize the level of citing deficiencies and enforcement actions.

Other Issues

Reducing Medicaid Participation - A Florida facility which is part of the 331-home Vencor nursing home chain was fined \$360,000 for inappropriately discharging Medicaid beneficiaries. Withdrawal from Medicaid does not appear to be a trend; however, current Federal law and regulations do not deny a facility's right to terminate its provider agreement or reduce the extent of its participation in Medicare and/or Medicaid. The change in extent of participation is allowed under the "distinct part" concept. The distinct part provision permits hospitals and other entities to have a part of their institution rendering skilled nursing services to be certified as a SNF, NF, or SNF/NF while recognizing that the entire institution (that provides a different type of care) should not be subject to the SNF/NF requirements. The current interpretation of the "distinct parts" provision allows that a portion of a nursing home may participate in Medicaid and/or Medicare while the rest does not. Federal regulations only require that a distinct part be physically distinguishable, such as a wing, corridor, floor, etc. The number of beds in distinct parts varies. Facilities change the size of their distinct parts by notifying the State, HCFA regional office, or fiscal intermediary.

While this issue is not addressed in our strategic plan, we are pursuing a regulatory fix to help close the loopholes for corporations maximizing profits at the expense of our poorest residents.

Roll Out

HCFA will have an ongoing roll out approach. A fact sheet or press release outlining the proposed strategies will be prepared. HCFA will work with Department staff to coordinate a roll out to five audiences: Congress, States, nursing home providers, consumer and advocacy groups, and the media. Roll out strategies could include an initial briefing for trade press, with a coordinated briefing for State, Congressional staff, and other selected stakeholders. Ongoing roll out activities will include a coordinated

Page 3

effort to aggressively communicate the strategy in a variety of settings, including presentations by HCFA staff at conferences and speech blocks to be incorporated into addresses given by the Secretary, the Administrator, and HCFA Senior Staff.

At this point I think it would be beneficial to convene another meeting, both to update you and our Department colleagues on our status, and to discuss our plan described above to roll out this initiative with consumers groups, States, and nursing home providers.


Nancy-Ann Min DeParle

Attachments

*Strategic Approach
for Improvements to the
Survey & Certification Program
for Nursing Homes*

Summary

Tackling patient abuse in nursing homes, improved targeting of poor performing facilities, heightening awareness of specific quality of life issues via the survey process, focusing on nutrition and hydration, quality of care issues, and developing new approaches for communicating with the nursing home industry are HCFA's short term strategies addressing current problems in nursing homes. HCFA's long range strategies include: implementing an integrated and comprehensive data system to assist in measurement and improvement of nursing home performance; establishing quality indicators; and developing analytical mechanisms for the optimal use of data.

Defining the Problem

For the past few years, HCFA has moved towards a framework for improving the quality of care delivered to beneficiaries through measurement and improvement interventions. This includes the survey and certification process and data design and collection functions for the myriad of providers and suppliers participating in the Medicare and Medicaid programs. This recent emphasis represents a significant shift away from an exclusive focus on reviewing provider compliance with established threshold requirements for Medicare/Medicaid participation.

HCFA's program strategy and quality vision are as sound with respect to nursing homes as for other provider types; however, external perceptions of this changed focus are working against us. The current HCFA emphasis on quality improvement suggests to some that our focus on data measures and quality improvement interventions would result in a reduction of on-site survey activity in nursing homes. Data collection and information dissemination ideally would make the survey process more efficient and allow surveyors to concentrate inspection activity where it will do the most good.

Despite ten years of significant advances in quality assurance and enforcement, we continue to be concerned about poor quality care in nursing homes. Although there has been considerable anecdotal attention to this issue in the national media, some of it overblown, we believe there is reason to believe things are not going in the way we intended. We also want to be proactive in addressing these concerns in the short run so that our longer-range strategies of implementing a data system and quality indicators will mean that nursing home performance is not derailed.

A. Enforcement Improvement Strategy

HCFA recommends the following short-term enforcement strategy that is multi-faceted and dynamic.

