

**RESIDENTS AT RISK: THE STRAINED
NURSING HOME INSPECTION SYSTEM AND
THE NEED TO IMPROVE OVERSIGHT,
TRANSPARENCY, AND ACCOUNTABILITY**

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Thursday, May 18, 2023

U.S. SENATE
SPECIAL COMMITTEE ON AGING
Washington, DC.

The Committee met, pursuant to notice, at 9:32 a.m., Room 366, Dirksen Senate Office Building, Hon. Robert P. Casey, Jr., Chairman of the Committee, presiding.

Present: Senator Casey, Gillibrand, Blumenthal, Warren, Kelly, Braun, Rick Scott, Vance, and Ricketts.

**OPENING STATEMENT OF SENATOR
ROBERT P. CASEY, JR., CHAIRMAN**

The CHAIRMAN. Good morning, everybody. The Senate Special Committee on Aging will come to order.

Today, the Special Committee on Aging will examine troubling problems, and that is an understatement, in the Nation's nursing home inspection system and receive testimony about the urgent need to invest in oversight to protect nursing home residents, health and safety.

Last year, I directed my staff and the Committee to investigate the capacity of State inspection agencies to enforce health and safety standards in the Nation's 15,000 federally certified nursing homes.

Today, I am releasing the findings of that investigation in a report entitled, I will hold it up just for illustrative purposes "Uninspected and Neglected", and the subheading is, "nursing home inspection agencies are severely understaffed, putting residents at risk". This is based upon 2,000 pages of documents and data provided by every State in the Nation.

The report paints a picture of a system in crisis. Underfunded and understaffed State agencies have fallen behind on the basic duties that they are charged with executing on. For example, conducting annual nursing home inspections and responding to resident complaints in a timely manner, as nursing home residents and their families should have a right to expect.

As we will hear from our witnesses, the result is that nursing home residents are at risk because of this problem. Just imagine the horror of an 84-year-old woman whose leg was broken at a

nursing home in Pennsylvania, but a full week passed before she was taken to a hospital where she later died.

The county coroner cited negligence as a contributing factor in this woman's preventable death that occurred one day before her 85th birthday. Often such stories aren't the subject of public attention due to inadequate oversight. Federal data shows that one out of nine, one out of every nine nursing homes in the Nation, has not received a comprehensive annual inspection in two years.

Infrequent annual inspections have led more residents and families to file complaints, which States are failing to investigate in a timely manner. Time is of the essence when State inspectors need evidence to prove serious deficiencies like physical abuse, sexual assault, or inadequate medical care in circumstances like we have all read about.

My fear is that the trail is going very cold for too many residents before nursing home inspectors can arrive at the scene. The findings of this investigation should serve as a wakeup call to Congress, both the House and the Senate.

The investigation found that 32 States survey—State survey agencies have vacancy rates of 20 percent or more, 20 percent or more among nursing home inspectors, and nine of those agencies have vacancy rates of 50 percent or higher.

States directly linked staffing shortages to inspection delays and said flat lined Federal funding over the last decade is making these problems much worse. Simply put, Federal dollars are not keeping up with the growing workloads and the need for States to offer comprehensive, I am sorry, the need to offer competitive salaries to attract workers.

Today, the Federal Government is spending tens of billions of dollars on nursing homes, but Congress appropriates less than \$0.80 per resident per day on nursing home oversight. Not even enough to buy a cup of coffee. For too long, Congress has failed to invest in strategies to protect the health and safety of the Nation's 1.1 million nursing home residents.

If we as Americans claim that ours is the greatest country in the world, we must insist upon, and invest in, and ensure that we have the best long term care system in the world. That should be our goal, and we are not fulfilling that goal right now, and I will now turn to Ranking Member Braun for his opening remarks.

**OPENING STATEMENT OF SENATOR
MIKE BRAUN, RANKING MEMBER**

Senator BRAUN. Thank you, Mr. Chairman. For the first time in U.S. history, older adults are expected to outnumber children by 2034. As our population ages, we are facing growing health care workforce shortages. I have dealt with that before I came to the Senate in a different arena. Indiana has 4,300 job openings for nurses and is projected to need 5,000 more—5,000 more by 2031.

Nursing homes have not been spared from these shortages, leading to issues with patient care and overall quality. My home State has worked to address this issue. A law championed by Ivy Tech Community College and the Indiana Hospital Association removed limits on nursing school enrollment.

Ivy Tech partnered with nursing homes to offer paid apprenticeships. Last month, I went to a rural high school, and they have a program for students to earn a CNA. We need to do a lot more of that in high school where the education is the best value we get, and before they get outside of the system, we need to have programs there, career and technical education that leads you, into places that may not need more time and more money.

I have also introduced a Prioritizing Evidence for Workforce Development Act, which prioritizes funding for evidence-based workforce programs. The Federal Government should make it easier for people who are looking to work not more complicated, especially in health care. Instead, excessive Federal rules and regulations pose barriers.

We got to have regulation, some guardrails, but not to where they become oppressive, and I have witnessed that in running a business over the years, and being aligned with the State Government that I think finds a little better balance.

President Biden is expected to propose an overtime rule, for instance. In my own company, that was 35,000. At one point I think it was adjusted up a little bit, but taking it up to 80,000, that will dislocate so many jobs and the people that would want something at a lower level, but yet you got kind of a crazy Federal recommendation there, and that is what goes above and beyond.

This would make nursing home workers subject to overtime regulations, reducing staff flexibility, and quality of care. As an employer, I dealt with the Administration, the Obama Administration's overtime rule myself, and know the obstacles it created in my own business. As we work to buildup health care workforce, we must do more to improve transparency and accountability.

In 2021, we spent \$181 billion on nursing home care. However, nursing home cost data is not readily available. Transparency is lacking in so many places in commerce throughout our country, and a lot of it has to do with Government regulations or at least their being for it. More transparency is never bad.

I sent a letter to the National Center for Health Statistics asking to improve an important long term care survey that runs every two years. Currently, the survey does not ask about nursing home costs.

I have asked to add new questions to that to bring that out into the forefront. Federal Government is required to conduct annual surveys of nursing homes, which is vital. It just needs to be done, I think, more thoroughly and with full transparency. CMS incorporates survey data and developing five-star quality ratings which are displayed on the website, Care Compare. I am developing a Bill that would make Care Compare more accessible. I would like to recognize the majority's report. I think they are for that as well. Over the past two years, nursing home inspection rates have been unacceptable.

COVID policies contributed to some of these delays. Nevertheless, we have got to do better, so much of health care comes at that stage in life. I agree with some of the recommendations in the majority report. We need to improve Care Compare and expand the health care workforce. I look forward to working with the chairman to accomplish these goals.

The CHAIRMAN. Thank you, Ranking Member Braun. Now, we will turn to our witness introductions. I want to start with Erin Bliss. Ms. Bliss is the Assistant Inspector General for Evaluation and Inspections at the Department of Health and Human Services Office of Inspector General. She has been with the OIG's office since 2000.

Our second witness is Shelly Williamson. Shelly Williamson is the President of the Board of Directors for the Association of Health Facility Survey Agencies, which represents State survey agencies across the country. She is also the Administrator for the Section for Long Term Care Regulation with the Missouri Department of Health and Senior Services.

Our third witness is Leah McMahon. Leah McMahon is the Director of the Colorado State Long Term Care Ombudsman Program. Ombudsmen work to resolve problems related to the health, safety, welfare, and rights of individuals in long term care facilities. Now, I will turn to Ranking Member Braun to introduce our fourth witness.

Senator BRAUN. Dr. Susan Lu is the Gerald Lyles, rising star, Professor of Management at Purdue University's Mitch Daniels School of Business. She is also affiliated with the Regenstrief Center for Health Care Engineering at Purdue University.

Her research centers on health care operations and analytics, with an emphasis on nursing home operations.

She received her Ph.D in managerial economics and strategy from the Kellogg School of Management at Northwestern. Dr. Lu's work has been widely recognized by a number of popular media outlets, including Nature News, Vox, Freakonomics, and Barron's, and we are delighted to have you here today.

The CHAIRMAN. Thank you, Ranking Member Braun. Now we will turn to Ms. Bliss for her opening remarks.

**STATEMENT OF ERIN BLISS, ASSISTANT INSPECTOR GENERAL
FOR EVALUATION AND INSPECTIONS, DEPARTMENT OF
HEALTH AND HUMAN SERVICES, OFFICE OF
INSPECTOR GENERAL, WASHINGTON, D.C.**

Ms. BLISS. Good morning, Chair Casey, Ranking Member Braun. Thank you for the opportunity to discuss the strains to the nursing home inspection system and the impacts on nursing home residents.

Decades of OIG work has found that alarming numbers of nursing home residents are subject to low quality care or unsafe conditions. The bottom line is this, people in nursing homes need a robust and effective inspection system to protect their health and safety. In some cases, their lives depend on it.

OIG has identified lapses in that system that put residents at risk. State survey agencies' responsibilities are vast and consequential. They are on the front lines, conducting inspection surveys for more than 15,000 nursing homes. State agencies assess nursing home quality and safety, investigate complaints, identify deficiencies, and verify that nursing homes correct those deficiencies.

However, State agencies too often fall short in fulfilling those responsibilities. A predominant issue is that many States fail to conduct timely surveys. This is a decades old problem worsened by the COVID-19 pandemic. States are required to do comprehensive sur-

veys for each nursing home at least every 15 months, but nationally, about a quarter of nursing homes are overdue for these vital surveys. States must also do surveys to investigate the most serious complaints about nursing homes within a certain number of days, but many States have repeatedly missed those deadlines to. Backlogs in routine and complaint surveys can have real consequences for residents.

On average, States cite almost nine deficiencies in health standards per survey, so delays in surveys mean delays in identifying and fixing risks to resident and even actual resident harm. This is very concerning, as serious complaints commonly involve allegations of poor care. In one example, a complaint alleged that a resident with known high blood sugar did not have glucose testing strips available and then died.

Other serious complaints involve allegations of patient abuse and neglect, poor conditions at the facility, and infringements of residents' rights, but States face some real challenges. States have pointed to staffing shortages as a driving cause for survey delays. Similar to the chairman's report findings, we have heard going back for years that States struggle to attract and retain surveyors who are typically nurses.

For example, in 2018, Colorado cited its vacancy rate of 32 percent as a cause for its late surveys. States have pointed to long hours and not being able to offer high enough salaries to compete for nurses. State agencies have also faced increasing numbers of complaints requiring onsite investigations.

The persistence of State agency performance problems raises questions about the Centers for Medicare and Medicaid Services, known as CMS, which oversees State survey agencies. How effectively is CMS able to drive improvements? They have relied primarily on corrective action plans and training to try to improve State agency performance, but these efforts often did not resolve the problems.

CMS's processes for validating survey results reported on the public Care Compare website are also inadequate. Last month, OIG reported on inaccuracies in State survey results showing on Care Compare for an estimated two-thirds of nursing homes. In conclusion, an effective survey process and transparency into its results is crucial for protecting nursing home residents.

OIG is committed to driving improvements in this safety system, as well as other aspects of nursing home performance, resident well-being, and oversight. We have recommended ways for CMS to strengthen nursing home oversight and are engaging with them to drive positive change.

Thank you for the Committee's support of OIG's work, and the resources that we need to protect people in nursing homes and other HHS programs. Thank you and I will welcome your questions.

The CHAIRMAN. Thank you, Ms. Bliss. Ms. Williamson, you may begin your statement.

**STATEMENT OF SHELLY WILLIAMSON, PRESIDENT OF THE
BOARD OF DIRECTORS FOR THE ASSOCIATION OF
HEALTH FACILITY SURVEY AGENCIES (AHFSA),
ADMINISTRATOR FOR THE SECTION FOR LONG TERM
CARE REGULATION WITH THE MISSOURI DEPARTMENT
OF HEALTH AND SENIOR SERVICES,
JEFFERSON CITY, MISSOURI**

Ms. WILLIAMSON. Good morning, Chairman Casey, Ranking Member Braun. I am here today representing the Association of Health Facilities Survey Agencies, or AHFSA, the organization that represents survey agencies across the country. I am also the Administrator of the Section for Long Term Care Regulation in Missouri, which oversees 511 certified nursing homes in the State. Like many survey agency managers and directors, I have spent most of my working life dedicated to protecting our country's most vulnerable citizens.

For me, my grandparents were a driving force, from the day I decided to pursue a graduate degree in social gerontology to becoming a nursing home surveyor, a manager, and to my role today. Four of my grandparents have relied on nursing home care. This work is personal to me. I understand firsthand why the work of a surveyor is so important to residents and families.

Protecting health and safety is the cornerstone of survey agency work. Our work is important and rewarding, and our work is hard. Our surveyors are the face of our work. They talk to families upset with care, to facilities concerned with the citations they receive, and they see the joy on resident and family faces when our work creates real, meaningful change. An example of this dedication is a recent survey at a nursing home in Missouri.

Our surveyor started their day early one morning and identified deficiencies that could have likely resulted in serious injury or death, if we had not intervened, what Federal regulations call immediate jeopardy.

The surveyors remained in the facility until midnight that night, ensuring they had an acceptable plan from the facility to remove the immediate jeopardy. Surveyors were back onsite to continue the survey the very next morning. Our work is not 9:00 a.m. to 5:00 p.m., Monday through Friday.

Surveyors spend many nights, weekends, and holidays away from their families and loved ones. Across the Nation, this is the type of protection survey agencies provide every single day. With workload increases, including a 102 percent increase in the number of immediate jeopardy complaints since 2015, and increases in the severity of deficiency cited, survey agencies are reacting to alleged noncompliance rather than being proactive by conducting recertification surveys.

Vacancies in nearly all survey agencies are having an impact on the ability to respond timely to complaints and to complete recertification surveys. Nearly 70 percent of survey agencies have surveyor vacancy rates over 10 percent, with many reporting closer to 20 or 30 percent. Registered nurse salaries in over 80 percent of survey agencies are not competitive with the health care market.

An increase in the Federal budget is necessary for survey agencies to rebalance, to improve retention of existing surveyors, and to recruit new surveyors, and with a growing number of Americans

expected to need nursing home care in the coming years, it is imperative to increase the Federal budget now and to sustain that increase.

Nursing home residents are our parents and grandparents, aunts and uncles, brothers and sisters, friends and loved ones. They are the generation that molded many of us today. They deserve our respect, our compassion, our dedication, and our protection.

Thank you for the opportunity to provide this testimony and for your support in ensuring nursing home residents receive the care they deserve. I welcome any questions you may have.

The CHAIRMAN. Thank you, Ms. Williamson, and thanks for sharing your own story about starting as a surveyor. Ms. McMahon.

**STATEMENT OF LEAH McMAHON, M.A., DIRECTOR,
COLORADO STATE LONG-TERM CARE OMBUDSMAN
PROGRAM, DENVER, COLORADO**

Ms. McMAHON. Good morning, Chairman Casey. Ranking Member Braun. I am the Colorado State Long Term Care Ombudsman and thank you for the opportunity to appear before you today. Last year, my office received a call from a family member who reported concerns about their loved one living in a nursing home.

The Ombudsman met with the resident and the resident reported regularly waiting hours to receive assistance after requesting help from the nursing home staff. The Ombudsman observed the resident crying while they reported that the nursing home staff yelled at the resident often, refused to let them out of their room, and physically shoved their wheelchair while forcing them back into their room and then slamming the door shut.

The resident also reported an instance of a staff person who pulled their hair, took away their phone, physically shook them, and left the resident in the bathroom after assisting them to the toilet. The resident requested the Ombudsman to file a complaint to the State survey agency.

A year later, the Ombudsman received a call from the surveyors stating they were investigating the complaint. The Ombudsman informed the surveyor that the resident moved out due to abuse and neglect. It was too late. The family later informed the Ombudsman the resident suffered from night terrors due to post-traumatic stress disorder.

This is unconscionable and one example of many my office has received over the past couple of years. This person lives with a disability and suffered abuse at the most vulnerable time in their life, with the greatest need at this time in their life. Imagine if this was your family member, your sibling, or you. It takes courage for residents and family members to file a complaint.

The fear and real threat of retaliation by nursing home staff is a concern on the minds of residents. Therefore, when a resident or family member finds that courage to file a complaint, it is critical that there is timely followup. The nursing homes have their equity firms, their trade associations, their lobbyists, their attorneys. The residents, the lucky ones, have family, and the rest of them have us.

As the Colorado State Long Term Care Ombudsman, I represent the interests of approximately 45,000 vulnerable adults and people

with disabilities who reside in licensed assisted living homes and licensed nursing homes in Colorado. My role is to coordinate and oversee the Ombudsman Program and provide systemic advocacy for residents.

The nationwide Long Term Care Ombudsman Program authorized by the Older Americans Act is an independent health oversight agency that advocates for the interests of long-term care residents.

We are in nursing homes at residents' bedsides every day, listening to the concerns of residents and their families, and advocating on their behalf. I would like to highlight to the Committee my concern about the impact of the staffing shortages among long-term care surveyors.

The State agency is responsible for licensing, surveying, and regulatory oversight of long-term care facilities. In Colorado, nursing home surveyors have incredibly challenging jobs, which are made more demanding by agency staffing shortages. I have great appreciation and respect for surveyors and the survey process. I know from speaking with the Colorado State Survey Agency, there are difficulties in maintaining adequate survey staffing levels.

The State agency needs to offer competitive wages to hire surveyors, and training new surveyors is time intensive and can take up to a year. I see firsthand the impact these shortages have upon nursing home residents and their families. Residents and family members have complained to my office about waiting long periods of time for a response after filing a complaint, and at times have not received a response.

Additionally, the Ombudsman Program has filed complaints with similar experiences. In March 2021, a local ombudsman was in a long-term memory care nursing home and observed several instances of abuse and neglect. This included a staff member yelling at a frail elderly resident, and residents laying in their own urine and feces.

This is a clear violation of residents' rights. The ombudsman called the State agency's complaint line, and they did not report back for one year after the complaint was filed. This delay can have a negative impact to the health, safety, not for just one resident, but all residents.

I know surveyors are working as hard as they can to be responsive to resident complaints and concerns, but it appears there is just not enough survey staff. These shortages place residents at a significant risk of harm and even death. The survey agency is the only entity with the authority to enforce standards that facilities meet regarding the quality of care and services residents receive.

Thus, it is important for CMS and State survey agencies to have the necessary staff and resources to conduct annual surveys and to respond to complaints in a timely manner. The Colorado Office of the State Long Term Care Ombudsman Program recommends increasing funds to assist State survey agencies to hire and retain nursing home surveyors to meet the workload.

Offer competitive salaries for required nursing surveyor positions, which could be the most difficult positions to fill and maintain within the regulatory agency. Create dedicated recruitment and training positions to hire and train new surveyors.

I appreciate the opportunity to appear before the Committee and for your time and attention regarding vulnerable adults who live in long term care nursing homes. I look forward to answering your questions.

The CHAIRMAN. Ms. McMahon, thanks very much. Dr. Lu, you may begin.

**STATEMENT OF SUSAN FENG LU, PH.D., M.A., GERALD LYLES
RISING STAR PROFESSOR OF MANAGEMENT, MITCHELL
E. DANIELS, JR. SCHOOL OF BUSINESS, PURDUE
UNIVERSITY, WEST LAFAYETTE, INDIANA**

Dr. LU. Thank you, Chairman Casey and Ranking Member Braun, for granting me this invaluable opportunity to testify on the regulations and operations of nursing homes. My name is Susan Lu from Purdue University. As the only child in my family, I have always pondered, how can I provide the best care to my aging parents?

In my quest, I recorded the—an older saying from my cultural background that emphasizes treating the elderly with the same respect and care as if they were my own parents, so hence this motivated me to focus my dissertation on nursing homes, dedicating nearly two decades of research of this industry, and over time, helping the elderly to receive high quality health care became the very mission of my life.

My expertise lies in the fields of economics and operations management, where I was trained to maximize social welfare, minimize cost, and optimize resource allocation by understanding the impact of policies and of technological advancements on nursing home behavior. I am pleased to provide my expertise in three key areas, quality disclosure, staffing, and ownership.

First, publicly disclosing quality information of individual nursing homes is crucial for the elderly to find a home where they would love to stay. The Center for Medicare and Medicaid Services have made commendable efforts in making quality information transparent, and that these actions have proven to be effective. Going forward, we aim to increase public awareness of those disclosed quality information, and to find an efficient way of communicating those valuable data to consumers, helping them to make informed decisions.

Second, the ongoing challenge of staffing shortages significantly affect nursing homes' operations. To effectively tackle the shortage, it is important to explore innovative ideas and have access to comprehensive data on individual nurses.

Third, there has been increasing concern about the potential downsides of ownership change, including the acquisition by private equity firms. However, rigorous research in this area is limited. It is critical for us to recognize the potential risks associated with ownership changes and implement targeted oversight to protect the well-being of nursing home residents.

Today, I stand before you as an expert in nursing homes, ready to offer insights into potential strategies that could incentivize nursing homes to improve the quality of care they provided. I would like to extend my sincere appreciation for your leadership and unwavering commitment to address the needs of older adults.

In conclusion, I express my utmost gratitude for the opportunity to be here, and I hope that we can work together to create an environment where nursing homes not only provide excellent care, but also serve as compassionate and reliable sources of support for our aging population. Thank you.

The CHAIRMAN. Dr. Lu, thanks very much. I think our panel set a record for time used in their opening statements. Well below the time you had, and I appreciate your efficiency. I would start my questions for—I have a question—I will go right down the panel. The Committee's investigation found that severely understaffed survey agencies are falling behind on nursing home inspections and complaint investigations.

Ombudsman provided examples of serious complaints involving abuse, neglect, and poor health care going months or longer without being investigated. I will start with Erin Bliss and go down the panel, and this is kind of a basic yes or no question. Are you concerned that understaffed survey agencies and delayed inspections negatively affect both health and safety of nursing home residents?

Ms. BLISS. Yes, very concerned.

Ms. WILLIAMSON. Yes, absolutely.

Ms. MCMAHON. I agree. Absolutely.

The CHAIRMAN. Doctor—thanks very much. I will next turn to Ms. McMahon. Your testimony highlighted examples of nursing home residents suffering when complaints went unanswered by strained survey agency staff, and our report shows that ombudsmen across the country similarly identified how residents, the care of residents, I should say, suffered as State surveyors were unable to respond to complaints in a timely way.

How do nursing home residents benefit from improved survey agency staffing, as well as more regular annual inspections, and third, faster response to complaints?

Ms. MCMAHON. More oversight. More regulatory eyes on the conditions of the nursing home and the residents' care.

The CHAIRMAN. What do you think is the best way to effectuate that?

Ms. MCMAHON. To make sure that the survey agencies have enough surveyors to do the work. It is a heavy workload. It is long, exhausting days, and they need help so that they have competent surveyors who are trained and skilled to do this exhaustive work.

The CHAIRMAN. Thanks very much. Ms. Williamson, I wanted to turn to you. According to the report that we have released this morning, more than 30 States expressed concern to the Committee about Federal funding levels for nursing home oversight.

Three Presidential Administrations, the Obama Administration, Trump Administration, and Biden Administration have proposed increasing funding for these survey agencies in their budgets.

However, Congress has not kept—has not had enough of a focus on this funding, effectively freezing much of the funding for the last decade. How would more funding help survey agencies better protect both health and safety of nursing home residents?

Ms. WILLIAMSON. Thank you for that question, Chairman Casey. An increase in funding would allow survey agencies to recruit new staff, retain existing surveyors to be able to respond to both complaints that we receive, and to conduct recertification surveys.

State agencies are finding themselves now utilizing many of their resources to respond to complaints that we received.

Overall, since 2015, complaints have increased by 45 percent, and as I highlighted in my testimony earlier, the most serious complaints have increased by 102 percent, so we are spending a lot of resources responding to complaints. The recertification surveys are very, very important.

Those are a comprehensive look at all of the regulatory requirements, and that often creates or results in identified issues before they become so severe that they harm residents, so more funding would allow us to both respond to complaints and to conduct those recertification surveys in a timely manner.

The CHAIRMAN. I wanted to highlight that number that you made a reference to in both your opening and then just a moment ago, the 102 percent increase in immediate jeopardy complaint, and that is just since 2015, correct?

Ms. WILLIAMSON. That is correct. Yes.

The CHAIRMAN. That is very alarming, and in order to keep the streak going—of going within our term, I will turn now to Ranking Member Braun.

Senator BRAUN. Thank you, Mr. Chairman. I want to start with Dr. Lu, and it has to do with the overtime rule.

I would like Ms. Bliss to weigh in on it as well, so that is a tricky way, in terms of compensation for anyone, yet it is generally an agreement between an employer and employee that seems to be the best working model. Under the Obama Administration, it was \$23,000, and simply, if you had any type of arrangement that was over, or not at least there, you had to take in overtime into consideration.

