

Statement of Carol Benner
on behalf of
The Association of Health Facility Survey Agencies

Chairman Grassley, Senator Breaux, distinguished Committee Members, thank you for inviting me, on behalf of the Association of Health Facility Survey Agencies (AHFSA), to participate in this hearing. I am Carol Benner, Vice President of AHFSA. AHFSA represents the leaders of State Survey Agencies across the country. We were established in 1970 to provide a forum for the State Agency directors to share information and to work with HCFA, provider organizations, and advocates to monitor quality of care in all types of health care settings.

State Survey Agencies represent more than 5000 surveyors, who go into nursing homes every day to monitor quality of care and to determine compliance with Medicare, Medicaid and State licensure regulations. We believe that surveillance and enforcement activity is the most important and effective means by which the federal and State governments can protect individuals and ensure quality health care for our elderly and disabled adults.

We appreciate the work of this Committee and we recognize the strides that you have made to improve the regulatory system. We commend your efforts and are grateful for them.

For the last two years, States have been diligently working to implement the 1998 Nursing Home Initiatives. We look forward to participation in this two-year evaluation and hope that our comments are useful to you.

The goal of the NHI's - to improve the quality of care in nursing homes is good, and AHFSA wholeheartedly supports that goal. We believe that some of the initiatives have already significantly improved the survey process. The enhanced survey protocols for nutrition, hydration and abuse prevention, for example, have - along with the Quality Indicator information provided by the Minimum Data Set - significantly improved our ability to evaluate care and identify problems.

Staggered surveys are ongoing throughout the country, the number of actual problems identified has increased, enforcement has increased and there is at least anecdotal evidence that overall quality is improving.

There are issues, however, that continue to require further guidance from HCFA. In June of 1999, AHFSA testified before you and expressed concerns that the NHI's were implemented without adequate planning, a clear definition of desired quality outcomes, and sufficient financial resources. In November 1999, we testified again. We stressed the need for planning, resources, reliable and consistent information, instruction and feedback from HCFA to the States. These same issues remain as concerns to State survey agencies today, and directly affect our efforts to fully implement the NHI's and to fully carry out federal regulatory responsibilities.

The hearings held by your committee and the development and implementation of the NHI's by HCFA have generated considerable activity at the State level. In addition to our federal responsibilities, states have also taken the initiative to improve quality of care and quality of life for nursing home residents through state licensure improvements, the development of consultative activities, improved training to surveyors and the provision of consumer information to the public.

States routinely participate in activities over and above what HCFA requires and measures. States sponsor training programs for providers on the top noted deficiencies; they participate in studies and

participate in projects that look at quality and seek methods to improve it. In Maryland alone, we have co-sponsored three training programs with the industry on pressure sores, dehydration and malnutrition, and falls. We have contracted with our local PRO to study the effects of relocation trauma on a group of nursing home residents who were forced to move following closure for quality purposes, and we are working with the National Citizen's Coalition on Nursing Home Reform to build and strengthen family councils in Maryland nursing homes. In addition, you are aware of the major state legislation to reform our licensing system that was passed in Maryland last year and our efforts to create a state-of-the art across the board rating system.

These projects are not unique to Maryland. Similar activities are ongoing in all states. Other states including California, Colorado, Florida, Massachusetts, New Jersey, North Carolina, Texas and Wisconsin are in the process of or have developed ratings systems, strengthened state enforcement systems, established technical assistance programs, initiated quality improvement programs and developed creative, positive uses for civil money penalty funds. This year at our national training conference, we will be highlighting state activity to improve care and performance and we will be happy to send you additional examples of our best practices.

At this time, as you review the activities of the past two years, it is critical that all of this activity be considered.

There are several issues that we need to highlight and we will follow with some recommendations for ongoing improvement in these critical programs.

Ongoing Issues

Workload Increase

The federal initiatives have significantly and dramatically increased state survey agency workload. The enhanced survey protocol requires more hours per survey; complaint investigations have doubled in some states; and, increased enforcement actions require additional surveys. Because of the increased enforcement, time for supervisory review, informal dispute resolution and preparation for administrative hearings and other legal activities have increased.