1. Patient Abuse

Allegations of patient or resident abuse have long been identified as an area of concern at both State and Federal levels. Moreover, prevention of abuse has been considered by various workgroups, including a Department level workgroup on elder abuse several years ago. Often these workgroups have a very broad agenda which inhibits their ability to develop usable solutions. From time to time, HCFA, Congress and various interest groups have reviewed the value of criminal background checks for nursing home employees and registries for abusers. Recently, some congressional staff have again raised these issues. Also, the law prevents States from issuing a civil money penalty for "each instance" of abuse, requiring instead that the penalty amount be linked to days out of compliance.

To reduce patient abuse in nursing homes, HCFA proposes to:

- ▶ *Prevent, identify and/or penalize patient abuse.* We will explore the value of criminal background checks and a national abuse registry. This effort will be coordinated with efforts in home health agencies on criminal background checks. good
- ▶ *Focus on one or more types of abuse for national attention and correction in egregious cases (e.g. verbal or physical abuse; neglect, misappropriation of property)* good
- ▶ *Propose civil money penalties for "each instance" of abuse, as an optional alternative for "every day out of compliance", when a civil money penalty is the remedy of choice.* (Requires a legislative change). This eventually would give States the flexibility to give a penalty on the spot without having to wait to see how many days a facility is out of compliance before computing and collecting fines. good

2. *Targeting Poor Performers*

OBRA 87 permits imposing sanctions immediately on nursing homes. HCFA, as a matter of policy, imposes sanctions immediately on facilities defined as poor performers. These facilities, which are not allowed an opportunity to correct before the sanction is imposed, are facilities with a history of swinging between compliance and noncompliance. Over the past two years we've found that this definition does not encompass the very group we were attempting to define, i.e., those who have a history of providing poor or marginal care and/or chronically have serious compliance issues.

To assure that appropriate penalties are imposed, HCFA will:

- ▶ *Identify facilities with chronically poor compliance history and have States monitor these facilities more closely.* Schroyer
- ▶ *Redefine the term "poor performers" in consultation with the various stakeholders, including imposing immediate sanctions on poorly run nursing home chains within a State.*

3. *Survey Process & Enforcement*

The OBRA 87 survey process and enforcement systems are complex and are especially difficult to apply to specific requirements for participation in the Medicare and Medicaid programs.

HCFA will continue to improve the survey process:

- ▶ *Identify quality of life/quality of care issues critical to quality nursing home care in consultation with consumer advocates.* Provide clearer guidance on a limited number of provisions that surveyors would focus on during every survey. We would not eliminate current survey requirements but would sharpen the focus on certain areas. (e.g. Admissions contracts, drug therapy)
- ▶ *Strengthen resident safety by applying the scope and severity guidance to current enforcement process for life safety code violations.*
- ▶ *Refine and prescribe HCFA's policy for following up on nursing homes who have corrected deficiencies.*
- ▶ *Pilot potential survey processes which could improve HCFA's ability to detect serious negative outcomes, particularly in nutrition and hydration.*

4. *State/Federal Operations*

Variation of State survey findings and enforcement actions is an issue frequently raised in relation to nursing homes. Consumer advocates and provider organizations have both raised concerns regarding inconsistencies among State and Federal surveyors. This variation applies to both differences in average number of deficiencies, and number and type of enforcement actions. One of the issues that GAO plans to study is inconsistencies among States. This is also an area of interest to the staff of the Senate Aging Committee.

HCFA will determine whether such variations reflect real differences or measurement error. Where it is found to be inconsistent measurement techniques, these problems will be addressed. Where we find significant variation, we will identify outlying States and/or Regions and implement strategies to improve performance.