Their idea was taking it up closer to \$50,000. During the Trump Administration, it actually moved to \$35,568. Biden Administration, and a lot of the stuff coming out of the Labor Department, is actually proposing that it is \$80,000, so across almost all disciplines that would disrupt tons of relationships between employers and employees where they both mutually agree that's okay on whatever that amount is, as long as it meets that minimum threshold.

What do you think would happen in the nursing home business if for those that are on salary, all of a sudden you had to take that up to \$80,000 from \$35,000, how many jobs would be lost? I think that would cut both ways.

Employers may not be able to afford it. Employees may not even demand it, so give me your take on how it would apply to nursing homes.

Dr. LU. Thank you, Senator Braun. Regarding the payment on the overtime issue, actually, it is beyond my study—the scope of my study, but I do have a paper to investigate the impact of mandatory overtime loss on nursing home quality, so initially I actually really liked this policy. Hence we want to do—evaluate this policy.

However, to our surprise, we find it that this well-intentioned policy leads to quality decline in nursing homes, and it took us more than half a year to figure out why, and eventually we find out that such type of overtime regulation leads to undesirable staffing changes, and a nursing home substitute the full-time nurse's

overtime hours with those hours from temporary nurses, from outsiders.

Those contract workers actually are not very familiar with the nursing homes they are going to work for. They even don't know the names of the elderly, so hence it caused the problem, so that is the research finding in my work. Yes, thank you.

Senator BRAUN. Thank you. Ms. Bliss.

Ms. BLISS. Thank you. Unlike Dr. Lu, we have not directly studied the impacts of overtime policies, so I don't have a basis to comment on that directly, but what I can say is that understaffing in nursing homes is a dire concern.

We have seen some nursing homes not even meeting the barest minimum of requirements of having eight hours of registered nurse staffing in a day, and that is extremely alarming, so certainly, any policies that support getting sufficient numbers of staff, sufficient quality of staff into nursing homes.

We have heard some concerns from nursing homes that Dr. Lu referred to regarding challenges around contracted nursing and will have forthcoming reports speaking to those.

Senator BRAUN. I think that this is probably something you need to all have on your radar because every particular component of our economy has some degree of it, and remember that if it is too low, you are not going to get people there. If you take it too high, you are going to shed jobs, so as tough as it is to get people to work in the arena, your concern with, just be aware of that.

Ms. Bliss, I will stick with you on this. When it comes to training, I am a big advocate that we are wasting time in high school to direct parents and kids into career and technical education avenues. Indiana, 135,000 jobs, double what it was pre-COVID. Need no further training.

They need better life skills. What is the best way to get more people interested in working at a nursing home? Does it have to have something postsecondary, or can we do better? It may be doing some things when they are crafting what they want to do after they get out of high school.

Ms. BLISS. Thank you for that question. The pipeline of nurses and other clinical support staff going into the field to be able to even staff these jobs is a huge issue that comes up, so there are questions of low pay, long hours, longevity, but there is also questions of, are there even enough people to hire if we can offer those things.

The pipeline is really important to keep building. We have heard from nursing homes that challenges involve both staffing of nurses, registered nurses themselves, as well as nursing aides, which may require, you know, lower degrees of—

Senator BRAUN. What I was asking, though—that is a symptom of the system. Would it be better, and do you think there is adequate attention to the place, where as a CEO in a play and a company, where I never had any issue hiring four year degree slots to fill—in fact, we have gotten rid of most of those requirements—the place I found most lacking would be life skills taught in high school that would apply to a broad array of jobs.

Apprenticeships, part time jobs, summer jobs, even where you might need a little additional training—so I think we are out of

time here. We may come back to that, and I can expound on that in the next—okay.

You want to look at it from that point of view. What about using those years where you are wondering, are you going to go AP, are going to go into something that maybe needs a little bit of training? When I went to school, you had all those skills being built and we have pretty well gotten away from that, so do you want to come back and offer any more on it?

Ms. BLISS. Sure. Certainly, starting early, you know, reaching out to people in high school and even before—you know, or in that early education, seems like it could be very important to building that pipeline, attracting them to go into the health professions, nursing and otherwise, providing opportunities for those skills.

It is not something that we at the HHS, OIG have directly studied, but I think, you know, all options need to be on the table to deal with the workforce crisis.

Senator BRAUN. I can tell you that in a State like Indiana with one of the lowest unemployment rates in the country, biggest manufacturing State per capita, how we are dealing with this is not necessarily from here.

It is through our States and getting the industry, these sectors that are struggling with people coming into whatever they need, they are starting in middle school, trying to have stuff in high school so that you are not so dependent postsecondary on how you get employees. Thank you.

The CHAIRMAN. Thank you, Senator Braun. As many of you know, you have heard me say this before, that with Thursday mornings is a busy morning around here, lots of competing hearings and that command the time of Senators.

I just wanted to mention Senators have been here and then some who have been here and then returned. Senator Blumenthal was here. Senator Warren was here and is back. Senator Kelly, Senator Rick Scott, and Senator Vance, and I think in terms of just going back and forth, I will turn to Senator Warren, and then Senator Vance.

Senator WARREN. Thank you very much, Mr. Chairman, and thank you both for holding this hearing today. It is a very important hearing. Nursing homes are where the most vulnerable members of our communities live.

It is our duty to ensure that they are safe, but some of these facilities are in horrendous condition due to the greed of their corporate owners, and it is families that end up paying the price. Private equity firms have targeted nursing homes for decades, and now new investment vehicles, real estate investment trusts, or REITs, are in the game, too, snapping up nursing homes as lucrative investments.

For these profiteers, their interest in nursing homes has less to do with providing care to those in need and a lot more to do with money. Now, research shows that private equity and REIT owned nursing homes are associated with higher Medicare costs, increased emergency department visits and hospitalizations, fewer registered nurses, and 40 percent higher COVID mortality rates.

Regulators need to be able to hold nursing homes accountable for patient safety, but corporate owners use all kinds of tricks to avoid

identity. Ms. Bliss, it is the job of the Inspector General's Office to investigate waste, fraud, and abuse in nursing homes to make sure that residents are safe and taxpayer money is being used wisely.

How easy or hard is it for your investigators to identify the owner of a private equity or REIT owned nursing home?

Ms. BLISS. Thank you for that important question. It can be very difficult to identify nursing homeowners and management, and really uncover who are the responsible parties to be held accountable when something goes wrong. That is something that comes up in our oversight and our enforcement cases.

Senator WARREN. Okay, so hard to enforce the law if you can't figure out who is on the other end of this, so the way this gets so tangled up is that private equity and REIT owners set up these complex legal arrangements to avoid transparency and to try to evade responsibility when something goes wrong.

Also, by the way, to make money. One trick is that when the company that owns the nursing home also has a stake in another company that sells supplies and services to the nursing home.

Now, Miss Bliss, the Inspector General's Office is looking into this issue, which is known in Government language's as related party payments. If a nursing homeowner is making money on both sides of a transaction like this, do you have concerns about whether or not taxpayer money is being used wisely?

Ms. BLISS. We do. We have concerns about the use of taxpayer funds, and we have concerns about the impact on the residents in those nursing homes. As you noted, we do have ongoing audit work that is looking into these arrangements and payments.

They are often called related party transactions, where that nursing home is making payments to contractors with whom it may have some financial stake, and we are looking at whether those payments may be inappropriately inflated and potentially diverting funds away from patient care.

Senator WARREN. Okay, so it is really important that taxpayer funds be protected. I appreciate your work on that, but of course, the main thing, too, is we want to make sure that patients have a safe, healthy place to live.

Ms. McMahan, you are a State Ombudsman, which means you are on the front lines when it comes to identifying and preventing problems in nursing homes, so can you tell us what trends you have noticed when a for profit company, such as a private equity firm or a REIT, purchases a nursing home?

Ms. McMAHON. Thank you, Senator Warren. I have observed firsthand over the years, and typically what we see is staffing cuts, in particular nursing staff, which are critical to the health, safety, and welfare of residents.

The Ombudsman Program will see an increase in complaints from families who report the inadequacies of care and their concerns when they visit their loved ones in nursing homes. Residents who are bedridden and develop open wounds because staff are not changing protective undergarments.

They are languishing. They are not receiving their medications timely or as prescribed. They are not getting basic needs such as food or water. Due to these types of concerns, residents become de-

hydrated, they lose weight, endure painful bedsores, oftentimes the size of your hand that can happen.

This can lead to hospitalization and in worst cases, death. We see a fast deterioration and systematic stripping down of the operations of the facility to the bare bones to make a profit at the expense of residents' lives. Residents go from thriving to just surviving.

Senator WARREN. That is a terrible list, and I just want to say to both of you, to all of you, I appreciate the work you are doing in trying to keep nursing home residents safe.

The Affordable Care Act requires facilities to disclose ownership and related party information, but the nursing home industry lobbied furiously to make sure that these provisions were never implemented.

In February, the Biden Administration took a step to change that. I urge CMS to finalize its proposed rule on ownership disclosure to ensure that consumers can make informed choices and so that regulators have the information they need to hold these owners accountable and to keep patients safe. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Warren. Senator Vance.

Senator VANCE. Thank you, Mr. Chairman. Thanks to you and the ranking member for holding this Committee hearing. Elizabeth, or Senator Warren said it is a very important hearing, and any of us who have known or love someone in a nursing home knows that while the care that they get when it is good can be quite exceptional, that when things do suffer, it really, really affects the quality of life for those who are sometimes languishing in our nursing homes.

To your point, Ms. McMahon, surviving instead of thriving, and that is not what we should want for any of our elderly folks, so I would—sort of two lines of questioning I would direct at Ms. Williamson here. One, just on, my understanding here is that staffing shortages play a major role in what is driving the lack of inspections, and probably driving a lot of other issues in our nursing homes as well.

We sort of understand the basic qualifications here, so when we talk about the people doing these inspections, what qualifications do they need to have before applying to a job with your particular agency?

Ms. WILLIAMSON. Thanks for that question, Senator Vance, so there are several different disciplines of surveyors, but the primary thing I would like to talk about is that when we do a recertification survey, and many of our complaint investigations are recertification surveys, and those require a registered nurse.

Every survey team has to have a registered nurse as part of that team, and then if the complaints are about quality of care, where a nursing assessment needs to be conducted, a registered nurse has to conduct those investigations as well. We do utilize other disciplines. Part of our survey process is also a life safety code survey or a fire safety survey.

We have to have surveyors who are trained and have that background in order to assess compliance with those regulations. Many other disciplines are social workers or physical therapists, and

other disciplines outside of that registered nurse, but the primary struggle States are having is in the registered nurse.

Senator VANCE. I see, and how big are the survey teams normally? You mention that each one needs to have at least one registered nurse. I mean, are these teams of ten, or five, or less or more?

Ms. WILLIAMSON. The team size depends on several factors. How large the home is, how many residents are in care at the home. The numbers of complaints that we may have to investigate during that survey, and then, you know, how much travel we have to do, how many resources we have to take. Normally a team of three or four over a work week is average for a recertification survey.

Senator VANCE. Got it, so moving on from there, I just want to ask about maybe possible COVID hangover effect. I am right that a lot of the backlog here is because we effectively stopped doing inspections for a few months during the COVID pandemic, is that correct?

Ms. WILLIAMSON. That is certainly a contributing factor.

Senator VANCE. Okay. You seeing any evidence of sort of a potential COVID hangover effect? What I mean, of course, is that, you know, we just declared an end to the emergency, I think far too late, but at least the declaration happened a week or two ago.

Is there any sense that the people who would be doing the inspections were maybe a little exhausted, a little overwhelmed, certainly by the pandemic, but also even well after the pandemic, had it reached its emergency phase end, or affected by a lot of the requirements and a lot of the regulations that existed on caretakers and inspectors related to the pandemic rules?

Ms. WILLIAMSON. While the pause certainly was a contributing factor, we have also seen a significant increase in number of complaints that have been reported to us. I mentioned earlier the number of immediate jeopardy complaints since 2015 has increased by 102 percent.

Those are the complaints where residents and allegations of residents are being harmed, severely harmed, so investigating those complaints day after day does lead to exhaustion and burn out, and stress on surveyors.

Senator VANCE. Sure. I suspect, just to close here, that the caregivers themselves are probably exhausted, and as you lose the best caregivers, it probably increases the complaints you are going to get because the underlying quality of care deteriorates.

The final point I would make here, and I appreciate, Ms. Williamson, your answers, and I appreciate the four of you for being here with us is, look, COVID was obviously a very terrible pandemic. I don't mean to make light of it or make light of the fact that it killed a lot of people.

I also think that we have to balance the public health response with the incredible stresses that we place on a lot of our public health and hospital and nursing home caregivers, because a consistent theme that I get is that COVID was miserable, but also all of the surrounding things that were placed on us because of COVID, or at least allegedly because of COVID, were also miserable.

I think we lost a lot of good people in our health care industry, so we are going to have a pandemic, God forbid, but we will eventually, hopefully, it is many, many years from now. I hope we learn the lessons and don't overstress our health care system again, because I think you all, and certainly other parts of our health care system, are dealing with the consequences. Thank you.

Senator BRAUN. Senator Ricketts.

Senator RICKETTS. Great. Thank you very much. I want to thank our witnesses for being here today.

Obviously, we have got a lot of people across the country that are in skilled nursing facilities, and we have got to be able to make sure that we protect them. Everybody probably has a family member that is going to be impacted by this, if not currently, at some point in the future.

In my home State of Nebraska, I know that one of the issues we have had has been with regard to staffing and making sure that our nursing facilities are staffed appropriately.

There is a lot of different issues, especially in rural areas, that can impact that. As Governor, we actually provided a 15 percent increase in funding for nursing facilities to be able to, which was like the most significant increase they had in probably a decade, to be able to help fight that.

We also put a tax credit in place for caregiving expenses designed to improve the financial and workplace security of family caregivers, but this continues to be an issue we have had, and as we have skilled nursing facilities and assisted living facilities close, one of the issues they relate to is the staffing.

Dr. Lu, you know, could you—I know you have got a lot of data and research that you have done with regard to staffing on this. What sorts of conclusions and recommendations can you give us around effectively be proactively combating nursing shortage?

What are some of the things that States can do, or are there models that you would suggest, or is somebody who is really getting it right that we could look at and say, here is a good model, something we should be replicating?

Dr. LU. Thank you for reading this staffing question to me. I firmly believe that we needed to rely on technology advancement, so we have the staffing shortage issue. I know, I understand to say raising salary, increasing the working environment, they are good ideas, but they have other consequences.

I am aware of two types of technology advancements that may help, according to my research. The first one is the adoption of healthcare information technology, so according to the research, we find that in a 12 shift—in a 12-hour shift, the hours are not spent at the bedside, patient at bedside—only two and half hours. The remaining huge amount of hours are wasted in walking on the hallway and something else, but health care information technology could help to improve the utilization of nurse hours.

The second the technology I am aware is kind of nurse sharing platform, which is something like Uber car sharing, so our team now is working with those type of platforms. They try to match nurses with those healthcare facilities and improve the efficiency of using the idle time of the nurses.

I hope that in the near future, we could rely on the technology to help to solve the staffing shortage.

Senator RICKETTS. Are there any regulations or red tape that the Federal Government puts in place that would enable CMS to dedicate more attention and resources to oversight of nursing homes?

Dr. LU. Of course, more resources are better. I, as a person training in economics, I care more about how to optimize the allocation of resources. In other words, how we can use the resources efficiently and effectively. That is a more important issue in my mind.

Senator RICKETTS. Yes. I have got just about a minute left, but I am going to ask every one of you just if you have got something that—to talk about this. One of the things I am concerned, it gets back to what Senator Vance was talking about with the pandemic, is one of the things we saw in Nebraska was having the residents be isolated.

That, you know, there was a lot during COVID wearing masks. You couldn't see people's faces. They were—they used to have, you know, meals together, and then that got discouraged because we didn't want to—and then I am not sure we have gone back to getting people back together again. I am really concerned about the loneliness of our residents of skilled nursing facilities.

I mean, the other thing, Ms. McMahan you were talking about are obviously very important, too, but here is one I think is maybe not getting enough attention, which is our residents in skilled nursing facilities getting enough social interaction.

It is not just about taking care of their physical well-being, but also, you know, their mental well-being, and, you know, having a life where they actually have interaction with other people. Just—these are just real quickly—Ms. Bliss, we are going to start with you.

Just give me a comment real quick on what do you think about what I am talking about here in regards the loneliness and personal interaction, and what we can do, and just how we might address it.

Ms. BLISS. Sure. Yes. Wellbeing of residents in all dimensions, including social and mental health, is critically important. I think that is a challenge worth focusing on.

Ms. WILLIAMSON. Thank you for the question. You know, during the pandemic, one of the things that I didn't say in my response to Senator Vance was our staff went into nursing homes with outbreaks going on to do focused infection control surveys.

We did see the isolation that was there and just the struggles that the residents and their families, because they couldn't visit, were experiencing. I think things are slowly getting back to what our new normal is.

There are still some areas where people need to be mindful, but communal dining and activities and those things are starting. Visitation is much more open now. Those are all very good things that are happening. Did the isolation and loneliness take a toll? Yes, it did.

Senator RICKETTS. Are there things that we can be doing to encourage the facilities getting back to more normal, to encourage that—those activities, the meals, all that?

Ms. WILLIAMSON. I think the ending of the public health emergency and some of the restrictions that were in place being relaxed is a good first step, and I think more groups meeting and talking about the importance of those social and interpersonal relationships.

Yes, care is very important, the physical care, but those other things are just as important. I think the more we can highlight that, and talk about that, and encourage that, that will only improve.

Senator RICKETTS. Okay.

Ms. MCMAHON. Thank you, Senator Ricketts. Residents suffered helplessness and loneliness to the highest degree during the pandemic, and folks were locked in their rooms all alone, and it is time for us to get back to having social opportunities for residents, in particular around meals.

That is where they come together every day to see their friends and to visit and talk over a meal, and I think one of the things that we continually need to address are the nursing home staffing shortages so that we can get back to those activities and facilitating that for the residents. The Ombudsman have seen firsthand that the activities are still lacking and are not quite what they should be. Thank you.

Senator RICKETTS. Dr. Lu, do you have any comment?

Dr. LU. I do not have comment on this issue. Thank you.

Senator RICKETTS. Thank you.

Senator BRAUN. Thank you, Senator Ricketts. We are going to have some other Senators roll in here, I think, soon. I will fill the gap. Got a question for Ms. Williamson. I ran a business for 37 years in a place like Indiana. Senator Ricketts was in charge of a State.

There is this constant dialog about where do we craft the best solutions for issues like this, and who pays for them? Since I have been here, this place is going the wrong direction in terms of running its own kind of finances in a way that would be sustainable, for all the places that look to it.

You know, we are running \$2 trillion deficits currently, up from \$1 trillion, and it has been on both sides of the aisle that have not managed the Federal Government in a way that puts so much in peril. With these issues, and I am pretty certain on staff shortages, that is probably something better addressed by States because they are going to know what they can do. It doesn't necessarily mean they would be the only ones, but where do we craft the solutions best in your mind, and how do we pay for them best over the long run? And should we be looking at a difference in, you know where the relative emphasis has come from to date?

That is a kind of a broad question, but I think it is really relevant because we are dealing with that same question on so many issues in the country.

Ms. WILLIAMSON. Thank you for that question, and yes, nursing home residents are our most vulnerable citizens, so I think they deserve adequate protection, and that is what survey agencies do. Survey agencies do receive a combination of Federal and State funds, so it is a combination, so I think it is imperative that both—

Senator BRAUN. Which form of Government, though—from here down to the grassroots are States and not all of them necessarily get it right. Where do you think the relative emphasis ought to be shifted to if we are going to actually solve these problems and pay for them in a way that is going to be sustainable?

Ms. WILLIAMSON. I think it is a combination. Federal has to allocate resources and States have to allocate resources.

Senator BRAUN. Do you think it should move one direction or the other, or just stay the way it is?

Ms. WILLIAMSON. I think it is both, because when survey agencies go do an inspection, it is for certification purposes, Medicare and Medicaid certification purposes, and it is also for State licensure purposes, so there is that share there. States recently have increased their budgets to fund survey or salary increases because of the shortage, so that is falling on States now because we don't have that increase in Federal funds.

Senator BRAUN. Dr. Lu, would you want to weigh in?

Dr. LU. Yes. First of all, I like the idea to increase the annual income for surveyors because they provided the fundamental information for quality disclosure. However, I think there are lots of ways to increase their income, in addition to raising pace, so here I proposed to one potential idea from my own perspective.

I think we can collaborate with those colleges with nursing education programs and give the money to them and let them to hire some State surveyors to train or mentor those undergraduate students or graduate students as a part time surveyor or provide exponential learning on those survey courses, and the students can be allocated with those tasks which do not require specified, or say, high skills. For example, they can check whether the floor is cleaned, whether nurses wash their hands between care. These are the dimensions in those data, surveyor programs, so by doing so, students could get a greater learning experience and open the new door to them. Let them get interested in the health care system.

Maybe potential surveyors will be there in the future, and also, surveyors can get more pay by teaching. They can earn the extra money by helping those students doing mentoring services, and those education programs also can benefit from it, at least so they can increase the quality of their program by providing such kind of exponential learning, and our Federal Government and a State Government could also benefit from it. It can help to solve the severe shortage issue and also, I would say, efficiently allocate the resources so each party can be better off. That is my idea. Thank you.

Senator BRAUN. Thank you.

The CHAIRMAN. Ranking Member Braun, thank you for filling in as I was running between committees. Appreciate that work and thank our witnesses. We will now turn to Senator Blumenthal.

Senator BLUMENTHAL. Thank you. Thank you so much, Mr. Chairman, and thank you to the Ranking Member, Senator Braun, as well, and thank you for all of the input that you are providing today. I am very, very grateful to the Chairman and Ranking Member, and also the staff of this Committee, for the work that it is doing on this really critically important topic.

With all of the issues that are facing us today that are in the headlines, sometimes the most important work doesn't get the attention that it deserves, and this work is among our most important.

Uncovering the need and the consequences of oversight and scrutiny in this area is very important, and I look forward to reading the investigative report that uncovers staffing shortages, high turnover rates, and flat Federal funding for the last decade that has resulted in insufficient oversight of the Nation's nursing homes and threatened the health and safety of their residents.

Yesterday, the Permanent subcommittee, the subcommittee on—Permanent Subcommittee on Investigations, held a hearing on Medicare Advantage, another area of health care where there is a need for greater scrutiny, and I think that some of the facts that have been uncovered by this investigation will be relevant to the work done there, and again, the Office of Inspector General, Ms. Bliss, has been very, very instrumental in that area as well. I would like to ask Ms. McMahan, beyond health care, beyond Care Compare, what do you advise families searching for a nursing home to do to ensure that they have all the relevant information they need to make an informed decision on what nursing home is best for them?

Ms. MCMAHON. Thank you, Senator. I would say call my office. We certainly can direct folks to other resources as to where—as to what they should look into. We oftentimes will tell folks to go to the survey agency and look at the most recent survey, and we will talk about the things that, as the Ombudsman Program, the things that they can ask of specific facilities as they are looking to provide the best quality of care and life for their loved one.

Senator BLUMENTHAL. Let me ask you, just for you and maybe for the other witnesses, when families regret what has happened to a loved one, what do they wish they knew before choosing a facility? In other words, you know, regret is probably one of the most important emotions that we have with respect to loved ones when it comes to health care. What do they wish they had known?

Ms. MCMAHON. Thank you, Senator, and we are talking about transparency. We are talking about potentially wanting to know staffing levels, how many nurses are in the building at any given time, who is the medical director that is overseeing and coordinating the overall care? Maybe any instances of abuse and neglect that have happened prior to. I think those are really important things to know.

Senator BLUMENTHAL. Ms. Williamson—and thank you for that answer. Ms. Williamson, your testimony touched on the issue of contractors, and I wonder if you can tell us, first of all, maybe elaborate a little bit on which States do well with contractors, which do not, and what lessons State, and particularly State officials ought to learn from the experience you have had.

Ms. WILLIAMSON. Thanks for that question. I did touch on contractors because more and more States are relying on them to complete, particularly recertification surveys and some focused infection control surveys.

Each state's contracts are a little bit different, and the work that they have contractors do can vary. I can speak on behalf of Mis-

souri. We do have contracts for contract surveys. Primarily for us, those are the recertification surveys, the health care portion of the recertification survey.

We have used them not as extensively as other States. They have done about 15 or so surveys for Missouri. We have had pretty good luck with the surveys that they have done. We have ongoing communication with the contractors when they are doing the survey, particularly if they are finding issues that are serious, just to make sure that they are thoroughly investigated, that the State agency agrees with the citations that they are issuing. We also do a review on the back end of their survey to make sure that they are applying the regulatory requirements consistently with what we would do.

Each state's experience is a little different. I can't speak to other States and their experience. I know the report highlights some different experiences. I don't have firsthand knowledge of that. I can just speak from Missouri, but I do know more and more States are relying on contract surveyors just because of the staffing shortages.

Senator BLUMENTHAL. I think more than half the States now rely on private contractors to do this kind of oversight and certification.

Ms. WILLIAMSON. That is correct.

