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**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.”*

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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.