- ▶ *Review existing evidence of State variation in enforcement and develop appropriate responses for explaining and/or reducing significant variation in State survey and enforcement activities.*
- ▶ *Develop legislative, regulatory or operational policies, as appropriate, to strengthen the effectiveness of Federal oversight of State operation of the survey and certification program.*
- ▶ *Implement enhanced strategy for Federal oversight for Federal Monitoring Surveys (FMS) and the State Agency Quality Improvement Program (SAQIP).*

5. *Communications*

In order to effectively pursue a coordinated agenda, HCFA will:

- ▶ *Continue to develop fact sheets, charts, talking points and speech blocks that summarize HCFA's more rigorous enforcement program. These will include examples of cases where HCFA actions have made a difference, describe the difference in standards now and in the past, and identify additional efforts planned.*
- ▶ *Aggressively communicate its strategy in meetings with consumer advocates, professional organizations, nursing home industry representatives, the states, Congress and the press. For optimum impact the administrator and other central office officials, as well as regional administrators should be integrally involved.*
- ▶ *Identify third parties, such as advocates and legislators, who endorse, formally or otherwise, HCFA's program.*
- ▶ *Link nursing home quality activities with the Administration's emphasis on volunteerism in America.*

B. *Focus on Nutrition and Hydration*

HCFA will continue to focus on the nutrition and hydration needs of residents. The following outlines activities currently in progress and additional steps we propose to ensure that the nutrition and hydration needs of residents are met.

1. *Changes to Requirements*

Develop policy and or a legislative proposal to allow for an increase in the type of nursing home staff available to participate in the feeding of residents. Currently only licensed health professionals, nurse aides, or volunteers are allowed to help feed residents; administrative staff are not allowed to help feed residents.

2. *Surveyor Training - focus on nutrition and hydration in current and proposed training*
Increase expertise of surveyors and nursing facilities on the maintenance of proper nutrition and hydration of residents. This will include intensified training as well as improved survey protocols.
3. *Nutrition Quality Initiative*
Develop a repository of best practice guidelines for caring for residents at risk of weight loss and dehydration in cooperation with the Administration on Aging, American Dietitians Association, industry, consumers and professional groups through Sharing Innovations in Quality and any other available venues.

C. Measurement/Improvement Infrastructure Strategy

1. In July, 1998, HCFA will begin collecting MDS data from nursing homes at both the State and national levels. This is the first step in a major HCFA initiative to use MDS data to improve the quality and cost effectiveness of nursing home services. Over the long term this system will:
 - provide data that will enable State survey agencies to enhance on-site inspections, and monitor facility performances on an ongoing basis;
 - provide information to support provider quality improvement activities,
 - provide information for beneficiaries and their families to use when making health care choices;
 - furnish data necessary for developing and implementing case-mix based prospective payment systems for both Medicare and Medicaid;
 - facilitate the development of clinical "best practices", and coverage policy
2. As part of its longer term strategy for nursing home improvement, HCFA should:
 - Fully implement the MDS data collection and analysis system at both the State and national levels. This should include connectivity with other systems for Medicare and Medicaid claims and for the PRO data.
 - Develop, test and implement protocols for assuring the validity of MDS data collected at the State and national levels. This should include both a plausibility analysis of the collected data as well as onsite audit processes.
 - Develop, test and implement quality indicators for use in analyzing MDS. Quality indicators and related performance standards will provide information on a facility's performance on one or more domains of care as compared to the standard or other providers.
 - Launch in conjunction with State survey agencies an effort to develop, implement and evaluate demonstration projects that will allow for testing innovations for quality oversight and improvements. These projects would be carried out with, not in lieu of, the nursing home survey process. It is only when we can demonstrate and prove that our arsenal of new tools actually result in quality improvement above the current enforcement level in nursing homes can we actually begin to sensibly focus on the locations, scope and duration of on-site visits.
3. Even though the system infrastructure is currently being installed, a great deal more work is required before the MDS data can be effectively utilized as part of a reengineered survey and certification program for nursing homes. Prior to relying on MDS data in lieu of other forms of evidence gathering, we must have in

place methods for assuring its accuracy and usefulness. In addition, a capability to analyze the collected data for indicators and standards of performance quality is critical to its use for measurement and improvement. It will also be necessary to establish protocols for integrating the use of MDS data into an improvement system for nursing homes and an enforcement process that fulfills HCFA's responsibilities under the survey and certification program.