Senator BLUMENTHAL. Connecticut actually is considering hiring a contractor because we have been unable to fill our vacant positions that were created during the pandemic, but it is a critical job, and it is kind of going to be garbage in, garbage out if we don't kind of oversee the quality of the contractors who do the certification—we don't certify the certifiers, so to speak.

That is a vastly over simplistic way of looking at it, but I think it is a very important area, and thanks for your input. Thanks, Mr. Chairman, for letting me run over my time a little bit.

The CHAIRMAN. Don't worry about it. Senator Blumenthal, thanks very much, and we will turn next to Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman and Ranking Member. This is an excellent hearing and one very needed for my State of New York. The Centers for Medicare and Medicaid Services require every nursing home to designate a medical director as responsible for resident care coordination of medical care.

CMS does not have a compliance mechanism for this legal requirement, however, and nursing homes are not required to submit the identities of their medical directors to CMS. Ms. McMahon, if nursing homes were required to report their medical directors to CMS and State survey agencies, would this be a helpful tool for ombudsmen to hold nursing homes accountable and effectively advocate for residents?

Ms. MCMAHON. Thank you, Senator Gillibrand. I do believe that requiring nursing homes to report their medical directors to CMS and State survey agencies could increase quality of care in nursing homes.

As you noted, the regulations place great emphasis on the role of the medical director and requiring them to implement resident care policies and coordinate care. Often, medical directors are absent from the nursing home for long periods of time. It is rare that you will see a medical director physically in a nursing home.

This is sometimes due to the medical director overseeing several nursing homes in the chain. By increasing accountability for medical directors, it could ensure they are fulfilling their critical obligations under the regulations, and when that doesn't happen, ombudsmen have another tool to take to the survey agency as a concern, and again, this ties back to increasing the surveyors for the State Survey Agency.

Senator GILLIBRAND. Well, it doesn't sound right, though, that a medical director would have to oversee eight facilities. Don't you think they should have to limit how many facilities they have under their care?

Ms. MCMAHON. I absolutely agree with you.

Senator GILLIBRAND. What limit would you put on it?

Ms. MCMAHON. I think it would be hard to pick a number because you have to take into consideration how many residents are in a specific facility in each building—

Senator GILLIBRAND. Maybe no more than a hundred residents for a medical director. Like, would you do it by that basis?

Ms. MCMAHON. I think that is a good way to approach it.

Senator GILLIBRAND. Well, we—you know, to the extent any of you have a recommendation on that, please submit it by letter to the Committee, if you have some thought about it, because I think some individual responsible for eight facilities obviously is not doing a good job. It is impossible to have that level of oversight if you are spread that thin.

I would like your recommendations there, and are there any ways that medical directors can increase transparency and accountability within nursing homes? Off to anyone. Go ahead, Dr. McMahon—or Ms. McMahan.

Ms. MCMAHON. Yes. Thank you, Senator Gillibrand. In my experience, again, this is a rare situation where residents even know the medical director who the—of the nursing home, and further what the role is of the medical director that they play actually in the nursing home.

By increasing transparency, residents will be able to interact better with the people who are responsible for implementing the policies and care. Increasing the participation of the medical directors in the facility operations would add additional safeguards and protections for nursing home residents.

Senator GILLIBRAND. Thank you. In 2021, New York Attorney General reported that the number of nursing home residents who died from COVID-19 was undercounted by as much as 50 percent compared to data from the New York Department of Health. The investigations reveal that facilities that had lower pre-pandemic staffing ratings had higher COVID-19 fatality rates.

Ms. Williamson, the New York State Attorney General report revealed a lack of compliance with infection protocols led to increased risk of harm for nursing home residents. How could better compliance with standard surveys improve outcomes in nursing homes? How can increased staffing standards improve compliance with surveys?

Ms. WILLIAMSON. Thanks for that question, Senator. As far as increased compliance and infection control, infection control is one of

the most frequently cited deficiencies that survey agencies cite, pre-COVID and since COVID.

That regulatory requirement has a lot of different elements to it, but it is one of the most frequently cited deficiencies. During the pandemic, our staff focused on conducting focused infection control surveys to assess compliance with infection control standards, and we continue those today.

I think increasing our ability to do recertification surveys will catch some of those lapses in infection control before they harm residents, so that is very important to us, and one of the things that we are struggling doing with the increased volume in the surveyor vacancies that we have. That is a very important aspect of our work, that we hope to be able to do more of with an increase in resources to do so.

Senator GILLIBRAND. Thank you very much. Thank you, Mr. Chairman. I have a question for the record based on investments at home and community-based services, I will submit.

The CHAIRMAN. Senator Gillibrand, thanks very much. I just have one more question, and then I think we will close, and I appreciate our witnesses' testimony today.

Ms. Bliss, I wanted to go back to kind of the basic function of the office you are a part of—the independent watchdog function, which is so vital in Government as it is and any other endeavor. That work has never been more important or under—frankly, under more pressure in recent years.

Last week, I met with the Nation's Inspectors General to discuss how oversight can improve accessibility for people with disabilities under Federal information and services. Today, you have highlighted how your office's critical work on nursing homes is so essential for us to examine, and it is an issue I know that Inspector General Grimm considers a top priority.

How can Congress best help your efforts on a number of fronts, but in particular to help improve nursing home care, as well as to tackle other pressing issues?

Ms. BLISS. I really appreciate that question, and in fact, improving nursing home care and safety is the number one priority for Inspector General Grimm. We are investing heavily into this area, but our resources are really strained.

We have about \$0.02 for every \$100 spent by the Department of Health and Human Services, so we have a vast and incredibly complex mission that is—incredibly important to the people that the programs serve.

We make difficult decisions every day about what oversight work we can and can't get to, what enforcement cases we can and can't investigate, and the President's budget request for Fiscal Year 2024 includes an increase of \$52 million, specifically for our Medicare and Medicaid oversight.

Certainly an increase like that would expand our ability to better protect nursing home residents, and to expand our work looking at care for residents of nursing homes with disabilities, and people with disabilities outside of nursing homes and across other HHS programs.

The CHAIRMAN. Well, thanks very much, and in the interest of time, we will move to our close. I just have a closing statement,

then I will turn to ranking member Braun. 37 years ago this week, the Aging Committee held a hearing to examine the State of nursing home oversight, which was chaired by a Pennsylvania Senator, John Haynes, who was then the chair and a leader on this issue.

At that hearing in May 1986, the Committee heard about the critical need to adequately fund nursing home inspection agencies and how not doing so would have, "grave consequences" for quality care. We heard similar warnings today, and these warnings must not be ignored.

Here is just four steps the Committee should work on going forward, and I would argue not just this Committee, but multiple committees in both houses of Congress. First is, of course, funding. Congress must prioritize the Nation's 1.1 million nursing home residents by investing in oversight, as I will say it again, the last three Presidential Administrations have proposed. Second is transparency.

The investigation makes clear that CMS needs to track and report survey agency staffing, given that staffing is a leading indicator of a state's performance. Third, protecting taxpayers. States, CMS, and independent watchdogs need to closely examine the use of contract inspectors and make sure that proper guardrails are in place, and finally, fourth, workforce.

The investigation shows that expanding the health care workforce will help health care providers deliver better care and ensure that States conduct better oversight. The Aging Committee's oversight in the 1980's paved the way for landmark nursing home reforms that President Reagan signed into law.

Today's hearing and the Committee's investigation provide another opportunity to find common ground to make sure nursing home residents are kept safe and receive the care that they and their families deserve and have a right to expect. I would like to thank the witnesses for their thoughtful and expert testimony today.

You have helped us to diagnose the problem and to set forth those problems, as well as solutions that we will examine going forward. I will now turn to Ranking Member Braun for his closing remarks.

Senator BRAUN. Thank you, Mr. Chairman, and again, we have had a good discussion. You can't legislate through this Committee, but a lot of discussions happen here that then do get legislated through other committees.

I think it is clear, from what I have heard, we need to improve transparency and accountability. I look forward to working with Chairman Casey to do this. Both of our officers have had a knack for, I think, finding common sense solutions and putting them into law. I stressed earlier, don't make things worse by Federal rules and regulations. Overtime rule was one.

We had a discussion on it. I can tell you that in almost all other arenas, you have got to be careful there because it went from just \$27,000, which was too low during the Obama Administration, they wanted to change it. It went to a level where it was an uproar in terms of the number of jobs that would have been lost or places just couldn't probably afford to do it, and now the current Administration is talking about going up nearly to \$80,000, and it would

be great, I guess, if you could afford to do it, but it would completely disrupt employer, employee relations across the country. How we sort that out remains to be seen. On other extreme Federal overreach, we have had to weigh in as a freshman Senate office.

When we do, it was generally on an issue that made sense because something was fixed on account of it. We had a lot of discussion earlier too. Do these solutions get crafted here in a place that has not evidently ever taken finance 101? Many places depend on it, and we increasingly borrow more and more money to support the programs that so many people look to. It is not a good long term business plan.

Something has got to change, and I think until we actually start doing budgets and doing things that would give more confidence to the American public that we are going to craft solutions and pay for them sustainably, maybe look to the rest of the Government marketplace, which would be States that actually have to live within the regimen of not borrowing from future generations, and have an equal responsibility and might be in better place to actually affect them and do it in a sustainably long run basis.

The one thing I think we can agree on is this is a big issue. I am going to be here as a partner with Chairman Casey to see what we can do, and again, thank you all for weighing in today. Much appreciated.

The CHAIRMAN. Thank you, Ranking Member Braun. I wanted to note for the record the scale of a report like this, as you can imagine, takes many, many months of work. Peter Gartrell right behind me, over my left shoulder, and his team put untold numbers of hours into this report. It gets to page 89, the footnotes, Peter goes over 440, something like that, so it is a pretty big report.

We had a stack of documents here which I won't lift up to show you, but it requires a maximum effort by our staff, and we are grateful for that, and grateful that Ranking Member Braun and his team are here with us today to talk about this.

I want to once again reiterate our gratitude to each of the witnesses for bringing not just your testimony and the answers to questions, but in many of your—in each of your cases, a lifelong, or more significant period of your life's commitment to these important issues. Nothing could be more important. No work could be more important than making sure that we are providing the best care to seniors.

If any Senators have additional questions for the witnesses or statements to be added to the record, the hearing record will be kept open for seven days until next Thursday, May 25th. Thank you all for participating today. We are adjourned.

[Whereupon, at 11:04 a.m., the hearing was adjourned.]

APPENDIX

Prepared Witness Statements



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

**Testimony Before the
United States Senate Special Committee on Aging**

***Residents at Risk: The Strained Nursing Home Inspection
System and the Need to Improve Oversight***

Testimony of
Erin Bliss
Assistant Inspector General
Office of Evaluation and Inspections
Office of Inspector General
Department of Health and Human Services

May 18, 2023

9:30 a.m.

366 Dirksen Senate Office Building

Good morning, Chair Casey, Ranking Member Braun, and distinguished Members of the Senate Special Committee on Aging. I am Erin Bliss, Assistant Inspector General for Evaluation and Inspections at the Department of Health and Human Services (HHS), Office of Inspector General (OIG). Thank you for inviting me to testify today regarding strains on the nursing home inspection system and the need to improve oversight to better protect nursing home residents.

I appreciate this opportunity to discuss one of the most consequential issues in health care today: ensuring safe, quality care for people in the Nation's nursing homes. Many nursing homes provide excellent care. But through decades of OIG work, we have found that people in nursing homes are too often subjected to poor quality care and unsafe conditions. Improving nursing home care for those who need it is Inspector General Grimm's top priority.

My testimony focuses on the roles and performance of State Survey Agencies (State Agencies) in overseeing more than 15,000 nursing homes nationally. While the responsibility for providing high-quality, safe care lies first and foremost with the nursing homes themselves, State Agencies provide critical, frontline oversight of nursing homes. State Agencies are the eyes and ears to conditions in nursing homes that millions of people and their families experience, and are the only Government entities regularly entering nursing homes to assess their operations.

I will provide brief context on the vital roles of State Agencies in overseeing nursing homes and then focus on concerns OIG has raised about State Agency performance and Centers for Medicare & Medicaid Services (CMS) oversight of State Agencies, challenges State Agencies face in fulfilling their responsibilities, and OIG's recommendations for improvements.

KEY TAKEAWAYS

- **State Agencies have not consistently fulfilled their responsibilities for overseeing the quality and safety of nursing home care, which puts residents at risk.**
- **State Agencies point to key challenges—particularly staffing shortages—that limit their ability to meet their oversight responsibilities.**
- **CMS has struggled to improve performance by State Agencies that have repeatedly fallen short.**
- **Sustained commitment and efforts by CMS, State Agencies, and others are critical to ensuring nursing home quality and safety for millions of Americans.**

STATE AGENCIES ARE ON THE FRONT LINES FOR PROTECTING NURSING HOME RESIDENTS FROM SUBSTANDARD CARE AND UNSAFE CONDITIONS

State Agencies' responsibilities for overseeing nursing homes are vast, touching millions of lives and involving billions of dollars. Federal and State expenditures to nursing homes through Medicare and Medicaid totaled \$94 billion in 2022 (\$56 billion under Medicaid and \$38 billion under Medicare).¹ According to CMS data in July 2022, approximately 1.2 million people resided in more than 15,000 certified nursing homes.²

State Agencies have specific responsibilities aimed at ensuring that nursing homes meet Federal standards for quality and safety.

Conducting Standard Surveys. CMS requires State Agencies to conduct onsite "standard surveys" (i.e., inspections) of nursing homes on average every 12 months, with no facility going more than 15 months without a standard survey. These surveys are comprehensive assessments of nursing homes' compliance with Federal health and safety standards set by CMS.³

Assessing and Responding to Complaints. State Agencies receive, track, and respond to complaints about nursing homes. They assess incoming complaints and assign severity levels based on the degree of harm or potential harm associated with an alleged problem. State Agencies must investigate the most serious complaints on site within 3 business days (for the highest level known as "immediate jeopardy") or in 15 to 18 business days (for the next highest level, known as "high priority"). These investigations are also called "complaint surveys." State Long-Term Care Ombudsmen, who advocate for nursing home residents and their families and do not have oversight responsibilities, can also receive complaints about nursing homes and can work to help resolve these complaints. With a resident's consent, an ombudsman may refer a complaint to a State Agency for investigation.

Citing and Following Up on Deficiencies. When a State Agency finds (e.g., through a standard survey or a complaint survey) that a nursing home has failed to meet one or more quality or

¹ These figures are based on an OIG analysis of CMS claims data for calendar year 2022; accessed May 3, 2023. Amounts include payments to nursing homes and exclude payments to other providers (such as physicians) for services to nursing home residents.

² Kaiser Family Foundation (KFF), KFF analysis of CMS Care Compare data, Total Number of Residents in Certified Nursing Facilities, July 2022, accessed at [Total Number of Residents in Certified Nursing Facilities | KFF](#) on May 14, 2023.

³ In response to the COVID-19 pandemic, CMS temporarily suspended annual standard surveys in March 2020 and introduced a new, focused infection control survey. On June 1, 2020, CMS directed States to conduct focused infection control surveys for all nursing homes and, at a State's discretion, to continue surveys for the most serious complaints. On August 17, 2020, CMS further directed States to conduct standard surveys as soon as they had the appropriate resources to do so. (See CMS, [Suspension of Survey Activities](#), Ref: QSO-20-12-All, March 4, 2020; CMS, [Prioritization of Survey Activities](#), Ref: QSO-20-20-All, March 20, 2020; CMS, [Revised COVID-19 Survey Activities, CARES Act Funding, Enhanced Enforcement for Infection Control Deficiencies, and Quality Improvement Activities in Nursing Homes](#), Ref: QSO-20-31-All (rescinded as of March 30, 2023); CMS, [Enforcement Cases Held During Prioritization Period and Revised Survey Prioritization](#), Ref: QSO-20-35-All, August 17, 2020).

safety standards, the State cites the nursing home with applicable deficiencies and rates the severity of the deficiencies. The State Agency then obtains and reviews plans of correction from the nursing home and must verify that the nursing home corrects its deficiencies (for all but the least severe categories). CMS provides timeframes for State Agencies to cite and follow up on deficiencies.⁴

CMS provides funding to and oversight of State Agencies.

State Agency oversight of nursing homes is jointly funded by CMS and the States. According to HHS, CMS’s survey and certification budget to support State Agency operations has remained relatively flat between fiscal years (FYs) 2015 and 2023 at roughly \$400 million annually.⁵ Congress appropriated about \$100 million in supplemental funds to cover costs for COVID-19-related survey and certification activities through the Coronavirus Aid, Relief, and Economic Security (CARES) Act.⁶ The HHS FY 2024 budget requests \$566 million for survey and certification, and cites continuing problems with poor, substandard care leading to preventable harm for nursing home residents and increases in complaints about nursing homes requiring surveys.⁷

CMS oversees State Agency performance of responsibilities including conducting surveys, handling complaints, and citing and following up on deficiencies. CMS uses the State Performance Standards System to evaluate whether State Agencies are meeting obligations and to identify areas for improvement.⁸ CMS considers a State’s performance to be “inadequate”

⁴ This process varies by the scope and severity of the deficiency. For most deficiencies (not including immediate jeopardy), State Agencies have 10 working days to send a nursing home a statement of deficiencies. A nursing home then has 10 calendar days from receiving the statement of deficiencies from a State Agency to submit plans of correction. Generally, State Agencies have 60 days from the date of a survey to revisit a nursing home to verify compliance.

⁵ See HHS, “FY 2024 Budget in Brief,” pp. 115-16, accessed at <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf> on May 3, 2023, and HHS, “CMS FY 2024 Justification of Estimates for Appropriations Committees,” pp. 69-73, accessed at <https://www.cms.gov/files/document/cms-fy-2024-congressional-justification-estimates-appropriations-committees.pdf-0> on May 3, 2023.

⁶ CARES Act, P.L. No. 116-136, Division B, Emergency Appropriations for Coronavirus Health Response and Agency Operations, Title VIII (March 27, 2020).

⁷ HHS, “FY 2024 Budget in Brief,” pp. 115-16, accessed at <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf> on May 3, 2023.

⁸ 42 CFR § 488.320(a); CMS State Operations Manual (SOM), Pub. No. 100-07, Ch. 8—Standards and Certification (Rev. 1, 05-21-04); Accessed at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107c08.pdf> on May 14, 2023.

when the State does not meet a specified performance threshold.⁹ When CMS determines that State performance is inadequate, it may impose one or more remedies or sanctions on the State.¹⁰

Longstanding, persistent problems in nursing homes make State Agency oversight crucial for the safety and well-being of residents.

The importance of State Agencies' roles in identifying and correcting poor care by nursing homes cannot be overstated in light of the longstanding and persistent problems that affect resident health and safety. Although many nursing homes provide excellent care and are diligent in protecting their residents, an alarming number of nursing home residents are subject to low-quality care and unsafe conditions.

Decades of OIG oversight and enforcement have revealed persistent, entrenched problems in nursing homes ranging from preventable harm to residents to failed emergency preparedness, understaffing, and cases of abuse and neglect, among others. The COVID-19 pandemic and its devastating impact on nursing home residents brought to the forefront known and new nursing home challenges, including staffing shortages and poor infection control.

STATE AGENCIES HAVE NOT CONSISTENTLY FULFILLED THEIR RESPONSIBILITIES FOR OVERSEEING THE QUALITY AND SAFETY OF NURSING HOME CARE, WHICH PUTS RESIDENTS AT RISK.

OIG and CMS have identified a variety of shortfalls among some State Agencies in performance of their responsibilities for protecting nursing home residents' health and safety.

Many States repeatedly failed to conduct timely standard and complaint surveys.

OIG analyzed CMS's performance metrics for State Agencies from 2015 to 2018. We found that the most common recurring performance deficiencies identified by CMS were associated with timeliness of standard and complaint surveys. In each of those years, between 20 and 29 States failed to meet the performance threshold of investigating 95 percent of high priority complaints within 10 business days.¹¹ From 2015 to 2018, between 12 and 28 States each year failed to meet the performance threshold of conducting standard surveys within 15.9 months for each

⁹ CMS SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000F (Rev. 1, 05-21-04); CMS response to OIG informational questions on August 30, 2019; and CMS, "FY 2018 State Performance Standards System Guidance," Admin Info: 18-02-ALL, October 17, 2017.

¹⁰ Sections 1819(g)(3)(C) and 1919(g)(3)(C) of the Social Security Act; 42 CFR §§ 488.320; CMS, SOM, Pub. No. 100-07, Ch. 8—Standards and Certification, Section 8000G (Rev. 1, 05-21-04).

¹¹ During that time period, CMS required States to investigate high priority complaints onsite within 10 business days. CMS recently changed that requirement. Effective October 2022, States need to investigate these complaints on site within 15 business days on average, not to exceed 18 business days for any high priority complaint. See Medicare [State Operations Manual](#).

nursing home or a Statewide average interval of 12.9 months.¹² When State Agencies miss these performance measures, poor care or safety risks for residents may go undetected and unaddressed.

OIG also evaluated State Agency timeliness in conducting onsite investigations of serious complaints (i.e., immediate jeopardy and high priority complaints) from 2011 to 2018, and our findings raise concerns.¹³ Serious complaints typically include allegations concerning health and safety, such as allegations of residents left sitting in urine and feces, preventable infections, or verbal and physical abuse, among others. We found that in 2018, States were late in investigating 13 percent of immediate jeopardy (the most serious) complaints and were late in investigating 19 percent of high priority (the second most serious) complaints. Furthermore, 10 States did not meet the timeliness threshold for high priority complaints for 8 consecutive years, from 2011 through 2018.

State Agencies have sometimes fallen short in identifying risks to nursing home residents.

OIG's work has raised questions about the effectiveness of State Agencies in identifying certain problems in nursing homes.

Infection Control. OIG has raised serious concerns about the effectiveness of the State Agency survey process in uncovering infection control problems during the first year of the COVID-19 pandemic. We identified more than 1,300 nursing homes that experienced extremely high infection rates—75 percent or more of their Medicare beneficiaries—during COVID-19 surge periods in the spring and fall of 2020. More than half—54 percent—of the nursing homes with extremely high infection rates were not cited with an infection control deficiency during any

¹² OIG, "CMS Should Take Further Action To Address States With Poor Performance Conducting Nursing Home Surveys," OEI-06-19-00460, January 2022, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 27, 2023.

¹³ OIG, "States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018," September 2020, OEI-01-19-00421, accessed at [States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018](#) on April 19, 2023.

standard survey, complaint survey, or targeted infection control survey in 2020, despite virtually all of these facilities having had multiple surveys during that year.^{14, 15}

Life Safety and Emergency Preparedness. Beginning in 2018, OIG audited 154 nursing homes across 8 States to assess the facilities' compliance with CMS's life safety and emergency preparedness requirements, which were updated in 2016.¹⁶ Across these 8 States, we found more than 1,000 areas of noncompliance with life safety requirements (e.g., requirements for building exits, and fire and carbon monoxide detectors) and more than 1,000 areas of noncompliance with emergency preparedness requirements (e.g., requirements for emergency supplies, evacuations, and emergency communications). As a result, residents were at increased risk of injury or death during a fire or other emergency in 150 of the 154 nursing homes included in our review. OIG determined that inadequate oversight by State Agencies was one of multiple factors contributing to these deficiencies.¹⁷

State Agencies have not always verified that nursing homes have corrected cited deficiencies, as required.

Through a series of reports, OIG determined that seven of nine State Agencies reviewed did not always verify nursing home correction of deficiencies. The deficiencies ranged in scope and severity, and included improper restraining of residents and failing to provide necessary care and services for managing diabetes, among others. Furthermore, for the less serious deficiencies, six of the seven State Agencies without further evidence or followup simply accepted the nursing homes' correction plans as confirming compliance.¹⁸ Without proper verification that nursing homes are correcting their deficiencies, residents may be at risk.

¹⁴ CMS temporarily suspended annual standard surveys in late March 2020 and introduced a new, focused infection control survey. On June 1, 2020, CMS directed States to conduct focused infection control surveys for all nursing homes and, at the State's discretion, to continue surveys for the most serious complaints. On August 17, 2020, CMS further directed States to conduct standard surveys as soon as they had the appropriate resources to do so. (See CMS, [Suspension of Survey Activities](#), Ref: QSO-20-12-All, March 4, 2020; CMS, [Prioritization of Survey Activities](#), Ref: QSO-20-20-All, March 20, 2020; CMS, [Revised COVID-19 Survey Activities, CARES Act Funding, Enhanced Enforcement for Infection Control Deficiencies, and Quality Improvement Activities in Nursing Homes](#), Ref: QSO-20-31-All (rescinded as of March 30, 2023); CMS, [Enforcement Cases Held During Prioritization Period and Revised Survey Prioritization](#), Ref: QSO-20-35-All, August 17, 2020).

