

Testimony of
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on
IMPROVING OVERSIGHT AND QUALITY OF NURSING HOME CARE

Chairman Grassley, Senator Breaux, distinguished Committee members, thank you for inviting me to discuss our efforts to improve oversight and quality of care for America's 1.6 million nursing home residents. I would also like to thank the General Accounting Office (GAO) for its continued involvement and evaluation, and for its recognition of our progress and commitment.

We have been aggressively working to improve protections for vulnerable nursing home residents since 1995, when the Clinton Administration began enforcing the toughest nursing home regulations ever. This and earlier GAO reports help to sharpen our focus in these efforts. We agree with the GAO that enhanced oversight of State surveyors is critical for improving the quality of care in our nation's 17,000 nursing homes. And we are already addressing many of the specific issues raised in this GAO report.

- We are working to increase consistency, cooperation, and communication among our regional offices.
- We continue to refine protocols for federal oversight of State surveyors.
- We have held training conferences and satellite broadcasts for federal surveyors.
- We are developing measurable and reportable performance standards for State survey agencies, including definitions of inadequate performance and a listing of sanctions and remedies available under current law, which we will complete within 90 days.
- And we will redirect the State Agency Quality Improvement Program to be a consistent national program directly tied to these measurable performance standards.

While we have much left to do, we are beginning to see evidence that our nursing home initiative is having an impact. The number of violations identified per survey increased from 4.8 in the year preceding the initiative to 5.5 in the year since it began. The number of violations with actual harm or immediate jeopardy to resident health and safety identified per survey increased from 0.65 to 0.73. And the number of facilities terminated for violation of health and safety standards increased from 39 to 45.

We have been greatly aided in our efforts to improve protections for nursing home residents by the assistance of this Committee, and particularly by your leadership, Chairman Grassley, in helping us secure needed funding. We know you appreciate the challenge of implementing the 30 distinct, often complicated, and interrelated provisions we are working to implement. The tasks require dozens of agencies and thousands of individuals across the country to literally and substantially change the way they conduct their business. We are committed to taking all these, and any additional, actions that will help build upon our efforts. By continuing to work with you, the GAO, States, advocates and providers, we will together put an end to the intolerable situations that have caused this most vulnerable population to needlessly suffer.

I must stress, however, our great concern about the adverse impact on nursing home residents that would result from budget proposals now under consideration. A \$15 million decrease from our current survey and certification budget would force us to cancel the expansion of all nursing home initiative activities planned for 2000. A \$4.6 million decrease in our administrative budget would further weaken our ability to conduct oversight and thwart efforts to ensure continued quality care for residents in nursing homes facing financial difficulties. A \$9.5 million decrease in the General Departmental Management account would eliminate all resources needed to handle increased litigation and appeals resulting from the

imposition of more nursing home sanctions. Additional across-the-board funding cuts would further reverse the progress we have made and endanger vulnerable nursing home residents.

BACKGROUND

Protecting nursing home residents is a priority for this Administration and our Agency. We are committed to working with States, which have the primary responsibility for conducting inspections and protecting resident safety. Through the Medicare and Medicaid programs, the federal government provides funding to the States to conduct on-site inspections of nursing homes participating in Medicare and Medicaid and to recommend sanctions against those homes that violate health and safety rules.

In 1995, the Clinton Administration began enforcing the nation's toughest-ever nursing home regulations. These regulations brought about measurable improvement, as documented in our 1998 Report to Congress. However, that report and investigations by the GAO made clear that more needed to be done. President Clinton therefore announced a major new initiative to increase protections for vulnerable nursing home residents and to crack down on problem providers.

NURSING HOME INITIATIVE PROGRESS

We have made substantial progress in implementing many facets of this initiative.

- We published new protocols for conducting nursing home surveys which specifically address areas where there have been significant problems, including hydration, nutrition, and pressure sores. These protocols are vital to guiding and training State surveyors and will assure a new level of consistency of surveying among the States.
- We provided training and guidance to States on the President's nursing home initiative, including enforcement, use of quality indicators in the survey process, survey tasks in the areas of medication review, pressure sores, dehydration, weight loss, and abuse prevention.
- We required States to evaluate all complaints alleging actual harm within 10 days. Last month we issued detailed guidance on how to evaluate and prioritize complaints. Key staff from each of our regional offices will be meeting with State survey agencies to discuss these guidelines and facilitate sharing of best practices in complaint management.
- We identified facilities in each State for more frequent inspection and intense monitoring, based on results of most recent annual inspections and any substantiated complaints during the previous two years. States have begun monitoring these facilities more frequently.
- We vigorously encouraged States to impose sanctions on facilities that do not comply with health and safety regulations.
- We urged States to impose especially close scrutiny and immediate sanctions for facilities that demonstrate "yo-yo" compliance by fixing problems temporarily, only to be cited again in subsequent surveys.
- We instructed States to stagger surveys and conduct a set amount on weekends, early mornings, and evenings.
- We required States to revisit facilities in person to confirm that violations have been corrected before lifting sanctions.
- We issued regulations that enable States to impose civil money penalties for each serious incident.
- We have been working with the Department of Justice to improve referral for potential prosecution of egregious cases in which residents have been harmed.
- And we are testing an abuse intervention campaign in 10 States, with posters and other printed messages in nursing homes to inform residents and families about the signs of abuse and how to report it.

