

A photograph of a person in a wheelchair moving through a brightly lit hallway. The person is silhouetted against the light. The wheelchair has large rear wheels and smaller front wheels. The hallway has a tiled floor and a door on the right. A large, semi-transparent brown square is centered over the image, containing the text 'APPENDIX D' in white. The word 'APPENDIX' is written vertically on the left side of the square, and the letter 'D' is a large, bold, serif character on the right side.

APPENDIX
D

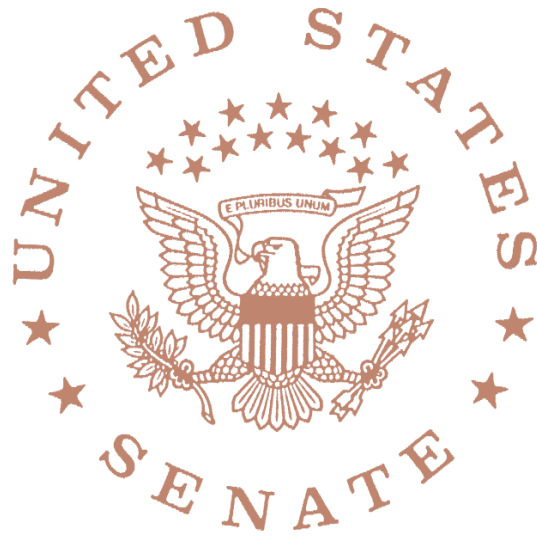


Exhibit 1

Ombudsman

LONG TERM CARE
RESIDENTS' ADVOCATE

Melanie S. McNeil, Esq.
State Ombudsman

Lin Chao
Ombudsman Services Coordinator

Kim Johnson-Prince
Ombudsman Services Coordinator

Jeff Taylor
Ombudsman Services Coordinator

Tracey R. Williams
Ombudsman Program Consultant

May 3, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

RE: The Long-Term Care Ombudsman's view of the effect on nursing home residents when nursing home survey and complaint investigations are delayed

Dear Chairman Casey:

Thank you for the committee's interest in nursing home residents and their experiences in long-term care facilities. The Long-Term Care Ombudsman Program is part of the Older Americans Act with a mission to provide advocacy services for residents of long-term care facilities including nursing homes. Ombudsman Representatives (ORs) in Georgia make routine quarterly visits to all the nursing homes. ORs talk with residents about their quality of care and quality of life. If a resident has a concern and will give the OR permission to act, the OR will advocate for what the resident wants.

Often when a resident has a concern, it relates to the resident's rights in the nursing home. ORs work with administrators, directors of nursing, direct care workers, dietary staff, and others to remedy the problem. ORs can only do so much because we have no enforcement power. When OR advocacy fails, the complaint is referred to the state survey agency to enforce federal laws and regulations related to nursing homes.

Ombudsman Representative understanding of how the complaint process works

In Georgia, individuals can call the survey agency and leave a message about their complaint or can file a complaint at the survey agency website. ORs have been told by the survey agency that those complaints are then triaged from the very serious at the top, to those that are less serious. We have been advised that complaints that are at the

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May 3, 2023
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bottom may never be addressed because higher priority complaints continue to be received and take precedence. ORs agree that residents facing immediate and serious harm should be assisted urgently. But residents with less serious concerns are still important, and their problems also need attention.

The effect on residents – some examples

ORs do their best to assist residents with their complaints with the facility. When ORs cannot resolve the complaint, ORs will refer the problem to the survey agency.

First example: in March of 2022, an OR, a family member, and someone from the hospital Emergency Room all separately made a report to the survey agency about physical abuse of a resident by facility staff.

The OR continued to make complaints about treatment of residents at that facility in hopes that the survey agency would investigate. Approximately three months later, the survey agency sent a team to investigate. They found immediate jeopardy described this way on page 1 of the 168-page long Statement of Deficiencies:

“There is a repeated, systemic failure to maintain an abuse free environment. The facility’s failure to implement an effective abuse prevention program resulted in a pattern of abuse including involuntary seclusion, verbal, mental, sexual, and physical abuse, involving both staff to resident and resident to resident incidents.”