¹⁵ OIG, "Data Brief: More Than a Thousand Nursing Homes Reached Infection Rates of 75 Percent or More in the First Year of the COVID-19 Pandemic; Better Protections Are Needed for Future Emergencies," OEI-02-20-00491, accessed at <https://oig.hhs.gov/oei/reports/OEI-02-20-00491.pdf> on May 5, 2023.

¹⁶ Except for one State, these audits were conducted prior to the COVID-19 pandemic and CMS's 2019 updated infection control requirements. Accordingly, these audits did not focus on infectious disease preparedness.

¹⁷ OIG, "Audits of Nursing Home Life Safety and Emergency Preparedness in Eight States Identified Noncompliance With Federal Requirements and Opportunities for the Centers for Medicare & Medicaid Services to Improve Resident, Visitor, and Staff Safety," A-02-21-01010, July 2022, accessed at <https://oig.hhs.gov/oas/reports/region2/22101010.asp> on April 20, 2023.

¹⁸ OIG, "CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs To Be Improved To Help Ensure the Health and Safety of Nursing Home Residents," February 2019, A-09-18-02000, accessed at <https://oig.hhs.gov/oas/reports/region9/91802000.pdf> on April 20, 2023.

STATE AGENCIES POINT TO KEY CHALLENGES—PARTICULARLY STAFFING SHORTAGES—THAT LIMIT THEIR ABILITY TO MEET THEIR OVERSIGHT RESPONSIBILITIES.

For State Agency performance problems, especially timeliness problems, CMS and State Agencies have pointed to staffing shortages as a root cause.

CMS and State Agencies have reported that staffing shortages are a driving factor in States' performance shortfalls, particularly with respect to timeliness of surveys. Staffing concerns reported by State Agencies commonly centered on the inability to attract and retain surveyors (who are typically nurses), and some State Agencies pointed to long hours and not being able to offer salaries that are high enough to compete in local markets. CMS staff from one region noted that many of the staffing shortages occur in States with widespread nurse shortages, and that these States have difficulty attracting and retaining nurses to conduct surveys. In one State, 15 of 47 surveyor positions were vacant.¹⁹ Not surprisingly, State Agencies reported to OIG that the COVID-19 pandemic exacerbated longstanding challenges in maintaining sufficient staffing levels.²⁰

CMS and State Agencies have also linked performance challenges to increased workloads. In our report on the timeliness of State Agency complaint surveys, OIG documented that the rate of incoming complaints grew from 2015 to 2018, and about half of the complaints were serious enough to require that State Agencies investigate promptly. CMS reported to us that the increase in nursing home complaints over the years has remained a challenge for CMS and States because resources to investigate these complaints have not kept up.²¹ The HHS FY 2024 budget request stated that in recent years State Agencies conducted more than 10,000 additional complaint surveys compared to 2015, marking a 19 percent increase.²²

¹⁹ OIG, "CMS Should Take Further Action To Address States With Poor Performance Conducting Nursing Home Surveys," OEI-06-19-00460, January 2022, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 27, 2023.

²⁰ OIG, "Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23-May 30, 2020," December 2020, OEI-01-20-00430, accessed at [Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020 \(hhs.gov\)](#) on April 25, 2023.

²¹ OIG, "States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018," OEI-01-19-00421, September 2020, accessed at [States Continued To Fall Short in Meeting Required Timeframes for Investigating Nursing Home Complaints: 2016–2018](#) on April 27, 2023.

²² HHS, "FY 2024 Budget in Brief," p. 115, accessed at <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf> on May 3, 2023.

The COVID-19 pandemic drove substantial backlogs of standard surveys that persist in many States.

In early 2020 and in light of the unprecedented pandemic, CMS directed State Agencies to temporarily suspend standard surveys and shift their resources to conduct more limited focused infection control surveys and investigations of serious complaints. Starting on March 23, 2020, State Agencies conducted shorter onsite surveys as opposed to the standard surveys that comprehensively cover nursing home quality and safety operations.

Prior to the suspension, State agencies were required to conduct a standard survey for each nursing home at least once every 15 months. By late June 2020, 8 percent of nursing homes had gone at least 16 months without a standard survey, and State Agencies were growing concerned about how they would eventually work through mounting backlogs.²³ In August 2020, CMS called on States to resume their standard surveys if they had the resources to do so. By May 31, 2021, the backlog of standard surveys had grown substantially: 71 percent of nursing homes had gone at least 16 months without a standard survey.²⁴ According to CMS's publicly available data as of May 7, 2023, that backlog stood at 28 percent of nursing homes nationwide going at least 16 months without a standard survey. By State, the backlogs range from less than 1 percent to as high as 87 percent, with Kentucky and Maryland each facing a backlog of 80 percent or greater.²⁵

CMS HAS STRUGGLED TO IMPROVE PERFORMANCE BY STATE AGENCIES THAT HAVE REPEATEDLY FALLEN SHORT.

The persistence of State Agency performance problems over time raises questions about how effectively CMS is able to drive improvements. CMS has relied primarily on corrective action plans, training, and informal communication to improve State Agency performance. But these tools did not always resolve problems. CMS has raised concerns about having few practical options for addressing intractable problems in some States.²⁶

²³ OIG, "Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020," December 2020, OEI-01-20-00430, accessed at [Onsite Surveys of Nursing Homes During the COVID-19 Pandemic: March 23–May 30, 2020 \(hhs.gov\)](#) on April 25, 2023.

²⁴ OIG, "Addendum: States' Backlogs of Standard Surveys of Nursing Homes Grew Substantially During the COVID-19 Pandemic," August 2021, OEI-01-20-00431, accessed at [States' Backlogs of Standard Surveys of Nursing Homes Grew Substantially During the COVID-19 Pandemic](#) on April 20, 2023.

²⁵ Calculated at [S&C QCOR](#), accessed on May 7, 2023.

²⁶ OIG, "CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys," OEI-06-19-00460, January 2022, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 27, 2023.

OIG work raises concerns about how effectively CMS is using corrective action plans.

CMS has commonly relied upon State Agencies to address their performance problems by developing corrective action plans, but OIG has found that those corrective action plans are sometimes insufficient to address performance. In a review spanning 2015 to 2018, plans for 12 States were missing from CMS files. When plans were available for our review, we found that State Agencies often failed to include substantive details about which actions would address the performance problem. For example, one State Agency indicated it would “work to achieve 100 percent” without providing further detail in each of three corrective action plans responding to three missed performance measures. In other States, corrective action plans were nearly identical to plans submitted for the previous year, which raises concern that either the plan was insufficient to address the problem or that the original plan was not fully implemented.

CMS has used other remedies, but many of these have limitations.

We found that CMS also used other remedies to address State Agency performance. Some examples include training, technical assistance, close communications, and allocating funding as States meet performance goals, a process called “benchmarking.” Among these examples, benchmarking to provide incentives for performance improvement appears to hold some promise. Limits in documenting training, assistance, and communications make it hard to determine their effectiveness. Other types of remedies included a few cases in which CMS used third-party contractors to support State Agencies struggling with performance; however, CMS reported to us that limited funding means only one to three States will typically receive this kind of support in a year.

CMS can also impose financial penalties, but this approach can compound the strains associated with increased workloads and staffing shortages. CMS has the authority to terminate its agreement, in whole or in part, with any State Agency for performance concerns;²⁷ it considers this to be the option of last resort. Terminating an agreement with a State Agency could lead to significant gaps in the oversight of nursing homes in that State.

Finally, CMS reported to OIG that in three cases, CMS escalated to senior State officials—in one case to a Governor and in the others to a State health department director—its concerns about State Agency performance and that this elevated attention led to some improvements.²⁸

²⁷ Under 42 CFR § 488.320(d)(5), for all survey inadequacies in Medicare facilities CMS may initiate action to terminate the 1864 agreement with the State, either in whole or in part.

²⁸ OIG, “CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys,” January 2022, OEI-06-19-00460, accessed at [CMS Should Take Further Action To Address States With Poor Performance in Conducting Nursing Home Surveys](#) on April 25, 2023.

CMS's processes for reviewing State survey results reported on the Care Compare website were inadequate, resulting in some inaccurate information for consumers.

In 2023, an OIG audit found that CMS's processes for reviewing State survey results reported on its Care Compare website were inadequate. Care Compare is a resource with information about health care providers to help consumers make informed health care decisions. It provides information for each Medicare- and Medicaid-certified nursing home in the country, including results of recent surveys by State Agencies. An estimated two-thirds of nursing homes had one or more deficiencies related to health, fire safety, and emergency preparedness identified during State Agency surveys that were inaccurately reported on Care Compare. CMS looked into the circumstances of some of the inaccuracies we identified. CMS determined that human error by surveyors entering the data had caused some of them and that systems errors had caused some others.²⁹

SUSTAINED COMMITMENT AND EFFORTS BY CMS, STATE AGENCIES, AND OTHERS ARE CRITICAL TO ENSURING NURSING HOME QUALITY AND SAFETY FOR MILLIONS OF AMERICANS.

Supporting a robust and effective survey process is crucial to the health and safety of nursing home residents. State agencies are on the front lines for determining whether nursing homes meet standards, investigating complaints, identifying deficiencies in nursing home care or conditions, and validating that deficiencies are corrected. Delays in responding to complaints or conducting comprehensive inspections and unaddressed nursing home deficiencies can put residents at great risk of harm.

OIG has made numerous recommendations to CMS to address specific shortcomings of State Agency oversight identified in our evaluations and audits. CMS has implemented some, and others remain open. We continue to call on CMS to work with urgency in implementing recommendations, including the following:

- **Address State Agency Timeliness Problems More Effectively.** CMS should engage earlier and more frequently with high-level State officials on serious or recurring performance shortfalls (most commonly survey timeliness), disseminate results of State performance reviews more widely, and actively monitor State Agency corrective action plans and other remedies to focus on making the remedies specific and outcome-oriented. CMS should also identify new approaches to address States that consistently fail to meet the required timeframes for investigating the most serious nursing home complaints, one of the most

²⁹ OIG, "CMS Did Not Accurately Report on Care Compare One or More Deficiencies Related to Health, Fire Safety, and Emergency Preparedness for an Estimated Two-Thirds of Nursing Homes," April 2023, A-09-20-02007, accessed at <https://oig.hhs.gov/oas/reports/region9/92002007.pdf> on April 20, 2023.

persistent and widespread problems. Furthermore, CMS should work with State Agencies on a plan to more frequently survey nursing homes with repeat deficiencies.

- **Strengthen Oversight of Nursing Home Risk Areas.** These areas include:
 - Infection Control. CMS should improve how surveys identify infection control risks and strengthen guidance on assessing the scope and severity of those risks.
 - Life Safety. CMS should work with State Agencies to require standardized life safety training for nursing home staff.
 - Leveraging Data to Target Risks. OIG has also encouraged CMS efforts to leverage data to analyze risks and target CMS and State agency oversight efforts in ways that are most likely to uncover problems in nursing home care. For example, CMS has implemented an OIG recommendation to provide State Agencies with certain nursing home staffing data to help States target specific nursing homes for weekend inspections.³⁰ OIG has also recommended that CMS use data to identify nursing homes associated with a higher use of psychotropic drugs and focus oversight on nursing homes with trends that may signal inappropriate use.³¹
- **Better Ensure That State Agencies Verify Nursing Home Corrections of Deficiencies.** CMS should improve guidance to State Agencies on verifying nursing home corrections of deficiencies and documentation to support verification.
- **Improve the Accuracy of Deficiency Data in Care Compare.** CMS should strengthen its processes for reviewing State Agency survey results reported on Care Compare by requiring State Agencies to verify that deficiencies shown across CMS's systems are accurate, providing technical assistance and additional training to State Agencies that are not following procedures for reporting deficiencies, and requiring quality assurance checks to ensure accurate reporting.

³⁰ OIG, "CMS Use of Data on Nursing Home Staffing: Progress and Opportunities To Do More," March 2021, OEI-04-18-00451, accessed at [CMS Use of Data on Nursing Home Staffing: Progress and Opportunities To Do More](#) on May 3, 2023.

³¹ OIG, "Long-Term Trends of Psychotropic Drug Use in Nursing Homes," November 2022, OEI-07-20-00500, accessed at [Long-Term Trends of Psychotropic Drug Use in Nursing Homes](#) on April 26, 2023.

OIG is committed to and is investing in improving quality of care and safety for nursing home residents.

This is the top priority of Inspector General Grimm, and OIG is building a nursing home strategy that targets problems with care, safety, and oversight. OIG's "**PRO**" strategy centers on initiatives in three key areas:

1. **Performance.** Understanding why poorly performing nursing homes fail and why good ones succeed.
2. **Residents First.** Ensuring that nursing homes prioritize quality of care and quality of life for residents.
3. **Oversight.** Ensuring that CMS and State Agencies detect and remedy problems quickly and effectively.

OIG is investing substantial resources into our oversight and enforcement work to drive better outcomes for nursing home residents. We have 26 audits and evaluations underway focused on nursing homes, and we have released 19 reports related to nursing home since January 2021.³² We also prioritize nursing home cases on the enforcement side. For example, OIG works in partnership with the Department of Justice on False Claims Act cases, including two recent cases involving allegations of materially substandard care by nursing home providers. The San Miguel Villa case in California involved allegations of overuse of psychotropic drugs, excessive falls, resident-to-resident altercations, and other serious mental and physical harm to residents. The Saratoga Center case in New York involved allegations of worthless nursing home care and misrepresentations in order to obtain operating certificates. As part of the Saratoga Center settlement, OIG excluded culpable individuals and entities from participation in Federal health care programs.

However, while more needs to be done, OIG's investments in this critical work are constrained by our resources. With a FY 2023 enacted budget of \$432.5 million, OIG has about 2 cents to oversee every \$100 in HHS spending. With current resources, we cannot keep up with the level of threats to HHS programs, nursing home residents and other patients, and taxpayer dollars. Every day, we make difficult choices on which cases we can and can't investigate, and which new audits and evaluations we can and can't start. There are many areas of critical concern that we are not able to address each year. The increased funding for Medicare and Medicaid oversight and enforcement in the President's FY 2024 Budget Request would significantly expand OIG's ability to conduct consequential oversight and enforcement, including to improve nursing homes for the people who need them and ensure that taxpayer dollars are being well spent on high-quality, safe nursing home care.

³² Some of these audits and evaluations underway may produce more than one final report.

Conclusion

Nursing home residents deserve and should expect high-quality care and safe living conditions. The persistence and seriousness of quality and safety problems in many nursing homes demands urgent attention and sustained action by stakeholders across Federal and State Governments, including program officials, Congress, and oversight entities, as well as the nursing home industry and care providers. My testimony today focuses on one critical component of the safety system designed to protect nursing home residents: the State Agency survey process. OIG is committed to driving positive change to strengthen this safety system as well as other aspects of nursing home performance, resident well-being, and oversight. Nursing home care is a deeply challenging enterprise. But with dedicated attention and action, nursing homes can be made better for residents who need them.

Thank you for your ongoing leadership in this area and for affording OIG the opportunity to testify and discuss with you this vitally important topic. I am happy to answer questions.



Testimony by Shelly Williamson
President of the Board of Directors for the Association of Health Facility Survey Agencies
Administrator of the Section for Long Term Care Regulation,
Missouri Department of Health and Senior Services

U.S. Senate Special Committee on Aging Hearing on

“Residents at Risk: The Strained Nursing Home Inspection System and the Need to Improve Oversight, Transparency, and Accountability.”

May 18, 2023

Good morning, Chairman Casey, Ranking Member Braun and esteemed members of the Senate Special Committee on Aging. On behalf of the Association of Health Facility Survey Agencies (AHFSA), I thank you for the opportunity to provide testimony regarding the importance of protecting the health and safety of health care residents and patients. AHFSA is comprised of survey agencies across the country who advocate, establish, oversee and coordinate health quality standards for state and federally regulated health care providers. AHFSA members provide oversight to all Medicare certified providers.

While AHFSA represents efforts to protect all residents and patients, my testimony today is focused on oversight provided to the country’s nursing homes. AHFSA works closely with the Centers for Medicare and Medicaid Services (CMS) to enforce federal standards related to quality of life, quality of care, infection prevention and control, environmental safety and emergency preparedness in the country’s 15,000 plus nursing homes through recertification and complaint surveys. These homes care for over 1 million of the nation’s elderly and disabled. Our members spend most of their working time doing everything they can to provide the oversight necessary to ensure the rights of the elderly and disabled are protected.

While the work of survey agencies is important and rewarding, survey agencies are straining to meet federal workloads. Adequate staffing and resources are necessary for survey agencies to ensure quality care is delivered. Survey agencies have not received a meaningful increase in federal funding to complete these critical oversight responsibilities since 2015, yet the cost to recruit and retain survey staff, the volume of work and additional work expected of survey agencies has significantly increased. These factors have resulted in many survey agencies being unable to complete recertification and complaint surveys timely, leaving nursing home residents at risk of substandard care.

Survey agencies enforce federal standards through recertification surveys and complaint surveys, with follow-up visits to ensure any deficiencies cited are corrected. There are strenuous training requirements for surveyors. To survey independently, a surveyor must complete required training and successfully complete the Surveyor Minimum Qualifications Test (SMQT). This training, which we support continuing, often takes a year or more to complete.

The federal regulations and interpretative guidance document is 863 pages. This document outlines the requirements nursing homes must follow and provides guidance to surveyors on how to evaluate compliance with the requirements. The requirements include a multitude of areas:

- Resident rights
- Abuse, neglect and exploitation
- Admission, transfer and discharge
- Resident assessments and care plans
- Quality of life and quality of care, including physician, nursing, pharmacy, diagnostic and dental services
- Behavioral health and other specialized rehabilitation services
- Infection control
- Food service and physical environment
- Administration and staff training
- Fire safety
- Emergency preparedness

To ensure nursing home resident health and safety, surveyors must be proficient in assessing compliance with all of these requirements on any given survey.

Recertification surveys are required to be completed no more than 15.9 months apart with no more than a 12.9-month average statewide interval. These recertification surveys are a proactive comprehensive review of federal requirements related to health and safety, emergency preparedness and life safety (fire safety). Most states also complete a licensure inspection at the same time as the recertification survey. These surveys are conducted by a team of surveyors, who spend several days making observations, reviewing pertinent records and talking to residents, families and staff. The survey teams are often comprised of surveyors from different disciplines, but at least one team member must be a Registered Nurse. These surveys are preventative and important - they are intended to identify deficient practice before there is harm to residents.

Survey agencies also respond to complaints by conducting onsite investigations also known as complaint surveys. Unlike recertification surveys, complaint surveys are conducted in response to alleged noncompliance with regulatory requirements that have already occurred. Complaints are triaged according to severity and impact to residents. The most serious complaints, those alleging serious injury, harm, impairment or death, or the likelihood for such, are the highest priority for a survey agency because they allege the most egregious noncompliance. Investigations of these complaints must begin within two working days of receipt. Complaint surveys for complaints alleging harm that has negatively impacted a resident's mental, physical and/or psychosocial status must begin within 10 working days. Responding to these complaints is critical, and is of utmost importance. These complaint surveys are in response to noncompliance and are necessary to prevent further harm, impairment or death.

There are three major areas of impact to survey agencies' ability to perform their oversight activities. Each of these three areas is described in detail below.

Insufficient Federal Funding

As mentioned above, survey agencies have not received a meaningful increase in federal funding since 2015, yet the cost to operate a survey agency has significantly increased. Vacancies in nearly all survey agencies are having an impact on the ability to respond timely to complaints and complete recertification surveys. While vacancies persist, survey agencies have implemented a number of strategies in attempts to increase recruitment and retention of survey staff, all of which has required additional state funding without an accompanying meaningful increase in federal funding.

Increasing funding to support surveyor salaries is critical. Surveyor salaries are a combination of state and federal funds, with percentages based on the type of survey being conducted. Increases in both state

and federal funds are required to fully fund salary increases. Some survey agencies have received state funding to increase salaries. While this salary increase is welcomed, many state increases have only covered the state portion of salaries which leaves a deficit. This deficit has resulted in some states having to leave surveyor positions vacant because of a lack of federal funds. For a survey agency with a small number of surveyor positions, this deficit can create a significant percentage of staff vacancies. Other states have been more fortunate, and the state has covered the entire salary increase.

For example:

- A surveyor's salary for a complaint survey is 50% federal and 50% state. If the survey agency receives an increase in state funding, but that increase only covers the state portion of that surveyor's salary (50%), the survey agency must use their *existing* federal funds to cover the increase for the other 50%.

According to an internal AHFSA survey in 2022:

- Even with these increases described above, nearly 70% of state agencies have surveyor vacancy rates of over 10%, with many survey agencies reporting closer to 20% to 30% or higher throughout the year.
- Registered Nurse salaries in over 80% of survey agencies are not competitive with the health care market.
- Approximately half of survey agencies are utilizing contract staff to conduct surveys. This percentage increased from 37% in 2021. These contract surveys are costly, ranging from double to triple the cost of a survey completed by a survey agency further impacting survey agency budgets.
- Survey agencies have also recruited former surveyors to work part-time, encouraged surveyors to work overtime and required surveyors to work outside their normal geographic area to cover shortfalls. These strategies are short-term measures and cannot be sustained without jeopardizing the health and well-being of survey agency staff.

An increase in the federal budget is imperative for survey agencies to rebalance and to improve recruitment and retention of survey staff. Increasing the federal budget is a necessary first step; however, any increase in federal budget must also be met with an increase in state funding in order to fully fund surveyor salaries. Because state budget cycles are often different than the federal budget cycle, it may be a year or potentially more before states have the opportunity to request additional state funding. Also, should there be an increase in federal funding, states will first look to rebalance the federal and state percentages and to make current surveyor salaries closer to health care market demands to retain current surveyors. Then, survey agencies may look to adding additional surveyor positions. Any new staff hired will need to complete the year-long training before they can survey independently. I believe this is an important point to make; an increase in the federal budget, while necessary and critical, may not be result in increased survey activity for a period of time. With a growing number of Americans expected to need nursing home care in the coming years, it is imperative to increase the federal budget now and to sustain that increase to protect the health and safety of those relying on nursing home care.

Survey agencies need enhanced federal support. CMS has proposed a survey and certification budget of \$565.8 million. It is a good first step in fulfilling the promise inherent in the federal government's agreement with survey agencies.

Workload Increases

Although the number of nursing homes has decreased nationwide since 2015 (15,793 to 15,115), the volume of work for survey agencies has increased significantly. Many survey agencies are expending more resources on responding to complaints as a result of the increase in the number of complaints

received. For instance, the number of complaint surveys (onsite visits) in 2022 was nearly 10,000 higher than 2015. During these visits, surveyors often investigate more than one complaint.

Overall, the number of individual complaints received has increased by 45% since 2015 (214,220 to 309,908). More alarming are the increases in serious complaints.

- Complaints alleging serious injury, harm, impairment or death, or the likelihood for such have increased 102% since 2015 (18,384 to 37,125).
- Complaints alleging harm that negatively impact a resident's mental, physical and/or psychosocial status has increased by 43% since 2015 (113,260 to 161,180).

Investigating these complaints is priority for survey agencies; they often take considerable time to investigate and thorough, comprehensive investigations are imperative given the outcome to residents. Survey schedules are often rearranged so that these complaints can be investigated timely. Additional interviews and medical records are often needed from health care professionals outside the nursing home, especially when residents have been transferred from the nursing home due to the seriousness of their condition. Because of the increase in complaints and the amount of time and resources dedicated to conducting complaint surveys, a number of survey agencies are unable to timely complete recertification surveys. The volume of work simply exceeds current survey agency capacity.

Another contributing factor to the increase in workload includes the increase in severity of deficiencies cited on recertification and complaint surveys. The number of deficiencies cited at actual harm and above has increased by 22% and the number of deficiencies cited at immediate jeopardy has increased by 42%. Because these deficiencies are those that have resulted in actual harm to resident(s) or a likelihood of serious injury, harm, impairment or death, they often take additional resources to fully investigate. Often, the sample of residents reviewed by the surveyor(s) is increased to ensure a comprehensive review of the requirements. In addition, other related requirements will be reviewed to determine the extent of the deficient practice. For the most serious deficiencies, surveyors must remain onsite until the nursing home submits a plan to remove the immediate jeopardy to residents. Surveyors must also conduct a revisit to ensure the plan has been followed. Additional visits are conducted to assess full correction of the deficiencies cited.

Additional Workload

Vacancies and increased workload have significantly contributed to the inability of survey agencies to timely complete all required surveys. Adding to the impact is additional workload survey agencies have been directed to complete. All of these additional activities are important and necessary to ensuring health and safety; however without additional resources, survey agencies are unable to meet all oversight requirements.

Since 2015, three phases of new and revised nursing home regulatory requirements have taken effect, along with a new recertification survey process. While many of these changes were necessary to ensure resident health and safety, they required a significant amount of time to train surveyors and to implement.