In Maryland, the increase in workload has been dramatic. In FY98, the state was able to complete all of its federal requirements. From FY98 to FY00, the number of complaints that were investigated tripled and the number of follow-up visits more than tripled. Although the actual number of visits to nursing homes increased from an average of 2 per year to more than 5 per year, there was a decrease in the number of annual surveys conducted and an inability of the state to meet the twelve-month average. Although we have worked hard to correct this problem, this shift in workload and priority shows the impact of a policy change without adequate preparation.

In another state example, the number of complaints in New Jersey increased 170% in the same time period from 1480 to 2500. The number of standard surveys went up by 7%, revisits by 65%.

In addition, duties and responsibilities survey agencies go well beyond output measures such as number of surveys, number of complaints, number of revisits, and these have increased too. Increased enforcement, especially if it is to withstand legal scrutiny, requires significant review and effort as well as increased dispute resolution. Because of the increased enforcement, the relationship with provider organizations has become much more adversarial. Because the stakes have increased, deficiencies are routinely challenged and debated.

If a nursing home closes, a survey agency may spend 600 or more survey hours preparing families and residents for relocation. When a survey agency identifies serious and immediate jeopardy or life-threatening conditions to residents, surveyors routinely shift from survey responsibilities to on-site monitoring to ensure protection of residents until the life-threatening conditions are removed. Situations such as these require change of schedules and workload plans that stress an already stressed system. Terminations of a facility, especially when there are only low-severity level deficiencies remaining consume significant portions of time, and often create anxiety and panic for residents and their families. While we agree that there must be some means to sanction a facility for slow compliance with the regulations, this ultimate sanction needs to be reassessed in light of both the outcomes for the effort and the impact on nursing home residents.

Budget Process

We acknowledge and appreciate the funding increases that HCFA has sought and which this committee supported over the past two years. Unfortunately, the budget process has not been responsive to the states' resource needs.

The issue for many states is not always the amount of the appropriation, but the timing of the appropriation and the ability to plan for the expected increase in activity by the federal government. For example, the final budget amounts and final clarification of the HCFA workload priorities for the current fiscal year was not completed until $\frac{3}{4}$ of the current fiscal year has elapsed. We believe that many states will not be able to fully spend these funds. Many state budget and accounting staff were reluctant to authorize hiring and training of additional staff when there was no assurance of funds beyond the remaining three months of the fiscal year. In addition, because this extra money was allocated "out-of-cycle," states were not able to use it. The fact that funding has been increased does not guarantee that an initiative has been fully implemented.

We have testified at previous hearings that many states need a full state budget cycle *prior* to allocation of federal funds to plan for additional positions. After state legislatures have approved hiring additional staff and the federal monies are appropriated, it takes another 12 to 18 months to hire staff and provide orientation, training and testing before a surveyor is deemed satisfactory to survey independently. This underscores the need for adequate planning and lead time for any new initiatives that will require additional staff. Otherwise, the initiatives will not be successful and the states will be doomed to failure.

This year, states were clearly told to prepare budgets that are based on actual need. We now understand, that in reviewing the FY 2001 budget requests, HCFA is using past performance data, including FY 1998 figures as the basis for decision-making. Although, this may be the most recent data available to HCFA, it clearly predates the NHI's and does not take into consideration the dramatic workload increases including changes to the revisit policy, complaint initiative, double G policy or the enhanced survey protocols. Budget allocations made on this basis will not satisfy current resource needs. Next year, we will be here again, testifying that there are not enough resources and that we are still not meeting federal time frames.

We are aware of the frustration that is created when you are informed that the budget has been increased but that the expected "bang for the buck" has not been achieved. The budget allocation process, the workload expectation and the difference in survey costs between states all need to be resolved. AHFSA is recommending that the efforts undertaken several years ago to evaluate budget issues, state barriers to fully expending the funds, and the cost differences be started again. AHFSA has members who will participate in this process through a reconstituted HCFA/AHFSA workgroup. Until this activity is completed there will be doubts and frustrations about this issue.