The three-month delay in responding to the complaints meant that residents and staff were subjected to on-going risk of harm. The OR continued to send complaints to the survey agency in hopes that something would be triaged at a high enough level to spark an investigation. The OR was eventually told that the complaint had been filed incorrectly resulting in the delay to investigate. I think it is safe to say that we have all made mistakes like that. But without some transparency or some way for complainants to know the status of the complaints they have submitted, mistakes like that go unnoticed, and residents remain at serious risk.

Second example: an OR related:

“I have reported four times since Oct. 2022 that residents were sitting in wet and soiled clothes and sheets for literally 4, 5, 6 hrs. Reported on 10/25, 1/26, 2/11, 3/16. Have not gotten the form letter from HFR (the survey agency) telling me my complaint is “unsubstantiated,” so I assume HFR has not yet followed up. I will be sending yet another complaint on this same facility, today, as I received a call from a resident there who said she once again sat in wet sheets and clothes the entire day on 4/12 without being able to get help.”

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While sitting in wet clothing and sheets may not seem an urgent matter on a triage scale, it is demoralizing, uncomfortable, unpleasant and, over time, may become a cause for skin breakdown and worse. If the issue never rises high enough to be triaged for survey agency action, residents do not get any relief.

Third example: an OR related:

“a facility would not allow visitors into the nursing home because they had not updated their corporate policies. The OR tried to resolve the problem with the facility without success. The OR filed a complaint with the survey agency on November 18, 2021, at the resident’s request. The surveyors did not investigate the complaint until February of 2023. The survey agency did not cite the facility because by that time, the issue had resolved.”

A person might say, “well the issue was resolved, so what’s the problem?” But for the residents who were prohibited from visiting with their friends and loved ones after being isolated for many months due to the pandemic, it was frustrating and upsetting.

Fourth example: an OR related:

The OR has had multiple complaints from residents since January of 2022. The OR was encouraged to learn that the survey agency had a planned recertification survey to begin on 4/17/23 after multiple years without a recertification survey. In the afternoon on 4/17/23, the OR visited the facility. The survey agency was not there for the recertification survey.

On 4/24/23 the OR received a call from a surveyor to report that they were in the facility to investigate “20 complaints” they had received. They were not there to complete a recertification survey. Survey staff stated almost all the residents who had complaints were no longer residents in the building. The surveyor stated they would be in the building investigating these complaints for four days.

On 4/25/23 the OR visited the facility and spoke with the surveyors in person. The surveyors stated that during complaint surveys, they are focused on the complaint, but that the facility could be cited for obvious violations such as strong urine odors, etc. Survey staff stated they would be extending their complaint survey by at least one more day due to their own findings.

OR evidence is not enough

In Georgia, I believe it is accurate to say that ORs are in nursing homes more frequently than surveyors. ORs live in the local area they serve, so are perhaps able to respond

to concerns more quickly. The problem is that when an OR sees or experiences the problem while on a visit, the survey agency is not able to take the OR's word for the issue, nor can they accept photos or other evidence. When an OR steps into a nursing home in the winter and the building has no heat, or in the summer and the nursing home has no air conditioning, the OR will call the survey agency to report the problem. The survey agency can accept the complaint but does not usually have the ability to go to the facility to confirm the problem. It may take days or weeks. For healthy individuals, these concerns may seem manageable. For a frail, older resident, or a younger resident with disabilities, being too cold or too hot can have significant consequences.

Suggestions

Personnel

It has been reported in the media that survey teams are struggling to hire and retain nurses. Perhaps the survey team makeup and the number on the team should be re-evaluated. Each survey team needs to include sufficient staff to meet with residents and review all the areas of concern. What if the on-site survey team did not include nurses but the team had nurses at the main office to direct the team and assess the evidence the team gathers. Allowing the nurse to participate remotely saves time and potentially would allow that nurse to be available to more survey teams.

Certified nursing assistants are knowledgeable about how nursing homes work. Why not use more of them as the "boots on the ground" during surveys? Social workers may be helpful for resident interviews. Non-nurses could be trained to check some aspects of the survey that are not clinical such as checking that food is cooked to a safe temperature, checking the temperature of refrigerators and freezers for food and medication storage, checking water temperatures for washing hands and showers, cleanliness of the building, and other systems in the building.