In 2017, detailed emergency preparedness requirements for all provider types, including nursing homes, went into effect to address longstanding concerns regarding the ability of health care facilities to appropriately respond to emergency situations. Senator Casey's work, including a recent report by the U.S. Senate Finance Committee and U.S. Senate Special Committee on Aging further highlighted the importance of emergency preparedness and the extreme impact on nursing home residents when nursing homes are unprepared. The report also addressed ongoing concerns and the need for additional work to improve resident health and safety. These requirements, while important and necessary, added an

entirely new survey process to recertification surveys. Again, additional time is required to train surveyors and to evaluate compliance with these requirements.

And then COVID-19 had its profound impact on our country. Many of our normal survey activities were paused, creating a backlog that is contributing to the difficulties today. Focused infection control surveys began. In 2020 and 2021, over 87,000 focused infection control surveys were completed. These infection control surveys were often in nursing homes that were experiencing widespread COVID-19 outbreaks, adding to surveyor stress, illness and burnout. Survey agencies received CARES Act funding to support these onsite surveys and we are appreciative of this extra funding. This funding, which could be used to supplement funding for survey agencies is only available through this federal fiscal year.

Nursing home enforcement for infection prevention and control deficiencies increased, causing additional work for survey agencies to implement as the implementation of these enforcement actions fell to survey agencies. Review of the vaccination requirements for healthcare staff was initially required on every visit to a nursing home, adding several hours to each visit.

In closing, all of the above give facts and figures about the importance of performing oversight and the desire of survey agencies, working with the federal government to protect nursing home residents. Nursing home residents deserve to be safe, they deserve high-quality care, and they deserve to be cared for with compassion and recognition of their individuality. We, as survey agencies play a vital role in ensuring safe, high-quality care and we need sufficient resources to complete that work. Without sufficient resources, nursing home residents will continue to be at risk of substandard care. Thank you for the opportunity to provide this written testimony and for your support in ensuring nursing home residents receive the care they deserve.



**TESTIMONY OF LEAH MCMAHON , M.A.
STATE LONG-TERM CARE OMBUDSMAN
OF
THE COLORADO STATE LONG-TERM CARE OMBUDSMAN PROGRAM
MAY 18, 2023**

“The Impact of Long-Term Care Surveyor Staffing Shortages to the Quality of Life and Care for Residents”

Good morning, Chairman Casey, Ranking Member Braun, and members of the Committee. I am Leah McMahon, Colorado State Long-Term Care Ombudsman. Thank you for the opportunity to appear before you today.

I am the Director of the Colorado Long-Term Care Ombudsman Program (Ombudsman Program). In this role I represent the interests of approximately 45,000 vulnerable adults who reside in licensed assisted living homes and nursing homes in Colorado. The role of the State Long-Term Care Ombudsman encompasses coordination and oversight of the statewide Ombudsman representatives, providing systemic advocacy for residents by monitoring laws impacting residents in long-term care, and ensuring the confidentiality of all ombudsman records.

Long-Term Care Ombudsman Program

The nationwide Long-Term Care Ombudsman Program, authorized by the Older Americans Act, is an independent, health oversight agency that advocates for the interests of long-term care residents.¹ The importance of the office of the Ombudsman is recognized in the Older Americans Act and specifically has a requirement for an office of the Ombudsman programs with a director. Long-term care ombudsmen are authorized by federal and state law to work to solve individual problems for residents and to change policy and law to protect residents. Long-term care ombudsmen (Ombudsmen) empower, educate, and inform residents of their rights, and we are guided by the

¹ 42 U.S.C. §3058f & §3058g.

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expressed interests and wishes of residents. We are in nursing homes every day listening to the concerns of residents and their families and advocating on their behalf.

In Colorado, during Federal Fiscal Year 2022, the statewide ombudsman program made 4,327 visits to facilities, investigated 3,321 concerns expressed by residents, family members and concerned individuals. The top concerns reported to the ombudsman program included quality of care, violations of the right for residents to be treated with dignity and respect, improper eviction and inadequate discharge planning by facilities, cleanliness of the facility, and concerns related to dietary needs. Nobody wants their family member to experience any of the above listed concerns. It is our responsibility as ombudsmen to advocate on behalf of residents to address these various issues.

A Day in the Life of The Long-Term Care Ombudsman

A day in the life of an ombudsman consists of fielding calls, educating the community, and providing information about the Long-Term Care Ombudsman Program and other issues related to long-term care and services, as well as visiting facilities to talk with residents about their care. During a visit to the long-term care facility, the ombudsman may meet with numerous residents and obtain consent to advocate on their behalf individually or on behalf of all residents. Ombudsmen receive consent from the resident to speak with family members, facility staff and regulatory agencies to resolve their concern. If concerns cannot be resolved by the ombudsman at the lowest level, the ombudsman may provide information to escalate the complaint. The ombudsman may suggest to the resident to file a complaint with the licensing and survey agency that in turn, can enforce state and federal regulations by making unannounced complaint investigations to the nursing home.

The Impact of Long-Term Care Surveyor Shortages to Residents

I would like to highlight to the Committee my concern about the impact of staffing shortages among long-term care surveyors. Over the last three years, the COVID-19 pandemic has had an enormous impact on the entire long-term care system. As we know, many residents tragically lost their lives to COVID-19 and the long-term care community feels the trauma of those losses every day.

Another lasting impact is staffing shortages at the Colorado Department of Public Health and Environment, the state agency responsible for licensing, surveying, and regulatory oversight of long-term care facilities. Nursing home surveyors have incredibly challenging jobs, which are made more demanding by agency staffing shortages. I have great appreciation and respect for surveyors and the survey process. I know from speaking with the state survey agency there are great difficulties in maintaining adequate survey staffing levels. It was also reported to me that the state agency needs to offer competitive wages for the initial hiring of surveyors. Training new surveyors is time intensive and can take up to a year. I see firsthand the impact these shortages have upon nursing home residents and their families.

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Findings

Residents and family members have complained to my office about waiting long periods of time for a response after filing a complaint and at times, a lack of response from the regulatory agency. I recently called the regulatory agency nursing home complaint line on May 5, 2023, and listened to the outgoing message.² The outgoing voicemail stated, due to a high volume of complaint calls and emails, they could not estimate a return call time or email response. The message also stated there was a significant delay in responding to calls and emails. Family members and residents reported to the local ombudsmen that they were discouraged by the outgoing message and in some instances, decided not to leave a message with their complaint.

I would like to highlight a few examples of what family members and residents reported as concerns to the Colorado Long-Term Care Ombudsman Program. For instance, a local ombudsman received a call about a report of a resident not getting medications as prescribed. The family member called the survey agency, listened to the outgoing message on the voicemail and decided not to leave a message about the complaint. The family informed the ombudsman about the decision to not leave a message, and the ombudsman encouraged the family member to call back. Another example includes a local ombudsman receiving calls from several family members who in the past six months did not receive a response to their complaint they filed via email. The ombudsman suggested calling the complaint line to see if that would illicit a response. The same family members called the ombudsman back and reported calling and filing a complaint but did not receive a response from the survey agency. The complaint line receives an extremely high volume of calls and is managed by one dedicated person.

Case Example 1

In March 2021, a local ombudsman was in a long-term care nursing home (memory care) and observed several instances of abuse and neglect. This included observing a staff member yelling at a frail, elderly, resident, and residents not receiving adequate incontinence care. This is a clear violation of resident rights. The local ombudsman called the regulatory agency nursing home complaint line, in addition to other appropriate agencies, to report the concern. The regulatory agency did not report back for one year after the complaint was filed. This delay can have negative impacts to the quality of care, safety, and health for not just one affected resident, but all residents. The potential for greater risk to a person's health is increased when they are required to sit in feces and urine-soaked protective garments without receiving proper care. It can lead to open sores that can cause infections to the point of needing hospitalization.

² [Regulatory Agency Nursing Home Complaint Line \(Listened to outgoing voicemail, May 5, 2023\)](#)

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Case Example 2

In November 2022, a local ombudsman received a call from a nursing home resident, who reported having to wait long periods of time after making requests for assistance and having skin breakdown due to not receiving timely incontinence care. The residents reported that it appeared there were not enough staff to assist all the residents. The local ombudsman visited these residents and together they called the regulatory agency nursing home complaint line. The ombudsman assisted one of the residents with making this call and reports following up with the resident who stated they did not receive a return call. No one appears to have received a return call.

Case Example 3

In December 2022, a local ombudsman received a complaint from a resident's family member, who reported that a nursing home did not appear to have enough staff to care for the residents. The family members also expressed concern about skin breakdown after visiting with their loved one. The family member inquired about what regulatory agency to call. The ombudsman provided the regulatory agency nursing home complaint line information. The local ombudsman stated the surveyors conducted a survey two months after the reported time the family called the complaint line. Again, this can have a negative impact on the health, safety, and welfare of residents.

Case Example 4

In 2022, a family member contacted the local ombudsman and reported concerns about a family member living in a nursing home. The ombudsman met with the resident and the resident reported regularly waiting hours to receive assistance. The ombudsman observed the resident crying while the resident reported that the nursing home staff yelled at the resident often, refused to let the resident out of their room and physically shoved the resident's wheelchair with the resident in the wheelchair into the room and then slammed the door shut. The resident also reported that staff pulled their hair, physically shook the resident, and left the resident in the bathroom after assisting them to the toilet. The resident requested the ombudsman to file a complaint to the state survey agency. It was reported a year later that the ombudsman received a call from the surveyor stating they were investigating the complaint. The ombudsman informed the surveyor that the resident moved out due to abuse and neglect. The family later informed the ombudsman the resident suffered from night terrors due to Post Traumatic Stress Disorder.

These are just a few examples my office has received over the past couple of years. I know current surveyors are working as hard as they can to be responsive to resident complaints and concerns. But it appears there are just not enough staff. These shortages place residents at significant risk of harm, even death.

Surveyors have an extremely complicated job, and the survey agency is the only entity with the authority to enforce standards that facilities must meet regarding the quality of care and services residents receive. Thus, it is important for CMS and State Survey Agencies to have the necessary staff

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and resources to conduct annual surveys and respond to complaints in a timely manner. Otherwise, residents' health and safety are at risk.

Working shorthanded impacts the ability of surveyors and survey agencies to effectively do their jobs. Through conversation with the state surveyor agency, it was stated to attract and retain skilled surveyors, they need to be able to provide competitive salaries. Wage levels need to be sufficiently competitive to attract the highly skilled workers necessary to execute survey requirements.

Recommendations

The Colorado Office of the State Long-Term Care Ombudsman recommends:

1. Increasing funds to assist state survey agencies to hire and retain long-term care nursing home surveyors to meet the workload.
2. Offer competitive salaries for required nursing surveyor positions, which could be the most difficult positions to fill and maintain within the regulatory agency.
3. Create dedicated recruitment and trainer positions to hire and train new surveyors.

I appreciate this opportunity to appear before this Committee and for your time and attention regarding vulnerable adults who live in long-term care facilities. I look forward to answering any questions you may have.



Written Testimony of Susan Feng Lu, Ph.D.

Gerald Lyles Rising Star Professor of Management

**Mitchell E. Daniels, Jr. School of Business & Regenstrief Center for Healthcare Engineering
Purdue University**

**Residents at Risk: The Strained Nursing Home Inspection System and the Need to
Improve Oversight, Transparency, and Accountability**

United States Senate Special Committee on Aging

May 18, 2023

Thank you, Chairman Casey, Ranking Member Braun, and esteemed members of the Committee, for granting me the invaluable opportunity to testify on the regulations and operations of nursing homes, specifically in relation to older adults and people with disabilities.

My name is Susan F. Lu, and as the only child in my family, I have long contemplated how I could best provide exceptional care for my parents as they age. In my pursuit of this goal, I was reminded of an old saying from my cultural background, emphasizing the importance of honoring the elderly as we would our own parents and extending our care to others' children as if they were our own. It was clear to me that the challenges surrounding aging would be of utmost significance for numerous countries, including the United States, China, Japan, and beyond. As the baby boomer generation in the U.S. rapidly approaches the age of 65 and older, the demand for comprehensive elderly care services is set to escalate. Thus, I embarked on a journey that led me to choose nursing home quality disclosure as the focal point of my dissertation, dedicating nearly two decades to researching various facets of this industry. Over time, assisting the elderly to get high-quality care has become the very mission of my life.

As a researcher trained in economics and operations management, my overarching objectives have consistently revolved around minimizing costs, maximizing social welfare, and efficiently and effectively allocating resources. The management of operational efficiency within healthcare delivery presents a formidable challenge for many countries grappling with aging populations and insufficient healthcare resources. Leveraging the tools of game theory, econometrics, and optimization methodologies, I have delved into the drivers of healthcare delivery performance. My aim has been to comprehend the effects of public policies and technological innovations on the operational and managerial aspects of elderly care.

Today, I stand before you as an expert in nursing homes, ready to offer insights into potential strategies that could incentivize improvements in the quality of care provided by these facilities. Furthermore, I seek to facilitate easy access to nursing home care for older adults and people with disabilities. In pursuit of these goals, I am pleased to provide expert research support from three distinct angles: quality disclosure, staffing, and ownership.

Quality Disclosure

Ensuring information transparency between medical providers and consumers is vital for delivering quality care. The inherent challenge lies in the fact that older adults often struggle to accurately determine the quality of care before receiving it, and even evaluating it retrospectively can be problematic. Publicly disclosing quality information about individual nursing homes can effectively mitigate this information asymmetry, facilitating consumer identification of high-quality providers, reducing search costs, and enhancing firms' responsiveness to quality through increased demand elasticity.

Nevertheless, it is essential to acknowledge that quality disclosure does not guarantee immediate quality improvement. Two major concerns arise when making quality information transparent. Firstly, medical providers may selectively choose patients to bolster their scores on report cards, a phenomenon known as "cherry picking" (Dranove et al., 2003). Secondly, providers may focus solely on excelling along the disclosed quality dimensions, neglecting the undisclosed ones—a practice referred to as "teaching to the test" (Lu, 2012).

The Center for Medicare and Medicaid Services (CMS) has made commendable efforts in collecting quality information from nursing homes through state inspection teams. In 2008, the CMS introduced the five-star quality rating system (FSQRS), which heavily relies on deficiency citations identified by state inspectors. Existing literature, including my own research, provides compelling evidence that quality disclosure significantly influences consumer demand, thereby motivating nursing homes to improve their quality of care. Werner, Konetzka, and Polsky (2016) discovered that one-star facilities experienced a decline in market share, while five-star facilities gained traction. Zhao (2016) demonstrated that the FSQRS encourages nursing homes in competitive markets to enhance their quality standards. Moreover, my research with Brickley and Wedig (2020) illustrated that the FSQRS prompted a strategic shift in nursing homes, as they began competing to attain higher ratings, thereby impacting senior management retention decisions.

In a surprising turn of events, our recent research revealed that social media platforms, particularly Yelp, exert a dominant influence over government report cards in shaping nursing home demand (Li, Lu, and Lu, 2023). Notably, this dominance of Yelp ratings over government ratings was observed primarily in markets with high Yelp penetration or markets characterized by low to moderate levels of consumer education. While higher Yelp ratings correlated with increased net incomes for nursing homes, we found limited evidence indicating that these ratings motivated quality improvements among the facilities.

In light of these findings, we respectfully propose that the CMS recognizes social media platforms as valuable sources of information and collaborates with reputable platforms like Yelp to promote

public awareness of government report cards, such as Nursing Home Compare. Similar endeavors have yielded positive outcomes in the restaurant industry, where displaying government hygiene scores on Yelp resulted in a significant decrease in consumers' willingness to patronize restaurants with low hygiene scores (Dai and Luca, 2020). By embracing the potential of social media platforms, we can leverage their influence to drive informed decision-making and positively shape the choices individuals make regarding nursing home care.

Staffing

Staffing decisions in healthcare facilities hold immense significance, as they directly impact both costs and patient outcomes. However, due to a variety of factors—regulatory, behavioral, and technological—making the right staffing choices can often be a complex undertaking.

For instance, the healthcare sector has witnessed widespread reports of nurse burnout resulting from excessive overtime usage. In response, several states have implemented mandatory overtime laws. However, in Lu and Lu's (2017) research, we discovered that despite the good intentions behind such policies, they inadvertently led to a decline in the quality of care provided by nursing homes. The imposition of caps on mandatory overtime hours prompted nursing homes to make unfavorable staffing adjustments, such as substituting full-time nurses' overtime hours with those offered by contract nurses to compensate for the lost overtime hours and reducing the hiring of full-time nurses to control costs. Regrettably, these changes ultimately resulted in a severe deterioration of care quality in nursing homes. Thus, when enforcing staffing regulations, it becomes crucial to consider both the *systemic* effects (e.g., healthcare facility responses) and *individual* effects (e.g., nurse responses) to ensure comprehensive and effective outcomes.

Taking an alternative perspective on staffing, Lu, Rui, and Seidmann (2018) discovered that, unlike in many other industries, the adoption of automated technology in healthcare systems may not lead to a direct substitution of staffing resources. Our findings indicated that nurse staffing levels decreased in high-end nursing homes but increased in low-end ones after the implementation of automation technology. This study sheds light on the interplay of two competing effects of automation: the substitution of technology for labor and the leveraging of complementarity between technology and labor. Moreover, it offers practitioners two distinct strategies to consider upon adopting automation technology: a revenue expansion strategy involving increased staffing and a cost reduction strategy involving decreased staffing. The optimal approach depends on a firm's vertical position within the local market.

While my research primarily focuses on the allocation of nurse resources and maximizing nurse utilization within a nursing home budget, it is important to address the challenges stemming from nurse shortages in the labor market.

Currently, two widely accepted approaches exist to tackle this issue. The first approach aims to enhance the appeal of the nursing profession. Measures include increasing wages and benefits, offering flexible work schedules, and improving working conditions, among others. These regulations may undoubtedly enhance the attractiveness of choosing nursing as a career from an *individual* perspective. However, from a *systemic* viewpoint, they can significantly escalate

operating costs for nursing homes, potentially forcing them out of the market due to an inability to break even. Consequently, this may exacerbate the issue of excess demand within nursing homes and lead to longer waiting times for elderly individuals with Medicaid insurance to access nursing home care (Ching, Hayashi, and Wang, 2015). The second approach involves encouraging immigration of nurses. Nursing homes can explore the recruitment of qualified nurses from other countries. However, this necessitates careful consideration of visa regulations and cultural differences.

Given the urgent need to tackle nurse shortages, it is essential to explore innovative ideas and have access to comprehensive data on individual nurses to evaluate and address these challenges effectively. Access to diverse dimensions of individual nurse data, including working conditions, factors influencing work-life balance, employment history, demographics, education, and geographic distribution, is crucial. Such data provides us with valuable insights into the dynamics of the nurse workforce, empowering evidence-based decision-making and enabling the development of targeted strategies. By leveraging this data, we can proactively address the challenges faced by nurses, optimize the delivery of high-quality healthcare services, and create an environment that fosters nurse well-being and satisfaction.

Ownership

- Ownership Conversion

In recent times, there has been growing concern regarding the potential drawbacks associated with ownership conversions from non-profits to for-profits and those facilities acquired by private equity firms. However, this area of research remains relatively underexplored. Nevertheless, my research team is keenly aware of the mergers and acquisitions issue and has conducted relevant investigations.

Specifically, we have examined the impact of nonprofit ownership conversion on nursing homes and have found that those facing higher levels of financial distress are more likely to undergo non-profit (NP) to for-profit (FP) conversions (Lu and Lu, 2021). This study highlights the need for policymakers to enhance oversight over NP to FP conversions, particularly in nursing homes that exhibit significant financial distress prior to the conversion. Moreover, our findings suggest that managers should avoid the pitfall of reducing registered nurse staffing levels and instead focus on streamlining overhead operations. This approach allows for increased operational efficiency without compromising the quality of care provided.

By acknowledging the potential risks associated with ownership conversions and implementing targeted oversight, policymakers can safeguard the interests of residents in nursing homes. I am confident that with continued research and concerted efforts from both policymakers and industry professionals, we can effectively address the challenges and complexities associated with ownership changes in nursing homes.

- Ownership Disclosure

In the second half of the 1990s, states with plaintiff-friendly tort environments experienced a sharp increase in lawsuits alleging patient neglect or abuse. This concerning trend prompted our

research (Brickley, Lu, and Wedig, 2017) to examine the asset-shielding practices that emerged between 1998 and 2004 in these states. Our research highlighted two notable trends: (1) large chains selling homes to smaller, more judgment-proof owners, and (2) a reduced inclination to brand chain-owned units with names directly linking them to the central corporation or sister units.

The disclosure of ownership to the public serves as a powerful mechanism to address these asset-shielding behaviors among large chains and enforce accountability at the unit level. By making ownership information transparent, the negative reputation and consequences of inadequate care within a single unit can spill over to the broader ownership entity. This spillover effect significantly magnifies the impact of negative reputational events and provides a strong incentive for large chains to actively monitor the quality of care across all their units.

Further, it is imperative to recognize the significance of ongoing research and analysis surrounding nursing home acquisition by private equity firms (PEs), which heavily relies on the availability of ownership information. By actively staying informed about the latest developments in ownership changes, we can gain valuable insights into the post-acquisition behavior of PEs and take collective action towards enhancing the quality of care and ensuring the overall well-being of nursing home residents. Through a comprehensive understanding of these dynamics, we can foster an environment of accountability, transparency, and continuous improvement within the nursing home industry.

Conclusion

Thank you for granting me the opportunity to discuss my extensive research on nursing homes and the critical factors of quality, cost, and access in elderly care. The implementation of quality disclosure has undeniably proven to be effective in ensuring that nursing homes consistently meet and surpass minimum quality standards. However, the persistent issue of nurse shortage remains a pressing challenge affecting nursing homes. Furthermore, we must remain cautious of potential risks associated with ownership conversions from non-profits to for-profits and the increasing acquisition of nursing homes by PEs. These developments necessitate a collective exploration of creative ideas and innovative approaches to support and revitalize the nursing home industry.

I sincerely appreciate your leadership and commitment to addressing the needs of older adults and people with disabilities. In conclusion, I express my utmost gratitude for the opportunity to address this esteemed committee, and I hope that through collaborative efforts and thoughtful policies, we can create an environment where nursing homes thrive as compassionate and reliable sources of care for our aging population. Thank you.

References:

- Brickley, J. A., S. F. Lu and G. J. Wedig. 2017. "Malpractice Laws and Incentives to Shield Assets: Evidence from Nursing Homes." *Journal of Empirical Legal Studies*, 14(2), 301-32.
- Brickley, J. A., Lu, S. F., and Wedig, G. J. "Five-Star Ratings and Managerial Turnover: Evidence from the Nursing Home Industry", 2021, *Journal of Law, Economics, and Organization*, 37(2), 278-313.
- Ching, A. T., Hayashi, F., & Wang, H. "Quantifying the impacts of limited supply: The case of nursing homes", 2015, *International Economic Review*, 56(4), 1291-1322.
- Dai, W., and Luca, M., "Digitizing disclosure: The case of restaurant hygiene scores", 2020, *American Economic Journal: Microeconomics*, 12(2), 41-59.
- Dranove D, Kessler D, McClellan M, Satterthwaite M, "Is more information better? The effects of "report cards" on health care providers", 2003, *Journal of Political Economics*, 111(3):555-588.
- Li, Y., Lu, L. X., & Lu, S. F. "Does Social Media Dominate Government Report Cards in Influencing Nursing Home Demand?", 2023, *Manufacturing & Service Operations Management*, forthcoming
- Lu, S.F. "Multitasking, Information Disclosure, and Product Quality: Evidence from Nursing Homes.", 2012, *Journal of Economics & Management Strategy*, 21(3), 673-705.
- Lu, S.F. and L.X. Lu. "Do Mandatory Overtime Laws Improve Quality? Staffing and Operational Flexibility in Nursing Homes", 2017, *Management Science*, 63(11), 3566-3585.
- Lu, S.F., H. Rui and A. Seidmann. "Does Technology Substitute for Nurses? Staffing Decisions in Nursing Homes", 2018, *Management Science*, 64(4), 1842-1859
- Lu, L. X., and Lu, S. F. "Does nonprofit ownership matter for firm performance? Financial distress and ownership conversion of nursing homes", 2022, *Management Science*, 68(7), 5127-5145.
- Werner RM, Norton EC, Konezka RT, Polsky D "Do consumers respond to publicly reported quality information? Evidence from nursing homes", 2012, *Journal of Health Economics*. 31(1):50-61.
- Zhao, X. "Competition, information, and quality: Evidence from nursing homes", 2016, *Journal of health economics*, 49, 136-152.

Questions for the Record

U.S. Senate Special Committee on Aging
“Residents at Risk: The Strained Nursing Home Inspection System and the Need to
Improve Oversight, Transparency, and Accountability”
May 18, 2023
Questions for the Record
Ms. Erin Bliss

Chairman Robert P. Casey, Jr.

Question:

The Majority staff’s investigation found that flat-lined Federal funding over much of the last decade has negatively affected the capacity of States to conduct nursing home oversight. During the hearing, witnesses testified that they are concerned delayed recertification survey delays and untimely complaint investigations put nursing home residents at risk. The investigation recommends that Congress and States should invest in robust nursing home oversight. Do you believe such investments would improve monitoring of health and safety standards at nursing homes?