We also are taking steps to protect residents in facilities that may be experiencing financial or other difficulties from any disruptions or dislocations. We have made clear that filing for Chapter 11 bankruptcy does not diminish a facility's responsibility to provide residents with high quality care and a good quality of life. We issued monitoring protocols designed to help State surveyors and ombudsmen uncover early warning signals that might indicate the possibility that a facility in financial difficulty will fail to continue providing quality care to residents. And we developed a management contingency plan spelling out responsibilities of State and federal governments so we can respond quickly and effectively if a facility's financial situation places resident health or safety at risk.

To improve consistency in how these efforts are implemented across the country, we have established a workgroup that includes key central and regional office staff. This workgroup is promoting clear and consistent communication among all involved staff. And it is specifically addressing areas where inconsistencies have been identified.

COMPARATIVE vs. OBSERVATIONAL SURVEYS

We agree with the GAO that comparative surveys, in which federal surveyors conduct a completely separate review and compare results to those of a State survey of a given facility, have an important role in our oversight efforts. Comparative surveys do find more deficiencies missed by State surveyors.

Observational surveys, on the other hand, in which federal surveyors accompany State surveys to review their performance, also have an important role. They enable us to directly evaluate State surveyors' work and assess how and why they may have failed to identify problems. Our protocol for oversight surveys provides a measurement tool to assure consistent assessment of a broad range of results and functions, including:

- surveyor skill at investigation, data analysis, decision making, professionalism, interviewing techniques, and general communication ability;
- whether surveyors appropriately determine the scope and severity of problems;
- whether surveyors properly documented problems;
- how promptly problems are reported to the facility being surveyed;
- how well States use informal dispute resolution;
- quality assurance review by surveyors' supervisors; and
- adherence to federal survey policies and protocols.

We believe that the most prudent approach at this time is one that includes both comparative and observational surveys. We are reviewing this issue to determine the appropriate balance between the two and the budget implications of any changes.

In the meantime, we are shortening the time between State surveys and comparative surveys. The law allows up to 60 days, but the current average now is 30 days. By the end of the year, we will direct our staff to initiate all comparative surveys within two to four weeks of State surveys. We also are directing Federal survey teams to focus comparative surveys on facilities that were found to be deficiency free on the State survey. (There are several reasons why we need to wait two weeks to start a comparative survey. For example, State surveyors have 10 days to notify a facility of any identified deficiencies, and these notifications are among the things evaluated in a comparative survey.)

We are working to provide State surveyors with faster feedback on findings from our observational surveys. In August, we directed all our regional offices to report to State survey agency directors at least once a month on survey process errors, omissions, and findings identified in observational surveys. And

we expect to complete development of a national standard reporting form, as well as standard time frames, for providing feedback to State surveyors by the end of this month.

We also are working to ensure that our surveyors interview some of the same residents interviewed by State surveyors. This is being done as we revise the "sampling" procedure for choosing which residents are included in the federal sample. We expect to implement this revised sampling procedure by the end of the year.

For observational surveys, we are working diligently to develop a better data system for reporting and tracking findings. We expect to complete it yet this month, and have scheduled training on its use for our staff in December. The current system was developed on an emergency basis as an interim system to meet minimum needs. The improved system will include powerful and easy-to-use query and report-generating functions.

We also are reviewing procedures and expanding the scope of our oversight surveys in an effort to be more consistent, effective, and constructive. As of August, our staff have been instructed to include several additional tasks, including off-site preparation and additional analyses for each survey. We have made clear to our surveyors that they can and should provide guidance to State surveyors during observational surveys. Over the past year, most of our surveyors have been observing State surveyors perform more than the minimum number of survey tasks that they are required to observe in order to improve the overall quality and comprehensiveness of oversight surveys. We have ongoing training underway to help our surveyors improve the quality of their oversight efforts. We are continuing to review procedures for selecting which State surveys to observe to look for ways to ensure an appropriate and standard selection process nationwide. And we will take other appropriate steps to improve national consistency as quickly as possible.

STATE ACCOUNTABILITY

We agree with the GAO's assessment of the parameters of our ability to ensure State survey agency accountability. Given these limits, the most critical factor for assuring State accountability is to establish definitive and measurable standards for the quality of surveys.

We have been working with State agencies to establish definitive, measurable, and reportable performance standards. We expect to complete them by the end of this year and to then use them as the basis for holding States accountable. For example, these standards will address:

- the timeliness of surveys;
- the timeliness of adherence to enforcement procedures;
- expenditure of funds; and
- adherence to survey policies and protocols.

There will be minimum criteria for each performance standard. We will provide standardized instructions for our regional office staff on how to evaluate whether a State is meeting these criteria. And we will include definitions of inadequate performance and a listing of sanctions and remedies available under current law.

Once these standards are in place and States fully understand how they are being held accountable, we will redirect our State Agency Quality Improvement Program so that it is consistent nationwide and tied directly to these measurable and reportable performance standards. We will work with States that fail to meet the standards, using the appropriate remedy or sanction to help them improve when necessary. We

also will evaluate the effectiveness of currently available sanctions, and explore alternative options for rewarding or sanctioning States based on their performance according to these measurable and reportable performance standards.

CONCLUSION

We continue to make solid progress in improving the quality of care and oversight in America's nursing homes. We agree that consistency in this effort is essential, and we are committed to consistency among our regional offices, clear guidance, better data systems, and measurable performance standards nationwide. This latest GAO report will once again help us to target and refine our efforts. I thank you again for holding this hearing, and I am happy to answer your questions.