More funding

Survey agencies need more federal funds to recruit the staff they need. Survey teams are still in the process of catching up on surveys that were not completed due to the pandemic. They are also behind because they are short on staff. Better salaries and benefits would help alleviate the shortage of surveyors.

Technology

We learned through the pandemic that telehealth is an appropriate substitute for going to the doctor's office in many instances. Could the on-site survey team use technology to video observations and send back to nurses who are not actually on site. Could that same technology be used for the team to discuss the findings over video with nurses?

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Evidence gathering

Could other reporters provide evidence and confirmation of the problem so that the survey agency could more nimbly respond to problems. The OR understanding of the survey process is that the survey team must go to the facility, investigate in-person, and document what evidence is found at that time, on that day. That process works when a facility has an on-going problem.

For example, a resident pointed out to an OR that the nursing home had a mold problem in the air vents in the residents' rooms. The OR addressed the issue with the facility staff. However, the facility failed to take action to remove the mold. The complaint was referred to the survey agency. When the survey agency investigated the facility some time later, the mold was still there. The survey agency was able to cite the facility for the problem. How much better would it be for the residents living in that building with mold, if the survey agency had a more streamlined process to confirm the problem and act more quickly?

On the other hand, ORs are concerned that facilities are aware of the shortage of surveyors and facilities may delay addressing problems or ignore problems because they know that the survey agency has a significant backlog of complaints. The facilities gamble that the survey agency will not prioritize the complaints, will not investigate timely and by the time they do, the survey agency won't be able to substantiate the complaint on the day they are at the facility to investigate.

Triaging complaints

Some complaints must be addressed immediately because of the harm that has occurred or may occur. It makes sense to place those at the top of the list. Would it be possible to have a "strike team" to go to those facilities when immediate action is required.

In addition, would it be possible to create different survey teams to complete the regularly required overall inspections for facilities versus teams that are deployed for complaints.

Would it be possible to create other teams dedicated to different types of complaints. Rather than have all surveyors respond to all complaints in priority order, why not have a separate team to address the less harmful complaints that many times are equally as important to residents.

The Honorable Bob Casey, Jr.

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Could the survey agencies create some processes for others, such as ORs or other service providers who are in facilities – for example hospice providers – to contact the survey agency, share the concern they have and whatever evidence they have that day, so that the survey agency could take some action without delay.

Standards of Promptness

It would be helpful to know what the standard of promptness is for survey agencies to respond to complaints and how they are doing in meeting those standards. It would be helpful to know whether survey agencies have the authority to drop complaints once they get past a certain date. If a complaint has been in the queue for a year, is it ok for the survey agency to just delete it? If so, shouldn't residents, families, and ORs be told?

Conclusion

ORs do their best to advocate for residents' wishes. Frequently, facilities are receptive to the concerns and do what they can to resolve the residents' problems. We are grateful for those providers.

As a part of the long-term care experience, survey agencies are critically important to long-term care residents. ORs support the enforcement powers, and authority that the survey agency and CMS have. ORs would like to be more helpful to the process and welcome the opportunity to explore ways to do that.

Thank you and the committee members for your interest in this concern for nursing home residents and for allowing Long-Term Care Ombudsman Programs the opportunity to share our experiences, observations, and suggestions.

Sincerely,

Melanie S. McNeil
State Long-Term Care Ombudsman

cc: The Honorable Raphael G. Warnock, Russell Senate Office Building, Suite 416,
Washington, DC 20510
The Honorable Jon Ossoff, Hart Senate Office Building, Suite 303, Washington, DC 20510

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AGING-01421

Exhibit 2



Leah McMahon
State Long-Term Care Ombudsman

April 20, 2023

The Honorable Bob Casey, Jr.
Chairman
Special Committee on Aging
United States Senate
G41 Dirksen Senate Office Building
Washington, DC 20510-6050

Subject: Survey Staffing Shortages and the Impact on Colorado Residents of Long-Term Care Facilities

Dear Senator Casey,

I am writing to bring awareness to the impact surveyor staffing shortages on residents of Long-Term Care facilities in Colorado. As the Colorado State Long-Term Care Ombudsman, 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 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 Long-term care ombudsmen (Ombudsmen) empower, educate, and inform residents of their rights. Ombudsmen are guided by the expressed interests and wishes of residents and ombudsmen never work for facilities. The mission of the Long-Term Care Ombudsman Program is to protect the health, safety and welfare of residents living in long-term care facilities.