Response:

CMS and States have consistently pointed to flat Federal funding for survey and certification as a key factor in State survey agency performance problems, particularly with respect to State delays in conducting standard surveys and serious complaint surveys. In OIG’s oversight work, State staffing shortages and the demands of rising workloads for complaint surveys are contexts in which CMS and States have identified insufficient funding for State survey agencies as a major challenge.

State survey agency performance shortfalls put nursing home residents at risk. For example, OIG has [documented](#) that many States have not investigated serious complaints about nursing homes in a timely manner, and this has been a problem for more than a decade. These are complaints that allege actual patient harm or grave risks of harm, so any delay can have serious consequences. Improving State performance of standard surveys and complaint surveys would improve the health and safety of nursing home residents.

Question:

The Majority staff’s investigation found that 32 survey agencies have vacancy rates of 20 percent or higher among nursing home surveyors. These vacancies directly impact the ability of States to conduct thorough and timely nursing home oversight. The report recommended that CMS should regularly collect and report staffing information from State survey agencies as part of its performance tracking. How could such information and collection activities improve nursing home oversight?

Response:

Greater transparency into a known problem such as State survey agency staffing shortages is an important step in solving the problem. That transparency holds promise for supporting CMS efforts to monitor and identify early warning signals, potentially enabling CMS to intervene before a State agency's performance becomes a problem for nursing home residents. Monitoring State staffing data might also help CMS and States to analyze the impacts of staffing on State agency performance.

Question:

The Majority staff's investigation showed how States are spending millions of dollars on contractors to conduct nursing home inspection. I am concerned these arrangements are an expensive use of taxpayer dollars and introduce serious questions about inspection quality and conflicts of interest. The testimony of Shelly Williamson also raised concerns about the growing use of contract surveyors. The investigation recommended that States, CMS, and the Office of Inspector General conduct more oversight of these arrangements. Can you commit to study the report's findings on the rising use of contract surveyors and consider the issue for future oversight work?

Response:

Yes. The use of contract surveyors by States is not an issue that OIG has looked into before, and we are closely reviewing the findings in your report. We would be happy to follow up with your staff and learn more about the issues at play as well as consider how OIG might have a helpful oversight role here.

Question:

The Majority staff investigation found that untimely surveys reduced the accuracy of Care Compare, the Federal website many consumers use to learn about nursing homes. The investigation recommends that CMS strengthen the accuracy of Care Compare. What steps should CMS take to accomplish this goal?

Response:

Many States have backlogs of overdue recertification surveys, meaning that many nursing homes have gone 16 months or longer without a standard survey. In these cases, the most recent survey results on Care Compare are at least 16 months old and may not reflect the latest status of compliance with health and safety standards for some facilities. OIG has [recommended](#) ways for CMS to improve the timeliness of State surveys, including recommendations that CMS engage earlier and more frequently with high-level State officials on serious or recurring performance shortfalls, disseminate results of State performance reviews more widely, and actively monitor State agency corrective action plans and other remedies to focus on making these plans and

remedies specific and outcome-oriented. OIG has also [recommended](#) that CMS work with State agencies on a plan to more frequently survey nursing homes with repeat deficiencies.

In addition, OIG has uncovered a different concern related to the accuracy of Care Compare data. Specifically, we found in an [audit](#) issued earlier this year that CMS's processes for reviewing State survey results reported on its Care Compare website were inadequate. An estimated two-thirds of nursing homes had one or more deficiencies related to health, fire safety, and emergency preparedness identified during State agency surveys that were inaccurately reported on Care Compare. OIG recommended that CMS strengthen its processes for reviewing State agency survey results reported on Care Compare by requiring State agencies to verify that deficiencies shown across CMS's systems are accurate, by providing technical assistance and additional training to State agencies that are not following procedures for reporting deficiencies, and by requiring quality assurance checks to ensure accurate reporting, among other technical recommendations.

Senator Kristen Gillibrand

Question:

Given the difficulties that nursing homes are experiencing with adequate staff/resident ratios, how can investing in Home- and Community-Based Services help alleviate the overburdening of nursing homes and give older adults the option to age in place?

Response:

Inadequate staffing of nursing homes is a longstanding and difficult challenge that can have negative consequences for quality of care and the safety of nursing home residents. Part of the solution could be finding better ways for elderly and disabled people who need care to remain in their own homes or with family, with needed care and support there. But this will not work for everyone, and so OIG is committed to improving quality and safety for people who do need nursing home care.

Question:

How would supporting the direct care workforce help make Home- and Community-Based Services more accessible?

Response:

Shortages in the clinical and direct-care workforce have come up time and time again in OIG's oversight work. Staffing shortages have been a prominent concern among nursing homes and the State survey agencies that oversee nursing homes. This concern has also been prominent in our recent [report](#) on home health agencies' challenges and strategies related to the COVID-19 pandemic. The pandemic exacerbated longstanding staffing challenges for home health agencies

and added new challenges. Home health agencies without enough staff may also struggle to accept new patient referrals, which could affect beneficiaries' access to home health care.

Senator Raphael Warnock

Question:

America is facing disastrous levels of staffing shortages across our health care system,¹ and Congress has the responsibility to address this crisis. How do shortages of nursing home staff and health care providers at large affect the quality of care that individuals in nursing homes receive?

Response:

We have found that shortages of nurses and understaffing are persistent problems raised by State survey agencies, nursing homes, and other health care providers.

We are very concerned about the links between understaffing at nursing homes and poor quality of care and health outcomes for residents. Our work has found that some nursing homes have failed to meet even the minimum requirement for at least 8 hours of registered nurse staffing every day. That is truly alarming.

Nursing homes, like State survey agencies, have raised concerns about their inability to recruit and retain adequate nursing staff and aides. We have also heard these concerns from home health agencies and hospitals. This is a systemic problem that will take an “all hands-on deck” approach to solving.

¹ <https://mphdegree.usc.edu/blog/staffing-shortages-in-health-care/>

U.S. Senate Special Committee on Aging
“Residents at Risk: The Strained Nursing Home Inspection System and the Need to
Improve Oversight, Transparency, and Accountability”
May 18, 2023
Questions for the Record
Ms. Shelly Williamson

Chairman Robert P. Casey, Jr.

Question:

The Majority staff’s investigation found that half the Nation’s survey agencies are using third-party contractors to oversee nursing homes. While using contractors on a short-term basis is understandable, I’m concerned that states seem to be leaning on contractors for more work over longer periods of time. You raised this issue in your testimony, discussing concerns about the effects the use of contractors has on survey agencies. The investigation recommended that States, CMS, and the Office of Inspector General conduct more oversight of these arrangements. From the perspective of survey agencies, are there additional steps CMS could take to help states manage these contracts and the issues they present?

Response:

CMS, as well as states, should ensure there are no conflict-of-interest concerns when utilizing third-party contractors. CMS should ensure their contracts with these third-party contractors do not pose conflicts of interest for CMS or for states with these contracts in place.

Question:

States told the Aging Committee that high turnover rates and inexperienced surveyors negatively impact both the timeliness of surveys and the quality of surveys. The Majority staff investigation found 33 survey agencies where one-quarter or more of the surveyor staff had less than two years of experience. In seven other survey agencies, at least half of the survey staff had less than two years of experience. What are the strategies survey agencies can pursue to reduce staff turnover?

Response:

Survey agencies have pursued and implemented many strategies to reduce staff turnover. Some of the strategies implemented include:

- Increasing salaries to fulfill federal expectations via state-provided funding
- Providing the ability to work from a home office when not in facilities
- Creating flexible work schedules to fit with surveyor needs including four, 10-hour workdays when possible
- Hiring of former or retired surveyors (number of hours often limited)
- Using contractors to ease the burden on state survey staff
- Providing resources to staff regarding reducing stress, self-care

Question:

How would a more experienced surveyor workforce improve the health and safety of nursing home residents?

Response:

A more experienced surveyor workforce increases survey efficiency and effectiveness. As mentioned in my written testimony, there are strenuous training requirements for surveyors. To survey nursing homes independently, a surveyor must complete required training and successfully complete the Surveyor Minimum Qualifications Test (SMQT). This training often takes a year or more to complete. Until such training is completed and a surveyor is able to survey independently, surveys take longer because new surveyors are being trained. In addition, there is often additional stress and burden on experienced surveyors who are tasked with this onsite training in addition to conducting the survey.

Question:

I worked with my former colleague Senator Toomey to expand the Special Focus Facility program, which is reserved for the Nation's poorest performing nursing homes. We worked on a bipartisan basis to increase transparency of the program and then introduced the Nursing Home Reform Modernization Act to expand the program's reach. The Biden Administration took steps in 2022 to bolster the Special Focus Facility program and has included additional funding in the Fiscal Year 2024 budget. Do you agree that more funding for the Special Focus Facility program will help better protect residents in the Nation's poorest performing facilities?

Response:

I agree more funding for increased oversight of poor performing nursing homes is needed. By conducting more frequent surveys, noncompliance is identified timely, reducing prolonged impact to residents.

Question:

The Majority staff report issued 10 recommendations to improve the capacity of survey agencies to oversee nursing homes. Please respond to each of the recommendations, indicating whether you agree with them, and adding any additional information or perspectives you think may be helpful to the Committee's understanding of these issues?

Response:

Recommendation 1: Partially agree. Federally directed work requires additional federal investment. State investments have already been made and will continue to be made but federal investments are the first step.

Recommendation 2: Partially agree. An overall assessment should be made of the efforts of CMS and the States to provide surveyor staffing of this important function. Increased transparency on surveyor staffing patterns at both levels would give a greater understanding of how many people are working to protect residents and patients. CMS and survey agencies should regularly communicate staffing information. CMS should utilize this information during budget preparation and when considering new initiatives and expectations that have an impact on survey agency work.

Recommendation 3: Partially agree. It would be helpful to have a list of federal contractors employed by CMS and clear parameters around the work that those contractors may perform at the State level. This will help avoid conflicts of interest. In terms of contractors at the State level, they should be held to the same standard as other survey activities.

Recommendation 4: Neither agree nor disagree. This is a state-specific decision and may be influenced by many factors.

Recommendation 5: Agree

Recommendation 6: Agree

Recommendation 7: Agree

Recommendation 8: Agree and a national system for tracking ombudsmen workloads and performance, similar to what is hosted by CMS, should be created.

Recommendation 9: Agree

Recommendation 10: Agree. Oversight of nursing homes and other healthcare providers is essential.

Senator Kristen Gillibrand

Question:

Given the difficulties that nursing homes are experiencing with adequate staff/resident ratios, how can investing in Home- and Community-Based Services help alleviate the overburdening of nursing homes and give older adults the option to age in place?

Response:

Everyone deserves to receive care in the most home-like and least restrictive setting as possible. Investing in all levels of long-term care services and home and community-based services is key in ensuring there are adequate support and resources across the long-term care spectrum.

Question:

How would supporting the direct care workforce help make Home- and Community-Based Services more accessible?

Response:

The healthcare workforce, in all areas, should be supported in order to make services more accessible.

Senator Raphael Warnock**Question:**

Chairman Casey's new report on the nursing home oversight crisis highlights data from the Centers for Medicare & Medicaid Services, in which 92 percent of all nursing homes in Georgia were not surveyed on time.² This lag in oversight is unacceptable. It leads to lower quality care for our loved ones and delays in detecting abuse and neglect in our nursing homes. How do ongoing vacancies and staffing shortages limit the ability of State Survey Agencies to conduct oversight in a timely manner?

Response:

Adequate staffing and resources are necessary for survey agencies to ensure quality nursing home care is delivered. Survey agencies enforce federal standards related to quality of life, quality of care, infection prevention and control, environmental safety and emergency preparedness in nursing homes through recertification and complaint surveys. Recertification surveys are preventative and important - they are intended to identify deficient practice before there is harm to residents. Responding to complaints is also critical and is of utmost importance. These complaint surveys are in response to noncompliance and are necessary to prevent further harm, impairment, or death. Because of the increase in complaints and the amount of time and resources dedicated to conducting complaint surveys, a number of survey agencies are unable to timely complete recertification surveys. The volume of work simply exceeds current survey agency capacity.

Survey agencies play a vital role in ensuring safe, high-quality care and we need sufficient resources to complete that work. Without sufficient resources, nursing home residents will continue to be at risk of substandard care.

² <https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf>

Question:

America is facing disastrous levels of staffing shortages across our health care system,³ and Congress has the responsibility to address this crisis. How do shortages of nursing home staff and health care providers at large affect the quality of care that individuals in nursing homes receive?

Response:

The number of complaint surveys (onsite visits) in 2022 was nearly 10,000 higher than 2015. Overall, the number of individual complaints received has increased by 45% since 2015 (214,220 to 309,908). More alarming are the increases in serious complaints.

- Complaints alleging serious injury, harm, impairment or death, or the likelihood for such have increased 102% since 2015 (18,384 to 37,125).
- Complaints alleging harm that negatively impact a resident's mental, physical and/or psychosocial status has increased by 43% since 2015 (113,260 to 161,180).

There has also been an increase in severity of deficiencies cited on recertification and complaint surveys since 2015. The number of deficiencies cited at actual harm and above has increased by 22% and the number of deficiencies cited at immediate jeopardy has increased by 42%.

In Missouri, these increases in the numbers of complaints and the severity of deficiencies is directly related to the shortages of nursing home staff.

Senator John Fetterman**Question:**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act included \$100 million in one-time funding for state survey agencies to conduct work related to the pandemic. A portion of this funding allowed state survey agencies to conduct more than 115,000 Focused Infection Control (FIC) surveys of nursing homes, which are key to the oversight needed to ensure resident safety. Though Congress made this important investment in the CARES Act and also included a 2.5% increase in the Fiscal Year 2023 accounts for FIC surveys, this funding will sunset at the end of Fiscal Year 2023. We can't go back to the prior status quo, where federal funding for state survey agencies was held flat from Fiscal Year 2014 through Fiscal Year 2022 and seriously limited the comprehensiveness of inspections. Your testimony spoke to the critical need for greater federal resources to ensure that state survey agencies can do their jobs. If Congress fails to increase federal funding for nursing home oversight, what will this mean for nursing home residents and their families?

³ <https://mphdegree.usc.edu/blog/staffing-shortages-in-health-care/>

Response:

Adequate staffing and resources are necessary for survey agencies to ensure quality nursing home care is delivered. Survey agencies enforce federal standards related to quality of life, quality of care, infection prevention and control, environmental safety and emergency preparedness in nursing homes through recertification and complaint surveys. Recertification surveys are preventative and important - they are intended to identify deficient practice before there is harm to residents. Responding to complaints is also critical and is of utmost importance. These complaint surveys are in response to noncompliance and are necessary to prevent further harm, impairment, or death. Because of the increase in complaints and the amount of time and resources dedicated to conducting complaint surveys, a number of survey agencies are unable to timely complete recertification surveys. The volume of work simply exceeds current survey agency capacity.

An increase in the federal budget is imperative for survey agencies to rebalance and to improve recruitment and retention of survey staff. Survey agencies play a vital role in ensuring safe, high-quality care and we need sufficient resources to complete that work. Without sufficient resources, nursing home residents will continue to be at risk of substandard care. With a growing number of Americans expected to need nursing home care in the coming years, it is imperative to increase the federal budget now and to sustain that increase to protect the health and safety of those relying on nursing home care.

U.S. Senate Special Committee on Aging
**“Residents at Risk: The Strained Nursing Home Inspection System and the Need to
Improve Oversight, Transparency, and Accountability”**
May 18, 2023
Questions for the Record
Ms. Leah McMahon, M.A.

Chairman Robert P. Casey, Jr.

Question:

The information ombudsmen provided during the Majority staff’s investigation was critical to understanding how understaffed survey agencies affect nursing home residents. The descriptions of abuse, neglect, and serious health deficiencies that went months and even years without being investigated put a face on this issue and showed how ombudsmen give voice to the voiceless. Your program is part of the Older American Act, which is up for reauthorization next year. What are three things Congress can do to help ombudsmen better advocate for residents of nursing homes and other long-term care settings?

Response:

Senator Casey, thank you for this important and timely question. I am a member of the National Association of State Long-Term Care Ombudsman Programs (NASOP) and we are currently in the process of considering what recommendations we will make to Congress regarding the OAA reauthorization. We will provide those to you in the future. However, from my vantage point, I believe that the first priority would be a significant increase in authorization levels for appropriations. The Long-Term Care Ombudsman Program needs more sustainable funding. Second, although the current Act includes mention of assisted living and board and care facilities as part of our jurisdiction and responsibilities, a more clear description of that work and a specific authorization of appropriations would be helpful in making our case to the funding committees. We need an increase in authorization levels to keep up with providing a regular presence in the rapid expansion of facilities, so we can quickly identify and address resident concerns before the problem causes actual harm or becomes a widespread systemic problem. There has been an explosion in the growth of assisted living facilities over the past 10 years with more than 60,000 nationwide, four times more than the number of nursing homes and with more than one million beds. Many vulnerable adults who live in assisted living facilities do not have regular access to an ombudsman for help. For example, in my state we have certified long-term care ombudsmen who only work part-time. We need full-time ombudsmen to provide continuity, increase our access to residents and expand the visibility of the program.

Additionally, there needs to be a clearer definition regarding the penalty for interfering with an ombudsman's duties, including impeding immediate access to residents and their records. It is critical that residents have unimpeded access to the ombudsman, without the fear of retaliation, and that the ombudsman has unimpeded access to the residents.

Question:

The Majority staff report issued 10 recommendations to improve the capacity of survey agencies to oversee nursing homes. Can you respond to each of the recommendations, indicating whether you agree with them, and adding any additional information or perspectives you think may be helpful to the Committee's understanding of these issues?

Response:

Senator Casey, please see my answers to the recommendations:

1. Congress and States should invest in robust nursing home oversight. I agree with this recommendation.
2. CMS should regularly collect and report staffing information from State survey agencies. I agree with this recommendation. The data should be utilized to demonstrate the needs and take action to address survey staffing shortages.
3. CMS, HHS, OIG, and States should increase oversight of contract surveyors. I agree with this recommendation.
4. States should consider more flexible hiring requirements for surveyors. I agree with this recommendation and that State Agencies hire an interdisciplinary team of surveyors and not rely solely on RNs.
5. CMS should consider strategies to reduce burden on States for non-survey tasks. Examples of non-survey tasks would be helpful to understand in this recommendation.
6. Congress, States, and institutions of higher education should collaborate to expand opportunities to enter into and remain in the health care workforce. I agree with this recommendation.
7. Congress, States, and health care facilities should improve mental health resource for the healthcare workforce. I agree with this recommendation.
8. Congress should increase funding for the State Long-Term Care Ombudsman Program. I agree with this recommendation.
9. CMS should strengthen the accuracy of Care Compare. I agree with this recommendation. Care Compare should include equity owned nursing home information to increase transparency to the public. The information should be concise, well defined, and easy to understand from a consumer perspective.

10. Congress should increase funding to the Office of Inspector General for the Department of Health and Human Services. I agree with this recommendation.

Senator Kristen Gillibrand

Question:

Based on your previous experience as a program manager for home and community-based services, how can investing in Home- and Community-Based Services help alleviate the overburdening of nursing homes and give older adults the option to age in place?

Response:

Senator Gillibrand, with appropriate services, many older adults can stay in their home or a community base setting. Many nursing homes are operated without sufficient staff, putting residents at risk of neglect and harm. Investing in Home- and Community-Based Services can help alleviate the overburdening of nursing homes and assist older adults with remaining independent in their own home. A few examples include, expanding the availability of Medicaid, increasing affordable housing, supporting family and other caregivers would help address some of the barriers that currently force people into nursing homes that may not be equipped to care for them.

Question:

How would supporting the direct care workforce help make Home- and Community-Based Services more accessible?

Response:

Senator Gillibrand, the Home- and Community-Based Services sector is also experiencing a shortage of workers and people who work in this field are the working poor. Thus, it is critical that we support the direct care workforce in order to retain workers in this field. We need to increase their wages. There are individuals who have been forced into nursing homes because there are not enough workers to provide care in their home or community setting. Increases in wages and benefits, as well as free and accessible training programs are some of the ways we can support this workforce.

Senator Raphael Warnock**Question:**

America is facing disastrous levels of staffing shortages across our health care system, and Congress has the responsibility to address this crisis.

Ms. McMahon, how do shortages of nursing home staff and health care providers at large affect the quality of care that individuals in nursing homes receive?

Response:

Senator Warnock, long-term care ombudsmen visit nursing homes every day and hear directly from the residents about how staffing shortages impact their care. They have told us that they have waited long periods of time to get help from staff, receive meals, medication, activities, laundry services and bathing and showering services. Residents have spent their lives in their careers. They are our veterans, teachers, nurses, judges, scientists and congressmen. They are you and me. When people enter a nursing home, they have lost some level of independence and need a professional to care for them at the most vulnerable time in their life. Caregivers and professionals choose a career in the long-term care field to help people and if they cannot make a livable wage, they move on to other professions. We need better wages and opportunities for professional development so people want to stay invested in a career of caring for people.

While there has been significant discussion about the federal budget and how we safeguard our financial future for the next generation, our State Survey Agencies still need sufficient federal funding to ensure that our loved ones in nursing homes receive the high-quality care that they need. Without surveyors, reports of abuse and neglect in nursing homes can go unaddressed.

Question:

From your perspective as a long-term care ombudsman, can you share how stagnant or reduced federal funding for State Survey Agencies affect the care and safety of nursing home residents?

Response:

Senator Warnock, cutting funds for the State Agency could mean that more residents receive less quality of care. It means there are less eyes on the nursing home from the only agency that is there to enforce the regulations and to detect all the things that could have a negative impact on the residents' care. For example, not receiving nursing care, assistance with meals, bathing and dressing and wound care. The outcome could be detrimental and lead to abuse, neglect and potentially death. We need more surveyors to conduct more inspections to protect people at the most vulnerable time in their life. When surveyors are short-staffed, this impacts their response time, and the residents are the people who suffer. As more time goes by without a response, the risk becomes greater for more residents to be impacted by the complaint that was filed.

Senator John Fetterman**Question:**

Earlier this year, the Biden administration released a proposed rule to increase transparency regarding nursing home ownership and management. Specifically, nursing homes enrolled in Medicare or Medicaid would have to disclose to Centers for Medicare and Medicaid Services (CMS) and provide additional information regarding owners, operators, and management, as well as data regarding individuals providing administrative or clinical consulting services to nursing homes. In recent decades, there has been an increasing trend of Wall Street and private equity firms snapping up non-profit nursing homes and other small chains in order to consolidate, reduce competition, and increase profits. As research shows, these new owners are more likely to prioritize company profits at the expense of residents' quality of care. What role could additional oversight play, particularly under the Biden administration's proposed role, in improving transparency about nursing home ownership and operations and safeguarding residents' quality of care?

Response:

Senator Fetterman, additional oversight of private equity owned nursing homes is imperative to the quality of care of residents. As you are aware, research has documented that nursing home residents who reside in private equity owned nursing homes have an increased risk of mortality. Despite this fact, it is often impossible to tell who actually owns a nursing home. Family members are the primary people who are looking for information about nursing homes and often during times of crisis. It is a hardship to the family member and the person who needs nursing home level of care when families are relying on limited information about the performance of a nursing home. The long-term care system, including the payor sources of Medicare and Medicaid, are extremely hard to navigate. It is much harder to navigate under duress. To increase transparency, the public needs to be informed about who owns, controls, and manages nursing homes. Increased transparency will help people make informed decisions about choosing a nursing home at the most vulnerable time in their life. Further increased oversight will assist with gathering and analyzing information on the performance of nursing homes.

U.S. Senate Special Committee on Aging
**“Residents at Risk: The Strained Nursing Home Inspection System and the Need to
Improve Oversight, Transparency, and Accountability”**
May 18, 2023
Questions for the Record
Dr. Susan Feng Lu

Senator Kristen Gillibrand

Question:

Given the difficulties that nursing homes are experiencing with adequate staff/resident ratios, how can investing in Home- and Community-Based Services help alleviate the overburdening of nursing homes and give older adults the option to age in place?

Response:

Over the past two decades, home care and community-based care have rapidly emerged and secured a considerable portion of the aging care market. The ascent of these service modalities provides older adults, who are capable of performing their daily activities, with enhanced choices and significantly eases the demand for nursing home accommodations. The promise of independent living and personalized care that these services offer are particularly appealing to this demographic. Nevertheless, for older adults requiring round-the-clock care, who lack familial support or the financial means to secure professional help, institutional care via nursing homes often remains the sole viable option.

Home care permits the elderly to remain in their familiar surroundings, relishing the benefit of individualized attention from a professional nurse through short, regular visits. Existing literature shows that home care is a financially efficient method for aging in place. Yet, most of these assertions rest on an idealistic premise that society has ample labor to service the elderly and that the staffing hourly rate is readily adjustable, with no budgetary constraints.