State Performance Measures

An important aspect of the NHI's was increased oversight of the states by HCFA to ensure that quality of care problems in nursing homes are both properly identified and addressed through strong enforcement. HCFA has proposed and has begun to implement several measures that it believes will adequately address this concern.

States want accountability, want to demonstrate effectiveness and are accustomed to scrutiny. Elected officials, governors' offices, auditors, local media and the public routinely hold individual states accountable. We understand however that this does not resolve the federal efforts and objectives for standardization and consistency among all states. However, before HCFA and the states can resolve this issue, we must all agree on defined quality outcome measures that clearly demonstrate effectiveness.

Current federal accountability measures focus on units of output and not outcome. Significance is attached to the number of deficiencies that are cited, or not cited, by the state surveyors, number of surveys conducted, and adherence to federal time frames. We agree that these are important measures and every state should certainly prepare and monitor its workload to comply with federal operating procedures. However, it should be understood that these are not measures of quality and do not indicate the overall ability of a state to maintain or improve quality of care or life in a nursing home.

In fact, quite the opposite is true. Some of the information collected by HCFA and used to evaluate state performance may be misleading to the public and create unnecessary lack of confidence. The mere fact that a state has completed all of its survey activity within the stated time frames demonstrates that the state has scheduled and monitored completion of the survey, but does not necessarily focus on the quality of the survey.

States can ensure that all surveys are completed by allocating hours for each survey based on the hours available. However, we need to be concerned that the standards and the threat of sanctions do not create a perverse incentive to just make sure all surveys are done and not worry about the adequacy of the survey. It is hard to predict how long a survey will take once you have entered the facility. We can use averages based on past performance, but this is primarily a planning tool and should not be used in a rigid fashion.

We are concerned that the performance standards established by HCFA may be premature and not representative of overall effectiveness of the state agency to achieve and maintain compliance effectively. In Maryland, last year, we restricted the number of revisits to two and required a period of at least 30 days between surveys. Many facilities were sanctioned, and some harshly. This year, with the exception of one of these facilities, all have maintained compliance. The State Performance Standards do not consider outcomes such as this.

OSCAR Data and State to State Variability

You are aware that the OSCAR data are not always timely and not always accurate. This is an issue that HCFA is working on but which has a two to three year timeline for completion. OSCAR redesign is critical to the ability to monitor survey efforts. The nation requires a state-of-the-art tracking system that can monitor survey and enforcement activity contemporaneously and make it available to consumers and to states.

Currently, some states have complained that they cannot access the system efficiently. Surveys cannot be entered into OSCAR until all components of the survey process are completed. This means that a

health component cannot be entered until the life safety or fire component is completed. Surveys are not entered until IDRs are completed. This means that information concerning a troubled facility may not be readily available.

OSCAR data entry is costly and labor intensive. With limited resources, data entry takes a back seat to actual surveys and complaint investigations. Thus, it is not surprising that comparisons among states yield uneven, outdated and inaccurate results.

Further, OSCAR does not collect all data that states need to effectively manage survey activities. It does not readily allow for the transport of data to state data management and information systems. It is not timely and is not routinely modified to meet changing needs. For example, staggered surveys were required by HCFA beginning in January 1999, but states were not notified that OSCAR was updated to capture this data until February of 2000.

Modifications to the OSCAR/ODIE system must be made quickly to ensure that information is more readily available, accurate and user-friendly.

In addition to variation among the states as a result of budget issues, OSCAR/ODIE problems, variation can also be attributed to the limitations of HCFA training. Modifications to HCFA policies and procedures are sometimes made after training sessions. Seats or slots at HCFA train-the-trainer sessions are often insufficient and the time allowed for state trainers to train survey staff between the HCFA sessions and the implementation date of an initiative is inadequate.