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. However, one of the other lasting effects

¹ 42 U.S.C. §3058f & §3058g.

of the pandemic is that Colorado long-term care facilities continue to report staffing shortages, which greatly impact the quality of care and life for residents. Additionally, the Colorado Department of Public Health and Environment, which is responsible for licensing, surveying, and regulatory oversight of long-term care facilities is experiencing surveyor staffing shortages.

Recently, I spoke with Chad Fear², Nursing Facilities Section Manager with the Colorado Department of Public Health and Environment. Chad articulated, what many professionals and states have reported: Regulatory agencies have had difficulty recruiting and retaining staff over the past three years. Currently, there are 51 positions within the nursing home survey team. Nursing home surveyors, who are responsible for being in the field conducting nursing home surveys comprise 48 of the positions and 38 of those positions are currently filled. However, Chad states that training new surveyors is time intensive and can take up to a year. There are 23 surveyors who are at the nine-month marker of their hire date. Additionally, I would like to highlight that there are eight Registered Nurse surveyor vacant positions within the nursing home survey team.

It is my perspective, the survey team staffing shortages and turnover have created barriers for residents and family members. 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 regulatory agency. I called the regulatory agency nursing home complaint line on April 19, 2023, and listened to the outgoing message.³ The outgoing voicemail stated, due to a high volume of complaint calls and emails, they could not estimate a return call time. 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.

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 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 residents.

² Fear (personal communication, April 19, 2023)

³ Regulatory Agency Nursing Home Complaint Line (Listened to outgoing voicemail, April 19, 2023)

Case Example 2

In November 2022 a local ombudsman received a call from nursing home residents, 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

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 date the family called the complaint line. Again, this can have a negative impact to the health, safety and welfare of residents.

Conclusion

The examples outlined within this memo highlight concerns the Colorado Long-Term Care Ombudsman program received from family members and residents. In the last few years, the pandemic strained the long-term care system, and those who serve the residents in ways one could not have envisioned pre-pandemic. This system and particularly the residents are still acutely feeling the impacts of that strain today. It is my perspective that surveyors have an extremely complicated job, and it is important for the regulatory agencies to provide a competitive wage in order to adequately recruit, hire and retain skilled surveyors. The nursing home survey team relies on the expertise of nurses and requires a nursing license for some of their positions. The nursing surveyor wages need to be competitive to retain those important positions. The residents rely on all of the responsible agencies to receive timely responses to their concerns and to have professionals who are knowledgeable, experienced and skilled. We owe it to the residents to feel safe in their home, receive quality of care and life, and to be free from abuse.

Recommendations

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

1. Increase funds to assist the Colorado regulatory agency to hire and retain long-term care nursing home surveyors to meet the workload.

McMahon
April 20, 2023
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2. Offer competitive salaries for required nursing surveyor positions to be filled and maintained within the regulatory agency.

If you have any questions, you may reach me at [REDACTED] or [REDACTED].

Sincerely,



Leah McMahon
State Long-Term Care Ombudsman

Exhibit 3

April 24, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Casey:

I am Camille K. Russell, the Kansas State Long-Term Care Ombudsman. The Long-Term Care Ombudsman Program is the only Older Americans Act program authorized by both state and federal law to have direct, unimpeded access to residents of long-term care facilities. As such, the Long-Term Care Ombudsman program provides resident driven advocacy and is uniquely positioned to identify and resolve complaints made by or on behalf of residents. I thank you for the opportunity to share insights from this work.

The Ombudsman program offers residents an option to address their concerns in an accessible, supportive, and confidential manner. This is especially important for vulnerable older adults who fear retaliation or may be unable to express their needs or face barriers to self-advocacy, such as cognitive impairments, and/or are socially isolated. Understaffing of Ombudsman programs and the regulatory state survey and licensing agencies, negatively impacts the well-being of residents in nursing homes.