In contrast, the actual circumstances reveal a nursing shortage precipitated by an inadequate supply of nurses and stringent fiscal budgets in the US. Nursing homes, by virtue of economies of scale, can utilize nursing hours more efficiently than home care. A single nurse can tend to multiple older adults simultaneously, eliminating the travel time that a home care nurse might expend in transit. Therefore, it behooves us to approach large-scale investment in home care with caution as it could potentially exacerbate the nursing shortage.

Community-based care showcases an alternative approach to nursing utilization compared to home care. It optimizes the economies of scale, while also reducing costs for older adults. If a sustainable care ecosystem could be cultivated within communities, it could significantly alleviate staffing dilemmas.

In summary, investments in home- or community-based services present older adults with a broader spectrum of choices for aging in place. However, in considering staff-to-resident ratios and nursing shortages, it's vital that we distinguish between the types of services and tailor our approach to the challenges they present.

Question:

How would supporting the direct care workforce help make Home- and Community-Based Services more accessible?

Response:

Generally, the existing literature advocates for the following four initiatives: (1) Investing in nursing education programs to nurture and retain the direct care workforce; (2) enhancing the attractiveness of the nursing profession by improving pay, reducing burnout, and enhancing work environments; (3) expanding the pool of direct care workers through immigration; and (4) leveraging technology to augment the productivity of nursing personnel. Crucially, the methods of reimbursement or payment are the linchpins that harmonize the interests of different stakeholders in the aging care market.

In the context of home care, it's beneficial to connect the demand for home care with out-of-pocket expenditures. Essentially, those who can afford to pay for home care services out-of-pocket can do so. This not only allows for higher rates through market influence, attracting more people to the direct care workforce for home care, but also eases the financial load on Medicare and Medicaid. This scenario illustrates where market forces can indeed exert a positive influence.

In relation to community-based care, government involvement can bolster the direct care workforce through the investment in innovative technologies and the creation of a comprehensive care ecosystem. As an illustration of the potential for technology, consider the four fundamental daily activities older adults may need assistance with: walking, eating, toileting, and bathing. Investment should be directed toward technologies that can aid in these four dimensions. Additionally, a significant hazard for older adults living alone is the risk of falls that may go unnoticed. Technology capable of detecting potential falls becomes crucial in community care scenarios. If Senator Gillibrand is interested in this area, we can delve into more detailed discussion.

Statements for the Record



Submitted Public Comment of Milta Little, DO, CMD—President, AMDA- The Society for Post-Acute and Long-Term Care Medicine

Senate Special Committee on Aging
 Hearing on “Residents at Risk: The Strained Nursing Home Inspection System and the Need to Improve Oversight, Transparency, and Accountability”
 May 18, 2023

Chair, Ranking Member, and other Members of the Committee,

Thank you for holding this important hearing about the quality of care received by nursing home residents. I am the President of AMDA – The Society for Post-Acute and Long-Term Care Medicine. We are the only medical specialty society representing the community of over 50,000 medical directors, physicians, nurse practitioners, physician assistants, and other clinical specialists working in the various post-acute and long-term care (PALTC) settings. The Society’s 5,500 members work in skilled nursing facilities, long-term care and assisted living communities, CCRCs, home care, hospice, PACE programs, and other settings.

My testimony focuses on one key area of concern for our nation’s seniors and those who work in the PALTC community.

Data Limitations – Need for a Medical Director National Registry

The limitations and inconsistencies in data about the nursing home workforce, before but especially during the COVID-19 pandemic, is a major area for concern.

Under 42 CFR §483.70(h), the Centers for Medicare & Medicaid Services (CMS) requires every nursing home to designate a physician to serve as medical director. The medical director is responsible for the implementation of resident care policies and the coordination of medical care practices in the facility. Requirements of the medical director role include coordinating medical care and providing clinical guidance; overseeing the implementation of resident care policies; providing active guidance and expertise in infection control practices; ensuring policies and procedures align with current standards of practice; and identifying and addressing issues with resident care or quality of life practices. Medical directors serve in an administrative and regulatory role overseeing overall clinical care practices of their facilities. When the medical director role was created in the OBRA’ 87 law, the goal was to help improve the overall quality of care, operations, and clinical practice within the nation’s nursing facilities. **We have an imperative to ensure that this role is not hidden to the public and be transparent to the training, background and level of engagement of this individual.**

In 2022, the National Academies of Sciences, Engineering, and Medicine (NASEM) released a report, The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families and Staff, that further highlights the importance of medical directors in the nursing home setting. According to the NASEM report, the medical director’s role is critical for the “promotion of high-quality clinical care, assistance in reviewing the quality of care, advising

on infection prevention and control issues, promoting employee health and safety, and being active in facility-related education and communication.” The NASEM report also noted that in 2020, the CMS coronavirus commission report emphasized “the importance of medical director engagement in nursing home emergency management planning and execution.”

The NASEM report recommended developing a publicly available national database of information about the basic demographics and training of the medical director, among other pieces of information. As the report notes, “CMS does not keep any record of the characteristics of nursing home medical directors (e.g., age, medical specialty, certification status, geriatric or medical director training, number of patients served, time spent in the nursing homes) in its databases, which makes research in this area challenging.”

The Society has long believed that CMS should disclose the medical directors of facilities and they be publicly displayed on the care compare website. Nursing home residents and their families have a right to know the physician who is charged with the vital tasks of coordinating the medical care given in the facility and the implementation of resident care policies. We strongly support this goal and have introduced legislation in this regard. H.R. 177, The Nursing Home Disclosure Act. The bill would ensure nursing facilities publicly report information on medical directors and CMS publish that information on Care Compare website. CMS could implement this policy without a statutory change.

We believe CMS could achieve this narrow but important goal under the current proposed rulemaking to increase transparency in the nursing home setting, which the Society supports. In the words of the Administration, “by making facility ownership and oversight more transparent, nursing home residents and their families will be more empowered to make informed decisions about care.” We believe the transparency requirements included in the recently proposed rule around nursing home ownership could achieve this goal with minimal clarification. In our comments, we suggested that CMS explicitly include in the definition of “managing employee” the title of “medical director” in addition to the other roles listed.

In short, we believe that CMS should begin keeping a public record, by name, of medical directors in each nursing home. The public needs and deserves access to immediate and adequate data about the clinicians who perform this vital role. In the fall of 2022 CMS asked for comments on establishing a national directory of health care providers and services. In a press release for that rule CMS argues that “Health care directories can serve as an important resource for patients, helping them locate providers who meet their individual needs and preferences and allowing them to compare health plan networks. Directories also have the ability to facilitate care coordination, health information exchange, and public health data reporting.” We strongly agree with this statement and would support the inclusion of nursing facility medical directors in this effort.

In closing, I want to emphasize the need to work together to ensure a safe environment that provides quality of life for those we care for. The Society looks forward to the opportunity to work with the Committee in the future on the important and evolving issue of caring for aging Americans in the PALTC continuum.



May 24, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G41 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mike Braun
Ranking Member
U.S. Senate Special Committee on Aging
628 Hart Senate Office Building
Washington, D.C. 20510


Dear Chairman Casey and Ranking Member Braun:

As advocates for our nation's 1.1 million nursing home residents, we thank you for convening the May 18, 2023, hearing, "Residents at Risk: The Strained Nursing Home Inspection System and the Need to Improve Oversight, Transparency, and Accountability." The hearing revealed a crisis in America's nursing homes brought on by state survey agencies experiencing debilitating staffing shortages. We are grateful to both of you for drawing attention to this matter, and we offer our support to help remedy this problem.

State survey agencies are critical to the health and well-being of nursing home residents. They are charged with ensuring nursing homes operate according to state and federal regulations. They respond to resident complaints and have broad authority to take decisive action to protect residents from harm. The majority's report "Uninspected and Neglected" details what happens to nursing home residents when state survey agencies cannot do their jobs: residents suffer, and poor care and resident abuse go unaddressed. The critical role of state survey agencies cannot be overstated.

The majority's report reveals a stark reality in our nation. State surveyors are overworked and underpaid. This fact has resulted in high levels of burnout and staff turnover. It is unacceptable that 1 in 4 nursing homes has not undergone a statutorily mandated annual inspection within the prescribed time. These delays place our most vulnerable citizens at risk of harm. Witness testimony revealed an over-taxed system that is harming nursing home residents and perpetuating the staffing crisis at state survey agencies.

Strong and decisive actions must be taken to remedy this dire situation. We concur with the majority report's recommendations and urge Congress to take the recommended steps in the report. Nursing home residents suffered disproportionately during the COVID-19 pandemic when nearly 200,000 residents died. We must act now to ensure the catastrophic events of COVID-19 do not recur and that residents can rely on the state survey agencies to consistently and promptly hold nursing homes accountable for meeting quality standards.



We were heartened to hear both of you agree that this is a critical issue and that steps must be taken to address the crisis in state survey agencies. We urge you to work together to ensure nursing home residents are protected and safe. We look forward to working with you on this critical issue.

Sincerely,

California Advocates for Nursing Home Reform (CANHR)
Center for Medicare Advocacy
The Geriatric Circle: Long Term Care Experts
Justice in Aging
Long Term Care Community Coalition
Michigan Elder Justice Initiative
National Consumer Voice for Quality Long-Term Care

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May 25, 2023

The Honorable Bob Casey, Jr.
Chairman
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G16 Dirksen Senate Office Building Washington, D.C. 20510

The Honorable Mike Braun
Ranking Member
U.S. Senate Special Committee on Aging
628 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Casey and Ranking Member Braun:

As the State Long-Term Care Ombudsman of California, I applaud you and the members of the United States Senate Special Committee on Aging for your investigation and recent report *Uninspected and Neglected; Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk*.

On behalf of the California State Long-Term Care (LTC) Ombudsman Program and over 250,000 residents in skilled nursing homes in our state, we strongly support the Committee's recommendation for increased funding for the Long-Term Care Ombudsman Programs.

The Long-Term Care Ombudsman Program was created over 50 years ago as part of the Older Americans Act. It was designed to "provide a grassroots forum for patients, family, friends, and nursing home staff to work cooperatively to improve long-term care" [1]. The role of the LTC Ombudsman has changed significantly since its inception. In 2022, California Long-Term Care Ombudsmen investigated and resolved over 40,000 complaints on behalf of residents living in long-term care facilities; the top three complaints were physical abuse, severe neglect, and involuntary discharge/transfers. Last year alone, we investigated over 5,000 cases involving allegations of physical or sexual abuse of an LTC resident.

LTC Ombudsmen also witness Advance Healthcare Directives, organize family and resident councils in LTC facilities, and conduct community outreach and education about elder abuse prevention. Ombudsman representatives conduct quarterly mandated visits to every LTC facility, where they develop trust with residents and

working relationships with nursing home staff that promote collaborative, resident-centered solutions to conflicts and crisis.

Over the last several years, Ombudsmen have demonstrated themselves to be vital assets during emergencies, such as when facilities have had to be evacuated due to extreme weather such as heat waves, devastating wildfires, or historic flooding events. During mandated evacuations, Long-Term Care Ombudsmen play critical roles in ensuring that residents, their families and/or legal representatives are kept informed before, during, and after these traumatic events occur.

Currently, California counts on only \$16 million in combined federal and state funding to run its statewide LTC Ombudsman Program and 35 local programs. However, this level of funding is far from adequate, particularly considering the expanded role and responsibilities of Ombudsman representatives and their statutory requirement to oversee the more than 315,000 licensed LTC beds across the state. Further complicating matters, over the last five years the California LTC Ombudsman Program has lost nearly 40% of its certified Ombudsman program representatives, many of them volunteers. Considering the growing demand for Ombudsman services and limited financial and human resources being allocated to the program, we are seriously concerned about the State LTC Ombudsman Program's ability to fulfill its federal and state-mandated responsibilities over the upcoming years.

I thank you for the opportunity to share the experience of the California State Long-Term Care Ombudsman Program. Increased funding for the Long-Term Care Ombudsman Program is critically needed to ensure all residents in Long-Term Care facilities have access to an advocate who can empower them to resolve issues or, if not, to be able to escalate problems to the enforcement and regulatory agencies. I agree with the Committee's recommendations and am ready to do what is needed to modernize our current Long-Term Care system in this great nation.

Best regards,



Blanca E. Castro
State Long-Term Care Ombudsman



[1] House of Representatives Select Committee on Aging, Subcommittee on Human Services September 10, 1985 "The LTC Ombudsman Program: A Decade of Service to the Institutionalized Elderly."



Eric Holcomb, Governor
State of Indiana

Office of the State Long-Term Care Ombudsman
402 W. WASHINGTON ST., ROOM W451, MS27
INDIANAPOLIS, IN 46207-7083

May 25, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G41 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Braun
Ranking Member
U.S. Senate Special Committee on Aging
628 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Casey and Ranking Member Braun:

Thank you for the opportunity to provide additional input from an ombudsman's perspective, on how survey agency staff shortages have affected nursing home residents. Having recently read your report, "Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk," I know firsthand that without timely and thorough facility recertification surveys and the prompt investigation of resident complaints, long-term care residents continue to live at risk. Prior to becoming Indiana's State LTC Ombudsman four years ago, I worked as a surveyor for the Indiana Department of Health (IDOH), our state's survey agency. I am not a registered nurse, but have a master's degree in Applied Gerontology.

Indiana's LTCOP has found that residents call the Ombudsman more frequently than calling in a complaint to the survey agency over the last two years because they were not getting substantiated complaints from surveyors. For example, one resident called my office because she had not been changed for four hours while her call light had been on and ignored for at least that long. Another called because there was no nurse in her building; the facility was staffed with only two Qualified Medication Aides or QMAs (a QMA is a CNA who has satisfactorily completed the state approved Qualified Medication Aide Course). Another resident indicated that her medications were not being administered as per her physician's orders, and in addition, a nurse threatened to take away those medications. Overall, my office has seen an increase in calls related to neglect by facility staff ignoring call lights, staff shortages, and a lack of hygiene and toileting care for residents.



We have also seen an increase in complainants from outside sources, such as Emergency Medical Services, hospitals' emergency departments, and medical office staff. For example, a nurse case manager with an insurance company called to report a resident was not receiving his medications and when he did receive them, he had to hold his own IV bag. He received the wrong dosage and called 911 himself because facility staff would not address a swelling on his body he was experiencing. This gentleman was in the facility for rehab and wound up with blood clots due to the lack of care. Calls such as these may be due to outside entities not being aware of the survey agency or not receiving a response when the agency was contacted.

As a former LTC surveyor, I know that each recertification/annual survey and complaint investigation Indiana's survey agency completes is a small step toward creating safe living environments for LTC residents. However, delays or no response at all often result in hardships for most residents, and catastrophic events for others.

I wholeheartedly support the recommendations made in your report, but particularly the following suggestions:

1. *Congress and States should invest in robust nursing home oversight.* As stated in the report, "Congress should increase funding for survey and certification activities and consider making the spending mandatory to provide States more predictable funding streams." Each state must have a sufficient workforce in order to fill vacancies as they occur within their survey agencies.
2. *Congress, states, and institutions of higher education should collaborate to expand opportunities to enter into and remain in the healthcare workforce.* Collaborating with area universities should extend beyond just nursing education and include other allied health professions such as social work, gerontology, nutrition, physical and occupational therapy, respiratory therapy, speech therapy, and others.
3. *Congress should increase funding for the LTC Ombudsman Program.* Indiana has 524 nursing homes with approximately 35,000 residents, and 372 licensed assisted living facilities with roughly 36,000 residents. Our LTCOP currently has eighteen certified local LTC Ombudsmen who provide coverage, and not all of those are FTEs. We are in the process of hiring two additional local ombudsmen, as two recently left the Program. There are two certified ombudsmen in our State Office: myself and a Deputy Director. We received nearly 6,000 phone calls in our office during FFY22. We are stretched very thin. Adequate funding for the LTCOP is necessary as the Ombudsman is often the only voice that can be heard for many residents.

We know that collaboration among agencies is vital to improving the quality of life for LTC residents. We very much appreciate the work Indiana's state survey agency does, and we are pleased we are able to work together on projects such as facility closures.

I thank you both, as well as your staff members, for the work you are doing and the commitment you have shown, on behalf of the country's older adults and people living with disabilities who live in our country's nursing homes and licensed assisted living facilities.

Sincerely,

Lynn Clough

Lynn Clough, MA
State LTC Ombudsman



LeadingAge Testimony for the Record
U.S. Senate Special Committee on Aging Hearing:
“Residents at Risk: The Strained Nursing Home Inspection System and the Need to Improve
Oversight, Transparency, and Accountability”
May 18, 2023

Chairman Casey, Ranking Member Braun, and distinguished members of the Senate Special Committee on Aging (the Committee), we appreciate the opportunity to submit written testimony from LeadingAge on your hearing titled, “Residents at Risk: The Strained Nursing Home Inspection System and the Need to Improve Oversight, Transparency, and Accountability.”

LeadingAge represents more than 5,000 non-profit aging services providers, and other mission-minded aging services organizations. Alongside our members and 38 state partners, we use applied research, advocacy, education, and community-building to make America a better place to grow old. Our membership encompasses the continuum of services for people as they age, including care provided in more than 2,000 of our member nursing homes.

Our country’s health care sector is facing serious workforce shortages. Indeed, longstanding workforce shortages for aging services providers, exacerbated by the COVID-19 pandemic, have resulted in families’ requests for care going unfilled and countless nursing homes in communities across the country being forced to close their doors permanently. Aging services providers rely on funding and programs supported via federal and state policies. Without more attention and resources, the crisis will only deepen as America ages. We agree with the observation of many members of the Committee and witnesses that the workforce crisis is very real, not only for nursing homes, but for the very state survey agencies and federal entities charged with nursing home oversight. We hope the Committee will devote time and attention to the workforce crisis in nursing homes too.

As noted in the Committee’s investigative report, “Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk,” 32 survey agencies have vacancy rates of 20 percent or higher among nursing home inspectors and nine of those agencies have vacancy rates of 50 percent or higher. States directly linked staffing shortages to nursing home inspection delays and pointed to flat federal funding over the last decade as an important factor.¹ LeadingAge member nursing home leaders are similarly concerned about these delays and about the training, experience, and consistency of survey team members.

The Administration’s budget to support state agency survey and certification operations has been flat funded at \$400 million annually since fiscal year 2015.² In 2020, Chairman Casey helped secure approximately \$100 million in additional funding to cover COVID-19-related survey and certification costs in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.³ However, additional investment is necessary to ensure that survey agencies have the funding to invest in well-trained staff who are paid competitive wages. Notably, the President’s fiscal year 2024 budget proposal for survey and certification included \$566 million, an increase of almost \$160 million over previous levels.⁴ We would like to see Congress devote equal attention to ensuring that nursing homes are able to invest in well trained staff who are paid competitive wages.

The Committee's investigative report also found that staffing vacancies are not simply a problem of insufficient numbers of surveyors. High turnover rates are contributing to survey staff with limited experience on the job.⁵ A timely and accurate survey and certification process with well-trained and experienced staff is critical to the effective oversight of nursing homes and the care they provide to residents.

LeadingAge has communicated to the Centers for Medicare and Medicaid Services (CMS) our members' concerns about late surveys, including a lack of timely follow-up visits needed to confirm whether operators have corrected past problems by a designated deadline. When the survey and certification process encounters delays, it makes resolving issues that much more challenging. It is incredibly frustrating for a nursing home that immediately (sometimes within hours) corrected cited deficiencies to have to wait for months or even years for a follow up visit.

Data derived from a survey reflects a snapshot in time — what's happening in a nursing home over four or five days. For residents, families, and providers, that information is most meaningful while still fresh. If a survey is delayed, information about a provider is incomplete or inaccurate. It is then often misreported on the CMS Care Compare website, which provides consumers with the results of recent inspections, staffing levels, and other quality-of-care measures for each nursing home.

Extensive Care Compare inaccuracies are reflected in an April 2023 Department of Health and Human Services' Office of Inspector General (OIG) report. The report found an estimated two-thirds of nursing homes had one or more deficiencies related to health, fire safety, and emergency preparedness identified during state agency surveys that were inaccurately reported on Care Compare.⁶

Residents and their families deserve accurate and timely information when utilizing Care Compare to make informed decisions about their care. Among the recommendations made to CMS in the OIG report were to strengthen its processes for reviewing inspection results reported on Care Compare by requiring state survey agencies to verify the deficiencies reported, providing technical assistance and additional training to state survey agencies, and verifying that nursing home inspection results are accurately reported.⁷

The Committee's investigative report also contained recommendations that are important to explore. Specifically, LeadingAge supports the following recommendations by the Committee:

- **Congress, States, and institutions of higher education should collaborate to expand opportunities to enter into and remain in the health care workforce.** Survey agencies have struggled to recruit and retain workforce, particularly nurses, due to stiff competition within the health care marketplace. Such staffing concerns are common across the Nation's health care system today. Congress and States, in partnership with institutions of higher education, should increase funding for nursing educational programs and improve scholarship and loan repayment programs to expand access to nursing education, including for those working in the long-term care field. Given the interconnectedness of the health care workforce, Congress, states, and institutions of higher education should explore increasing similar educational opportunities for allied health professionals, as well.⁸
- **Congress, States, and health care facilities should improve mental health resources for the health care workforce.** Numerous states expressed concern about the stress of surveying and associated burnout, largely driven by the long hours and difficulty of the work, large number of backlogged surveys, long distance travel and days away from home, frequent turnover of staff, and

COVID-19 related stresses. In recent years, Congress and States have dedicated some resources and funding to address mental health challenges for the health care workforce. More must be done to prevent burnout and provide support for surveyors to remain on the job.⁹

- **CMS should strengthen the accuracy of Care Compare.** The OIG’s April 2023 audit of Care Compare found that health, life safety, and emergency preparedness deficiencies were underreported at an estimated two-thirds of nursing homes. Consumers rely on Care Compare as a tool when selecting nursing homes for themselves or their loved ones. CMS should strengthen the process for reviewing inspection results reported on Care Compare by requiring survey agencies to verify deficiencies reported. CMS should also provide training and technical assistance to survey agencies.¹⁰

The National Academies of Science, Engineering, and Medicine (NASEM) also reviewed the performance of survey agencies in its April 2022 report, “The National Imperative to Improve Nursing Home Quality: Honoring our Commitment to Residents, Families, and Staff.” The report contains several goals and recommendations, including Recommendation 5B¹¹, which calls for the following:

- **Developing and evaluating strategies to improve quality assurance efforts, including:**
 - **Enhanced data monitoring to track performance and triage inspections;**
 - **Oversight across a broader segment of poorly performing facilities;**
 - **Modified formal oversight activities for high-performing facilities, provided adequate safeguards are in place; and**
 - **Greater use of enforcement options beyond civil monetary penalties.**

In order to advance nursing home improvements and reforms, LeadingAge has convened a multi-sector stakeholder coalition, called the Moving Forward Nursing Home Quality Coalition¹², through a grant from The John A. Hartford Foundation. The Coalition’s purpose is to develop, test, and promote a set of step-by-step action plans that can be implemented based on recommendations in the NASEM report. The Coalition began in July 2022 and has established seven committees, each focused on various priorities.

The Quality Assurance Committee’s draft action plan states that, “Many possible strategies could be developed, implemented, and tested to make nursing home quality assurance efforts more effective, efficient, and responsive. Though the [NASEM] report noted that there is limited evidence linking enforcement and quality, it proposed using enhanced data monitoring to target oversight resources more effectively to higher and lower performing nursing homes... Underlying the Committee’s decision to focus on NASEM recommendation 5B was a strong sense that innovation and change are needed to bolster the ability of quality oversight efforts to address quality challenges in the nursing home sector more effectively. For too long, despite the existence of detailed care standards, some gaps and limitations in nursing home oversight have persisted.”¹³

LeadingAge believes it is time to forge a new path of collaboration between aging services providers, policymakers, regulators, and consumers that will create a more effective and efficient oversight process for our country’s nursing homes. We appreciate the opportunity to provide our written comments to the Committee and look forward to working with you on this and other aging services policies.