Uniform implementation of policies is yet another variable that affects consistency. This can only occur with healthy and timely communication between the HCFA central office, regional offices and the states. It must also include a timely feedback so that states can investigate and look for causes of national variances. To date, states are still not receiving timely and consistent feedback from Federal Observational (FOSS) and comparative surveys. States that have received feedback question the usefulness of the information, and, considering the intensity of resources and efforts, question the overall impact it will have to actually affect state performance. Other inconsistencies include the manner in which terminations are managed, citations of abuse deficiencies, restraint policy, and the ability to use non-nursing personnel to assist with meals

It is also critical to incorporate a formal and fair process for states to discuss and bring to resolution identified variances. Otherwise, discrepancies in state performance will continue -- in the FOSS and comparative surveys, OSCAR data and with the new state performance measures developed by HCFA.

We agree there are identifiable differences between states that will always affect our behavior and that will be evident in trend analyses. These must be acknowledged. State licensure and enforcement requirements vary based upon state statutes and regulations. Federal budget levels continue to vary, as do the state budgets. All of this affects our ability to address new initiatives while maintaining compliance with existing requirements. Medicaid rates, labor markets, even the character of state provider organizations impact the type and level of services and the type of survey program that is allowed to exist within the states. Labor contracts and state travel policies affect both the budget and the ability to implement initiatives such as staggered surveys. Measuring trends alone without consideration of other factors also implies a stagnant industry and economy, and this is simply not the case today especially in the health care industry.

We are aware of HCFA's acknowledgement of these problems and applaud the steps being planned to deal with these issues at the federal level through its Alliance for Consistency. We are appreciative of

HCFA's offer to the Association to participate in this important effort. Many states have undertaken similar reviews at the state level and we realize that this is a time consuming project. However, we do agree that there should be the expectation among residents, families and providers that the national system outlined in the laws and regulations for nursing home enforcement should be consistently applied across the country. We are participating with HCFA in a Consistency Clearinghouse to review regional office program letters in order to establish consistency in the directions provided to the survey agencies.

Recognizing the importance of consistency, AHFSA has initiated several efforts to promote consistency among the states. We have convened a workgroup to look at actual harm deficiencies, especially in the area of quality of resident life. Another is development of data management systems to meet state needs for quality assurance and sharing of information between the states. We have our State Best Practices Program -- now three years old -- where states share information on ways to carry out survey and enforcement responsibilities. We have established an Intranet site to facilitate communication and to share information.

Recommendations

In closing, there are many issues that we have not addressed. These include special focus facilities, use of the instant civil money penalty, and the very real difficulty that we are all facing with the labor shortage.

I would like to present the following recommendations to guide our collective, continuing efforts to implement the NHI's and, most importantly, to improve the quality of care for all nursing home residents.

Recommendations:

- Increase involvement and communication between HCFA and the states prior to implementation of new policies and procedures
- Establish a budget workgroup that includes State Agency representatives to jointly review issues prior to a new budget cycle
- Consider a two-year budget cycle to allow states to merge federal and state budget processes
- Expedite overhaul of the OSCAR/ODIE data entry system
- Continue efforts on cooperative relationship to look at consistency and state to state variances
- Review of alternative methods to make the survey process more effective
- Clearly identify the priorities to be achieved which must include a consideration for entities other than the nursing homes
- Consider complaint surveys to meet off-hour survey requirements
- Review State Performance Standards to include quality outcomes rather than or in addition to output measures
- Develop a national nurse aide abuse registry database. Consider a criminal background check requirement
- Support research on nursing home staffing to capitalize on the current momentum for evaluation and funding for staffing
- Support the development of advanced training paths and career ladders for direct care staff.
- Encourage creative use of CMP funds for the benefit of residents

Thank you for the opportunity to speak with you today. AHFSA and our state members continue to implement the NHI's to improve resident outcomes. We remain committed to ensuring provision of

quality care to our Nation's elderly and disabled populations and appreciate the efforts of the Special Committee on Aging to focus attention on quality of care and life to our nursing home residents and the effectiveness and the consistency of the survey process.