Ombudsman programs are receiving ever-increasing concerns of abuse and neglect of residents. Residents not getting medications, receiving the wrong medications, lacking assistance to bath, change clothes or use the bathroom, not having the room or bedding cleaned, care plans not done timely, rehabilitation not happening, unaddressed pain, wound care absent, being isolated, weight loss, transportation not scheduled, medical appointments canceled, refusals to access acute care treatment, frequent verbal abuse and more ongoing. The first quarter of 2022 Jan-March vs. 2023 January -March saw a 50% complaint increase to our program in Kansas.

I will spare you the photos of sores, soiled items, inedible food, pests, and bruises. The photos cannot fully convey the other senses and the feelings endured 24 hours a day, seven days a week, in a place that humans are supposed to call home. Often individuals are not living in the home of their choosing. They are living in a home provided under the premise of safety.

Feeling safe is not the case for many people living in nursing homes today. Our fellow humans are expected to resign themselves to barely tolerable and sometimes toxic conditions. Often ombudsmen are told, "I have reported to 'state,' and no one ever came and talked to me," or "state comes ... nothing changes". Residents tell ombudsmen they are ready to die rather than

live with the loss of dignity, the loss of autonomy, and the physical and emotional suffering they endure.

Ombudsmen work diligently to assist residents, but when enforcement of even the minimum standard required by regulation is lacking, it negatively impacts those efforts. The poor conditions in nursing homes are directly connected to insufficient enforcement capacity of survey, certification, and licensing entities. A lack of accountability for owners and staff in nursing homes to simply follow the rules of the business they chose puts individuals at risk. The power balance between the industry and the system to ensure accountability is absent when sufficient capacity for enforcement is lacking at any level.

Sufficient intake capacity is necessary to accept complaints. In Kansas, the “hotline” is only staffed during the day and only on weekdays. Evening and weekends, and even sometimes during the week, callers must leave voicemail messages; some report to our office that they have waited days for a return call. Incidents assigned for investigation may occur months after the event and are often combined within an annual survey. Exacerbating this delay further is annual surveys are also past due by months due to lack of sufficient survey capacity.

Too few survey staff create failures at all levels. Desk reviews using only documentation are used instead of on-site investigations. This may seem efficient, but it is not effective. More and more nursing home staff report to our office they are asked to falsify documents or know of other staff doing so. Residents often report they did not receive medication or care that was charted as having occurred. Desk reviews don’t provide the same quantity or quality of information that direct observation and interviewing individuals on-site can provide. Additionally, self-reports and self-investigation by nursing homes are allowed for efficiency due to limited enforcement capacity. Facility self-reports of incidents often are void of details that the individuals on site will provide if interviewed. This is the proverbial “fox watching the hen house,” yet it is practiced due to insufficient enforcement resources.

Surveyors who are nurses are necessary for medical review, but much of what is most important to individual residents requires additional perspectives. Half the survey positions in our state are unfilled. The inability to pay comparable rates to nurse surveyors and failure to adopt multidisciplinary hiring practices results in less attention to resident rights. Resident rights violations, including abuse and neglect, are a high source of complaints to ombudsmen. While nursing expertise is essential and critical to care complaints, there is value in including other perspectives. Multidisciplinary survey teams as a requirement instead of just a recommended practice is needed.

Capacity issues of surveyors are creating delays in annual survey frequency. This may not have as significant of a consequence in a 5-star home operating consistently in that regard, but it is of greater concern for a home with changes in ownership, homes with changes in leadership. Homes with low ratings need additional oversight. Homes with a lower rating merit more frequent visits, not only for the safety of residents but also for providers to have the opportunity

to demonstrate improvements to be a more reliable resource for the public to consider when choosing a nursing home. CMS's Nursing Home Care Compare continues to upgrade and provide more information, but it must be timelier and continue to be more comprehensive. Residents and other reporters often state they are not being contacted by surveyors when their complaints are investigated. They say they "never hear back," so they are unsure if any investigation occurred and are not notified of a finding. The sheer number of reports, number of homes, and miles to get to them, combined with so few survey staff, make conducting a thorough investigation difficult. Residents experience increased fear and frustration. They often give up. The survey process itself is not person (resident) focused; standard facility records are accepted, while resident logs, photos, or other evidence are not accepted equally. To accept and effectively use these various types of evidence, the survey agencies need additional resources for technology, policy staff, and sufficient legal capacity. The resident evidence should be utilized.