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- ¹ “Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk”, A report by the Majority Staff of the U.S. Senate Special Committee on Aging, May 2023, as accessed at <https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf> on May 23, 2023.
- ² Fiscal Year 2024 White House Budget Appendix, Page 439, as accessed at https://www.whitehouse.gov/wp-content/uploads/2023/03/hhs_fy2024.pdf on May 23, 2023.
- ³ CARES Act, Public Law 116-136, as accessed at <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf> (134 STAT. 557) on May 23, 2023.
- ⁴ Fiscal Year 2024 White House Budget Appendix, Page 439, as accessed at https://www.whitehouse.gov/wp-content/uploads/2023/03/hhs_fy2024.pdf on May 23, 2023.
- ⁵ “Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk”, A report by the Majority Staff of the U.S. Senate Special Committee on Aging, May 2023, as accessed at <https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf> on May 23, 2023.
- ⁶ Department of Health and Human Services, Office of the Inspector General, “CMS Did Not Accurately Report on Care Compare One or More Deficiencies Related to Health, Firesafety, and Emergency Preparedness for an Estimated Two-Thirds of Nursing Homes”, Page 7, as accessed at <https://oig.hhs.gov/oas/reports/region9/92002007.pdf> on May 23, 2023.
- ⁷ *Id.* Pages 21-24.
- ⁸ U.S. Senate Special Committee on Aging, “Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk”, May 2023, Page 70, as accessed at <https://www.aging.senate.gov/imo/media/doc/UNINSPECTED%20&%20NEGLECTED%20-%20FINAL%20REPORT.pdf> on May 23, 2023.
- ⁹ *Id.*
- ¹⁰ *Id.*
- ¹¹ National Academies of Sciences, Engineering, and Medicine. 2022. “The National Imperative to Improve Nursing Home Quality: Honoring Our Commitment to Residents, Families, and Staff.” Washington, DC: The National Academies Press, Page 17, as accessed at <https://doi.org/10.17226/26526> on May 23, 2023.
- ¹² Moving Forward Nursing Home Quality Coalition website, as accessed at <https://movingforwardcoalition.org/taking-action/> on May 23, 2023.
- ¹³ Moving Forward Nursing Home Quality Coalition, Updated Priorities, February 1, 2023, “Committee #5: Quality Assurance” Page 2, as accessed at <https://movingforwardcoalition.org/wp-content/uploads/2023/02/Committee-5-Action-Plan.pdf> on May 23, 2023.



May 25, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G41 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Mike Braun
Ranking Member
U.S. Senate Special Committee on Aging
628 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Casey and Ranking Member Braun:

The Michigan Long Term Care Ombudsman Program (MLTCOP) advocates for over 102,000 Michigan residents living in nursing homes and other long term care settings. Our program appreciates the opportunity to provide feedback on behalf of Michigan's nursing home residents regarding the issues raised during the U.S. Senate Special Committee on Aging hearing on Chairman Casey's report, *Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk*. Michigan nursing home residents have experienced many of the issues identified in Chairman Casey's report and supports the recommendations to address these critical concerns.

Michigan's state survey agency (SSA) is currently experiencing a 12% vacancy in survey positions. We understand it takes at least one year for a new surveyor to complete SMQT certification and gain the experience necessary to conduct surveys independently. We are grateful that Michigan's SSA has not sought independent contracts to conduct surveys, but the survey process has been strained given the current staff shortages and years of flat funding. We are also pleased that our SSA was able to resume certification and complaint surveys during the public health emergency (PHE) sooner than other states. That was accomplished by prioritizing the two highest levels of complaints but has left a significant backlog of complaints triaged at a lower level uninvestigated. Those resident concerns have gone uninvestigated for

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many months, if not over a year, and often the resident is no longer at the nursing home or there is no longer evidence of non-compliance given the time that has passed since the complaint was filed with the SSA to when it is finally investigated. To residents, these concerns are as important to them as those that are prioritized at Level 1 or Level 2 for timely investigation by the SSA.

Michigan's SSA reports that our complaint volume is on the rise (a reflection of increasing resident concern over care and services, resident rights, and quality of life issues) putting Michigan above the national average on nursing home complaints. We understand Michigan has met the CMS requirements for timely investigation of Level 1 (2 days) and Level 2 (10 days) complaints but that has been at the cost of lower level complaints delayed for months before being investigated, often leading to less evidence for non-compliance to be substantiated. Some residents and their family members state that it is a waste of their time to file a complaint as it does not get investigated or substantiated. Residents need to know that the SSA is readily available to address their concerns and hold providers accountable to delivering quality of care and addressing residents' needs for a high quality of life.

Starting in October 2023, CMS will require complaints triaged at Level 3 to be investigated within 45 days. While we fully support the requirement to investigate Level 3 complaints within 45 days, we are concerned SSA resources will not be adequate to meet this requirement without negatively impacting the timeliness and thoroughness of certification surveys and complaint investigations, as well as the possibility of unintended consequences of the complaint triage process to meet this new standard. It is critical that appropriate funding be made available for SSAs to appropriately staff to ensure that resident concerns are addressed timely and certification surveys are conducted frequently (9 to 15 months average) to hold providers accountable to the **minimum** standards of participation in the Medicare and Medicaid programs.

Michigan long term care ombudsmen are experiencing a significant high call volume reporting concerns from residents, their family members and friends, and nursing home staff. Our data from FY22 shows that we continued to see an increase in call volume for information and assistance which hit a record high during the PHE. Of note, we experienced a 30% increase in complaint investigations (3,401 closed in FY22). Like our SSA, there is a need for increased funding for long term care ombudsman programs to be readily available to respond to the needs of residents, thoroughly discuss concerns and action plans for resolution with the resident, and visit frequently enough to ensure resident access to the long term care ombudsman program. Most of the time, ombudsmen can resolve a resident issue much faster and more efficiently than the SSA complaint process and it is typically resolved to the satisfaction of the resident.

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A national report from 1995 recommended one ombudsman for every 2,000 beds served. In Michigan, ombudsmen serve an average of 5,000 residents, with some ombudsmen responsible for nearly 10,000 residents in highly populated areas and lower numbers of residents in large geographic service areas. The MLTCOP would need an additional thirty ombudsmen to meet the recommended ratio. We believe an increase in ombudsman resources can result in quicker identification and resolution of resident concerns and improved access to ombudsmen through more frequent routine visits. Long term care residents need ombudsmen and SSAs to be readily available to address their concerns. Now is the time to support these critical programs with increased funding to respond to and meet residents' needs.

Thank you again for the opportunity to comment on the report recommendations and provide feedback on the experience of Michigan nursing home residents and the MLTCOP. I agree with the Committee's key findings and recommendation and stand ready to support efforts to implement the needed changes for nursing home residents. Thank you for your interest in, support of, and commitment to older adults and people living with a disability who require nursing home services.

Sincerely,

Salli A. Pung
State Long Term Care Ombudsman



**Office of
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Long-Term Care**

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May 25, 2023

Dear Chairman Casey and Ranking Member Braun:

Thank you for the opportunity to provide input on how state survey agency shortages are impacting nursing home residents in Minnesota. As noted in "Uninspected and Neglected: Nursing Home Inspection Agencies are Severely Understaffed, Putting Residents at Risk," without timely and thorough surveys, residents in nursing homes are negatively affected physically, emotionally, and psychologically on a regular basis by chronic lack of quality care, abuse, neglect, and exploitation.

A gentleman living in a MN nursing home diagnosed with cerebral palsy was left on the toilet repeatedly for more than 45 minutes. He used his call light numerous times; staff would come turn off the call light and leave without helping this man. He would yell for help, same response. He finally resorted to the purchase of a bull horn and used it numerous times to receive proper assistance. I testified before a MN Senate Committee about such serious problems. The Senate Committee members immediately made request to the MN state survey agency to learn why after numerous complaints issued no response to investigate.

This delay creates additional negative outcomes for residents, including added stress and anxiety due to living without needs being met for a prolonged period.

Another example, a regional ombudsman in southern Minnesota has been working with a resident and family who have repeatedly raised concerns about staff not following the resident's care plan, including not helping the resident stay hydrated leading to multiple urinary tract infections and frequently offering the resident food such as sandwiches and cookies when she is on a pureed diet. This creates a severe choking hazard. The family, with the assistance of the regional ombudsman, has made many



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attempts to communicate these concerns via emails, phone calls, and in-person meetings with the nursing home staff resulted in minimal change occurring. A report was made to the state survey agency, and an investigation was opened in October 2022, however, the investigation has still not occurred. The resident continues to experience poor care, most recently having a staff person walk over her while she was in her bed. The family continues to be scared for the resident's well-being, choking risk, and the deterioration in health that occurs with every urinary tract infection.

In another example, a regional ombudsman in northern Minnesota worked with a resident who was not getting bathed twice a week as identified in his care plan. He went multiple months between showers. When the regional ombudsman advocated for the resident to receive routine showers, the nursing home staff suggested the resident frequently "refused" the showers. The resident stated this was untrue as he had not been asked about taking a shower for a very long time. A report was made, but it took so long for the state survey agency to investigate, the resident resigned himself to not receiving showers and withdrew the complaint. The regional ombudsman heard similar complaints about lack of showers from other residents in the same nursing home and continues to work to resolve and improve resident quality of life. Receiving a shower on a regular basis may be something most people take for granted. Think about how many people resign themselves to going without and simply giving up.

These examples are real life experienced by our "everyday heroes", people who worked hard, loved, cared for us, and made it possible for us to enjoy life as we know it.

The examples are an indication of the challenges Minnesota's state survey agency faces. The MN state survey agency is working to catch up on re-certification surveys and complaint surveys but is from lack of staff and struggling to fill vacancies that needed surveys and complaint investigations remain untouched.

While the investigations the state survey agency completes support resident well-being and safety, the delays in recertification surveys and complaint investigations creates hardship for Minnesota's nursing home residents.



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I support the following recommendations:

1. Congress and States should invest in robust nursing home oversight. From the report: "Congress should increase funding for survey and certification activities and consider making the spending mandatory to provide States more predictable funding streams. States, in turn, should provide adequate matching funds and ensure civil service salary rules provide survey agencies flexibility to offer competitive salaries." State survey agencies need adequate human resource support to fill vacancies in a reasonable timeframe.
2. Congress should increase funding for the State long-term care ombudsman program. In the examples I give Regional Ombudsman staff were involved, in-person at the side of the resident on a regular basis. Adequate funding for Ombudsmen programs is vital. Most often we are the **only** hope for residents and most often outcomes are favorable for the resident. In addition, we return on a regular basis to ensure sustainability and keep informing the state survey agency prompting action.
3. Congress should increase funding to the Office of Inspector General for the Department of Health and Human Services. People must be informed of the status of long-term care settings compliance with laws and regulations. Audits, evaluations, and enforcement inform others including state agencies responsible in holding providers of service accountable.

Collaboration is key to improving quality of care and quality of life. Minnesota's Office of Ombudsman for Long-Term Care respects the staff and efforts of the MN state survey agency. We are proud to work hand in hand with our state survey agency.

I sincerely thank you for your work, dedication, and commitment to serving our elderly and people with disabilities in need of long-term care services and supports.

Yours Sincerely,

Cheryl Hennen
State Ombudsman for Long-Term Care
P.O. Box 64971
St. Paul, MN 55164-0971



Lisa Mae Smith,
State Long-Term Care Ombudsman

May 25, 2023

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The Honorable Mike Braun
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Dear Chairman Casey and Ranking Member Braun:

Thank you for taking a moment to consider the impact state survey agency shortages have on nursing home residents in Mississippi. The State Long-Term Care Ombudsman Program is proud to support our survey agency and make strides to build upon the excellent working relationship we have built. As ombudsmen, we often require the regulatory and enforcement power of our state surveyors to ensure residents complaints are resolved to the satisfaction of the resident.

Far too often a resident's chief complaint will be due to a lack of quality care on the part of a facility. Very often our resident's physical and emotional health are being impacted by this lack of care and therefore require prompt assistance by the survey agency. However, when surveyor numbers are low, the response time of surveyors increase, resulting in the time a resident suffers to also increase. This is unacceptable yet we, as ombudsmen, witness this suffering.

We must do better for the residents of long-term care facilities not only in Mississippi but across our great nation. We must remember that every resident is a human, a parent, a sibling, and/or a friend. Time and again this fact seem to be forgotten by both our society and our leadership. We must remind every person that resident's lives have value. Residents living in facilities have significance. Residents in facilities are our history. Ensuring the care of our residents at all costs is the least we can do for the lives they have lived and the contributions they have made.

Thank you for the opportunity to share these few words about nursing homes residents and the impact low surveyor numbers have on them. This is a critical issue, and the very lives of residents depend on our willingness to ensure they are not overlooked.

Kindest Regards,


Lisa Mae Smith
State Long-Term Care Ombudsman

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Teresa Teeple,
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May 25, 2023

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The Honorable Mike Braun
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Dear Chairman Casey and Ranking Member Braun:

Over 10 years I have served as an Ombudsman in three states, including the past year as the State Long-Term Care Ombudsman for Tennessee. The Long-Term Care Ombudsman Program, authorized by the Older Americans Act, has unimpeded access to residents of long-term care facilities. Thank you for the opportunity to add my perspective on the vital importance of having fully staffed and functional state survey agencies and long-term care ombudsman programs in each state to ensure the wellbeing of those who call long-term care facilities home.

Ombudsmen are resident advocates, singularly focused on elevating resident voices, highlighting their concerns, and resolving issues to their satisfaction, above all else. We frequently work with residents' family members and loved ones, long-term care providers, and other investigatory entities when we have resident consent to do so. However, ombudsmen have no regulatory or enforcement power, and at times when facilities are unwilling to negotiate with the ombudsman, we must have access to sufficiently resourced survey agencies.

In Tennessee, the state survey agency relocated from the Tennessee Department of Health to the Tennessee Health Facilities Commission on July 1, 2022, and saw new leadership put in place at that time. Long-term care ombudsmen have experienced our state survey team working tirelessly to get up to speed on annual and complaint survey and issue immediate jeopardy citations (IJs) when residents faced severe harm. It has led, along with CMS, several nursing home closures for those homes that simply could not come into compliance with federal nursing home regulations and protect residents from ongoing substandard care and harm.

The difficulties posed by the pandemic, including limited or no access to long-term care residents, continue to impact our state survey agency's work. Executive orders in place in Tennessee greatly contributed to the state survey agency's backlog of complaints and recertifications across all provider types. Surveys were suspended from March 2020 through November 11, 2021. During that time, only IJ complaints were able to be investigated in-person. When surveyors returned to surveying in-person, complaints of a high level of scope and severity along with many IJs were found. In addition, many facilities had changes in management, were not prepared for surveys, or were not cooperative during the survey process. This resulted in challenging surveys and increased surveyor time. Due to the increase of IJs since June 2022, Tennessee has had 4 de-certifications and multiple voluntary closures. When this has occurred, Tennessee has led daily closure team calls with multiple internal and external stakeholders, including CMS,

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Adult Protective Services, the Tennessee Department of Mental Health and Substance Abuse, the Tennessee Department of Intellectual and Developmental Disabilities, TennCare, the State Long-Term Care Ombudsman, and Area Agencies on Aging, as needed. While these calls are labor-intensive, they have resulted in ensuring resident safety and choice in deciding on their next homes.

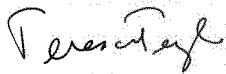
My designated district ombudsmen share with me what they hear directly from the field-residents and family members have expressed concerns about waiting long periods of time for a response after filing a complaint and, at times, a lack of response from the state survey agency. While surveyors are not first responders, they are often the primary voice of authority for facility leadership when it comes to corrective action on complaints. Ombudsmen know that when a surveyor is unable to make a timely visit to investigate a complaint it means that poor practices continue longer, potentially resulting in harmful outcomes like going without medical care and treatment, being chemically restrained, and even suffering abuse longer. Other common issues ombudsmen see in Tennessee long-term care facilities include residents left wearing soiled adult briefs for hours, not being assisted with moving regularly, resulting in skin breakdown and pressure ulcer formation.

To compound the issue, in federal fiscal year (FFY) 2022, my Office responded to the most complaints in a given year in its history at just over 3,700. As I write this letter, we have responded to over 3,000 complaints to date in FFY 23 and are on track to again respond to more complaints than ever in one year. On top of this our more frequently received complaint for the last several years has been abuse in one form or another, and the acuity of complaints and issues the program works to address only seems to increase. The work of the ombudsman is getting more challenging, but short of recent supplemental funding, the program's funding has increased very little.

The Older Americans Act tasks ombudsmen not only with addressing individual complaints, but also being powerful, consistent voices for residents and support for facility staff. We accomplish this through activities like supporting resident and family councils, helping facility staff address complex issues through a resident's rights and person-centered care lens, and providing education to the broader community about long-term care issues and options. Best practice dictates that every long-term care facility in the state receive a regular presence visit from an ombudsman at least quarterly to ensure residents know their ombudsman and how to contact them when concerns arise. Frankly, my office cannot do this work consistently or reliably in Tennessee, as most of our time is spent responding to complaints and putting out proverbial fires. As supplemental COVID-related funding dries up, the situation will get increasingly dire. Supplemental COVID-19 funds have been used to support hiring, training, and onboarding part-time, temporary ombudsman staff to support district ombudsmen. In over half of the 9 district program offices in Tennessee, we will be back to only one full-time ombudsman supporting thousands of residents across large geographical areas, that include many counties.

Thank you again for the opportunity to share the experience of the Tennessee Long-Term Care Ombudsman Program. This is a critical issue, and we all owe it to long-term care residents to get it right. I agree with many of the Aging Committee's key findings and stand ready to support its efforts to effectuate meaningful change for long-term care residents.

Best regards,



Teresa Teeple
State Long-Term Care Ombudsman



Patty Ducayet

State Long-Term Care Ombudsman

May 26, 2023

The Honorable Bob Casey, Jr.
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The Honorable Mike Braun
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Dear Chairman Casey and Ranking Member Braun:

As the Texas State Long-Term Care Ombudsman, I serve on behalf of approximately 90,000 Texans living in nursing facilities. I commend the Senate Committee on Aging's effort, through its report, *Uninspected and Neglected*, to advise the public on the urgent need for funding of state survey agencies and to monitor the staffing of these agencies as a critical function in America's long-term care system. As you know, state survey agencies perform a vital function to evaluate and enforce the laws designed to protect the lives of Older Americans who need nursing facility care. They cannot perform their functions without enough nurses, social workers, and other qualified specialists to be onsite quickly to collect and evaluate evidence, determine compliance, and ensure that a facility corrects and maintains the correction of any deficiencies.

By law, the State Long-Term Care Ombudsman Program must coordinate with its State Survey Agency. We participate in annual and complaint survey processes, giving surveyors insight about the facility operations based on our frequent visits to facilities and relationship with residents as their advocate. In March 2023, our State Survey Agency reported that it had a backlog of over 3,400 nursing facility complaints. Residents, residents' family members, and ombudsmen are alarmed at the poor care in many nursing facilities and despondent about the survey process.

Residents need a regulatory system with optimum staffing who are competitively paid, well-trained, and fully supported to do the important work of protecting our elders.

Important improvements to nursing facility regulations were made in the last 10 years and more are needed, but many of these changes amount to multiple unfunded federal mandates of a State Survey Agency if the government fails to fund the necessary survey positions, training, and support for them. A specific change that relates to this is a new

Texas State Long-Term Care Ombudsman
May 26, 2023

requirement for investigations to occur within 45 days, rather than on the next onsite visit by the State Survey Agency. The 45-day investigation timeframe is absolutely needed in order to collect fresh evidence and protect residents from harm, but if the change does not come with funding for additional surveyor positions it will not achieve the goal of better outcomes for residents. Without funding, state survey agencies will be perpetually out of compliance with the timeframe and investigations will be rushed and incomplete.

Ombudsmen routinely hear from residents and their decision-makers that they do not view "The State" enforcement function as a viable option to resolve their serious problems. Waiting months for an investigation of your complaint feels like your life doesn't matter. Residents feel forgotten and are at risk of prolonged poor care, abuse, neglect, and retaliation while they wait. How long residents wait for an investigation depends. In Texas, there are thousands of nursing facility complaints from 2022, not classified by the state as abuse and neglect allegations, that remain uninvestigated.

Everyone can imagine what happens with complaints are not promptly investigated. Residents die, residents are discharged or choose to leave, memories fade, injuries heal, and facility staff turnover. This leads to investigations that rely heavily on paperwork and the word of facility management. Facilities have the upper hand when an investigation focuses on paperwork because few residents document their problems. Moreover, to conserve staffing resources state survey agencies may conduct compliance reviews as desk reviews rather than through onsite visits. A desk review will not include direct observations and in-person interviews to determine if a facility has achieved and maintained compliance. By the time an investigation is conducted, facilities benefit from the lack of evidence and residents lose from the delay. But residents lose much more than the complaint outcome; they lose dignity, hope, confidence, and a sense of belonging and purpose because what happened to them wasn't validated. Residents are disempowered by a regulatory system that is unable to promptly investigate complaints and it is time for lawmakers to recognize that the long-term care system isn't whole without effective regulatory oversight and enforcement of minimum requirements. An effective system of long-term care must significantly increase funding of survey positions.

On behalf of Texans living in long-term care facilities, thank you for reporting on the need for additional resources to achieve proper oversight of nursing facilities. My office concurs with your recommendations and urges lawmakers to implement them.

Respectfully,



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The Honorable Bob Casey, Jr.
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The Honorable Mike Braun
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May 25, 2023

Dear Chairman Casey and Ranking Member Braun

Thank you for the opportunity to express my deep concern regarding the impact that understaffing state survey and licensing agencies and Ombudsman programs has on the wellbeing of residents in skilled nursing facilities. I am West Virginia's State Long Term Care Ombudsman. Ombudsmen around the country work to improve the quality of life and quality of care for residents in nursing homes. Ombudsmen respond to and investigate complaints brought forward by residents, family members, and other individuals acting on resident's behalf. We offer information, consultation, monitor state and federal laws, and make recommendations for improvement.

This is a layered and multifaceted issue. Although they function very differently, both state survey and licensing agencies and long-term care ombudsman programs offer protection and accountability to some of the most at risk and vulnerable members of our society. In West Virginia, our local ombudsmen have been working with residents and family members who have been waiting for months if not years for state survey teams to investigate their complaints and for accountability to be ensured in skilled nursing facilities. Indeed, the Center for Medicare and Medicaid services has advised the survey agency to consolidate complaints older than one year with annual survey inspections resulting in additional delays. While the pandemic has had a significant impact on the workforce available to support the survey and oversight process, this has been a concern even before COVID-19, and it is an even greater issue today. The workforce and funding issue impact both survey and licensure and long-term care ombudsman programs across the country.

Like other survey agencies across the country, West Virginia's survey agency has numerous vacancies. These positions have remained open for an extended period of time for a variety of reasons. Nurses, who are key members of the survey team, have many other options with significantly higher compensation packages and work environments. Surveyors must spend a lot of time on the road away from their families. Existing surveyors are charged with investigating not only the backlog of complaints but also newly filed complaints. Their bucket is never empty, or even nearly so. A system that requires fewer surveyors investigating more complaints sets the system up for failure.

Sadly, the individuals most impacted by the system's failure are the residents themselves. Our local ombudsmen share that they hear directly from residents and family members with concerns about waiting long periods of time for a response after filing a complaint and, at times, a lack of response from the state survey agency. While surveyors are not first responders, they are often the primary voice of authority for facility leadership when it comes to corrective action on complaints. Ombudsmen know that when a surveyor is unable to make a timely visit to investigate a complaint it means that poor practices continue longer. Sufficient funding and staffing for both survey agencies and long-term care ombudsman programs are an essential part of a quality long-term care system.

The U.S. Senate Special Committee on Aging's recent report *Uninspected and Neglected* identifies many important areas for improvement. I specifically encourage a priority on the following:

1. Congress and states should invest in robust nursing home oversight by increasing funding for survey and certification activities. States, in turn, should be required to provide adequate matching funds and ensure state employee policies/rules provide for the flexibility to offer competitive salaries.
2. Congress should increase funding for State long-term care ombudsman programs. Long-term care ombudsmen are the primary advocates for residents of nursing homes and other long-term care settings, providing a voice to voiceless residents in instances of abuse, neglect, and other care insufficiencies. They are a critical part of an effective, quality health care system and must be treated as essential allies. Congress should increase funding to the long-term care ombudsman program.
3. CMS should regularly collect and report staffing information from State survey agencies. Without transparency, even severe understaffing can go unacknowledged and unaddressed. Data collection and publication should include, but not be limited to, numbers of budgeted surveyor positions, numbers of vacant positions, turnover rates, salary ranges and competitiveness, and the volume of survey work conducted by contract surveyors.
4. CMS should improve transparency and strengthen the accuracy of Care Compare. Consumers rely on Care Compare as a tool when selecting nursing homes for themselves and loved ones. Yet, the platform is not especially user-friendly. CMS should continue its efforts to promote ease of use and should strengthen the process for reviewing inspection results reported on Care Compare by requiring survey agencies to verify deficiencies reported so that consumers can easily reap the benefits of this information.
5. Congress, States, and institutions of higher learning should collaborate to develop and

expand opportunities to enter and remain in healthcare and allied professions, including surveyors and long-term care ombudsmen. Providers, survey agencies, and long-term care ombudsman programs struggle to recruit and retain a competent workforce due to stiff competition in the marketplace. Congress and States should partner with institutions of higher education to expand access to nursing and allied health professional programs through increased funding for education, scholarships, and loan repayment programs.

6. Congress, States, and health care facilities should improve mental health resources for the entire health care workforce. More must be done to prevent burnout and provide support to allow surveyors and long-term care ombudsmen to effectively remain on the job.

I urge you to act by ensuring appropriate financial resources to support and maintain high quality state survey and licensing teams and long-term care ombudsman programs. Although there will be an additional upfront investment, ensuring these teams are in place and able to respond will improve residents' access to quality care, quality of life and accountability resulting in overall cost savings to the greater system. Thank you for your attention to this matter.

Respectfully submitted



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