Enforcement/Nutrition Initiatives Timeline								
Task	98 Summer	Fall	99 Winter	Spring	Summer	Fall	00 Winter	Spring
	<p><i>Legislative Proposal to Permit Civil Money Penalties for "each instance" or "each day of noncompliance"</i></p> <ul style="list-style-type: none"> Draft language 	X						
<ul style="list-style-type: none"> Once legislation becomes law - draft implementing instructions. 		90 days after law						
<ul style="list-style-type: none"> Incorporate concept into training for State survey agencies 			120 days after law					
<p>2. Targeting Poor Performers</p> <ul style="list-style-type: none"> Develop list of "bottom of the barrel" providers in each State using various indicators. 	X							
<ul style="list-style-type: none"> Develop monitoring strategy for HCFA and States to more closely monitor facilities with chronically poor compliance histories. 		X						
<ul style="list-style-type: none"> Based on Report to Congress and GAO reports distill other recommendations/strategies into monitoring strategy 		X						
<ul style="list-style-type: none"> Work with States to implement monitoring strategy 		Ongoing	-----	-----	-----	-----	-----	Ongoing
<p>3. Survey Process & Enforcement</p> <p><i>Enhance surveyor training</i></p> <ul style="list-style-type: none"> Improve basic health facility surveyor training course to emphasize decision-making, investigation techniques and documentation 			X					
<ul style="list-style-type: none"> Develop & conduct training course for State surveyor supervisors to assure greater consistency 			X					

Enforcement/Nutrition Initiatives Timeline								
Task	98 Summer	Fall	99 Winter	Spring	Summer	Fall	00 Winter	Spring
• Aggressively communicate HCFA strategy in meetings with consumer advocates, professional organizations, nursing home industry representatives, States, Congress and the press.	Ongoing	-----	-----	-----	-----	-----	-----	Ongoing
• Determine feasibility of linking our efforts with Volunteer organizations regarding nursing home initiatives	X							
B. FOCUS ON NUTRITION/HYDRATION								
1. Changes to Requirements • <i>Feeding residents</i> • Develop guidance to States to better use volunteers in the feeding of residents.	X							
• Require special training for individuals to feed residents who have swallowing or other feeding problems (law).		X						
• Permit individuals paid by the facility who do not have nurse training or nurse aide training to feed residents as long as they've either had special training or feed residents who do not have a feeding problem. (Program memorandum, State Operations Instructions)		X						
• Develop legislative proposal which would be self-implementing to require individuals to have training in feeding residents.	X	X						
2. Nutrition Summit² • Identify stakeholders and individuals who have expertise in this area; develop contract to convene summit.	X							
• Hold Summit (will look at draft interpretive guidance & make other suggestions methods to improve nutrition and hydration in nursing homes)			X					

Enforcement/Nutrition Initiatives Timeline								
Task	98 Summer		99				00	
		Fall	Winter	Spring	Summer	Fall	Winter	Spring
• Make revisions to policy based on Nutrition Summit & prepare in final.				X				
3. Satellite Presentation & Educational Materials ¹ • Contract with entity to present satellite training and assist in the development of educational material.					X			
C. MEASUREMENT/IMPROVEMENT INFRASTRUCTURE STRATEGY								
1 Collect Minimum Data Set (MDS) data from States.	X							
2. Explore methods to analyze MDS data for accuracy and usefulness. Also analyze data for indicators and standards of performance			X					
3. Assure that MDS data collection and analysis system are connected to other systems for Medicare and Medicaid claims & PRO data.					X			
4. Develop, test and implement quality indicators for use in analyzing MDS data collected at State & National level.					X			
5. With States, develop implement and evaluate demonstration projects that will allow for testing innovations for quality oversight and improvements.						X		

1. Proposed legislation in House bill is regs to be enacted not more than 60 days after statute's enactment and for the Senate legislation -- not more than 6 months after enactment. These timeframes are unrealistic as HCFA's regulation process historically takes a minimum of 2 years.

2. Expertise needed for this area. Contract with NCCNHR or other organization to convene summit. Contract \$ may be needed for this activity.

3. Contract \$ may be needed for this activity.

F:\briefing\imp_plan.wpd