Owners should be expected to show reasonable expenses are spent on direct care and, most importantly, used to hire and train staff. Without sufficient monitoring and accountability, they have failed to do so. Instead, many owners divert money through related business schemes and cut staff, food, and other essential resources. Financial accountability capacity is woefully lacking in current enforcement activity and needs built into the oversight process. Corporate employees, often out of state, are usurping the decisions of administrators, nurses, and social workers with those roles and duties under licenses meant to merit the public trust. Enforcement capacity to ensure those required licensed positions are present and operating as intended is lacking.

Owners have had fair success, drained individuals' life-long savings and requested more tax dollars with little accountability for how they use those dollars. There is little evidence if you visit these homes in mass that sufficient money is going to direct care. Direct care staff increasingly express concerns for the conditions in the homes. Until enforcement activities are sufficient to show true compliance, residents and the valuable workforce continue to suffer.

Ombudsmen are the "fair warning system" as we do not regulate but often reference regulation in our advocacy. Regulations are only minimum standards, not best practices. Even in advocating for those standards, facility management sometimes defiantly tells us, "We will take our chances." Currently, they know the odds are in their favor.

The long-term care industry is a monster without a master. It is powerful, and people have made billions in this human service business, sometimes at a grave and tragic cost to the workforce and the customer.

We MUST build community capacity for people to stay in their own homes. We must also provide for a reasonable measure of accountability in nursing homes when people truly require that level of care.

There is appears to be significant effort on the part of individual survey staff in ever more difficult conditions but overall, the survey agency appears to not have adequate capacity in numbers of surveyors, other staff, or other resources to fulfill their responsibilities.

When adequate regulatory oversight is not present, it also negatively impacts the understaffed Ombudsman program's ability to resolve issues for residents. Residents have the RIGHT to be free from fear of abuse, neglect, and exploitation...that right is being violated in mass.

Thank you for the opportunity to bring this before you today, and I hope we can all be supported to fulfill our roles and address this critical need for our fellow citizens. If we are lucky enough to continue to age, at some point, we will all need some type of support. There must be some measure of enforcing the quality of life the regulations require, otherwise we are funding nothing more than an industry warehousing people for profit.

Respectfully,

Camille Russell
Kansas State Ombudsman

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [REDACTED] 2023, 04:45 PM, [REDACTED]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[REDACTED]
Last name	[REDACTED]
Facility Name	[REDACTED]
City	[REDACTED]

State	Ks
Your relationship to the resident	Child

Information about complainant, if different from resident

First	██████
Last	██████
Best phone number to reach you at (including area code)	██████████
Email	██████████
Does the resident know you are contacting the Ombudsman office for assistance?	Yes
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	Yes
Please describe the nature of your concern or complaint.	<p>My father, ██████, was recently admitted to ██████ in ██████, KS for a temporary stay while awaiting his pending Medicaid application; end goal was to go to a Long term facility in ██████, Ks. I am writing to bring it to your attention that within 3 weeks time my father endured verbal abuse, neglect, and developed sepsis within 3 weeks of being in the nursing facility. He is currently in ██████ Hospital in ██████ Ks. He was In the ICU and has recently been moved to the Intermediate Care Unit. The staff here has even brought it to our attention that he was emaciated, full of bed sores upon admission (heel breakdown and blisters which he did not have going into the ██████ facility) and a sacral ulcer that was almost healed when he was admitted to the nursing home that clearly worsened while he was in the care of ██████. He lost 20 lbs in 3 weeks time and was unable to speak, eat or drink. he was confused and very ill; ALL which was NOT his norm. My father was admitted on March 8, 2023 into ██████ and was critically ill with Sepsis by March 30, 2023. I would like to speak with someone in further detail about this case at your earliest convenience as there is a lot more information I need to provide. I appreciate your time. ██████</p>

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is [REDACTED] and their email address is [REDACTED].

Captcha

False

From:

[LTCO \[OB\]](#)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Default

<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [Redacted], 08:32 PM, [Redacted]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[Redacted]
Last name	[Redacted]
Facility Name	[Redacted]
City	[Redacted]
State	KS
Your relationship to the resident	Child

Information about complainant, if different from resident

First	████
Last	████
Best phone number to reach you at (including area code)	██████████
Email	████████████████████
Does the resident know you are contacting the Ombudsman office for assistance?	No
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	Yes
Please describe the nature of your concern or complaint.	My father has been in terrible pain the last couple of months and we just learned it's because of horrendous bedsores on his body. My mother is unable to check my father's body and the staff at ██████ seem to not care. Four of his five children live out of state and are unable to be with him to monitor his care. We hired an end of life doula last summer and legally there is only so much she can do. Anything medical she can't touch. I'm appalled by what I have witnessed.

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is ██████████ and their email address is ██████████.

Captcha	False
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Default
<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [REDACTED] 2023, 11:47 AM, [REDACTED]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[REDACTED]
Last name	[REDACTED]
Facility Name	[REDACTED]
City	[REDACTED]
State	KS
Your relationship to the resident	Other Relative

Information about complainant, if different from resident

First	██████
Last	██████
Best phone number to reach you at (including area code)	██████████
Email	████████████████████
Does the resident know you are contacting the Ombudsman office for assistance?	No
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	Yes
Please describe the nature of your concern or complaint.	My grandmother has been saying the nurses at the place she is staying will not bring her water, they don't respond to her call light, and they continue to test her daily for covid even though I know for a fact that is unnecessary. I live out of state and concerned for her well-being. I am scared of calling the place as they will retaliate towards her.

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is ██████████ and their email address is ██████████

Captcha	False
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Default

<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [REDACTED] 2023, 03:50 PM, [REDACTED]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[REDACTED]
Last name	[REDACTED]
Facility Name	[REDACTED]
City	[REDACTED]
State	KS
Your relationship to the resident	Other

Information about complainant, if different from resident

First	[REDACTED]
Last	[REDACTED]
Best phone number to reach you at (including area code)	[REDACTED]
Email	[REDACTED]
Does the resident know you are contacting the Ombudsman office for assistance?	No
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	Yes
Please describe the nature of your concern or complaint.	Veteran reports that he has only had three showers since November 2022 and that he is not changed frequently. He states that the facility takes a long time to answer the call light button and that sometimes he is not changed for over 24 hours.

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is [REDACTED] and their email address is [REDACTED].

Captcha	False
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Default

<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [REDACTED] 2023, 05:00 PM, [REDACTED]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[REDACTED]
Last name	[REDACTED]

Facility Name	[REDACTED]
City	[REDACTED]
State	KS
Your relationship to the resident	Other Relative

Information about complainant, if different from resident

First	[REDACTED]
Last	[REDACTED]
Best phone number to reach you at (including area code)	[REDACTED]
Email	[REDACTED]
Does the resident know you are contacting the Ombudsman office for assistance?	No
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	No
Please describe the nature of your concern or complaint.	<p>My mother had a massive stroke on [REDACTED] 2023, which left her paralyzed on the right side and unable to speak. After her hospital stay, she was admitted to the post-acute care unit at [REDACTED] on [REDACTED], 2023, and discharged to the memory care unit at [REDACTED]. Upon her admission, I met the Marketing Coordinator, Administrator, Social Services Director, and Business Office Manager, all of whom assured me she would be well taken care of. Yesterday, [REDACTED], was the first time I met the Medical Director. I have visited every day at various times to engage my mom and observe the staff in their interaction with each other and the residents. Today I was in the building in the late morning, through lunch, while she had a bath, was changed, and put back into bed. Not once did a nurse or nurse's aide inform me of the fungal infection in the perineal area, which I didn't know she had and was prescribed medication for while I was there. I found out about the infection only after the nurse on duty called to inform me of the HBP medication change and I asked about the times she was given the meds and the list of what she was given daily. I told them I should have been informed of that when they noticed it and asked why was I not informed today while I was in the building and was the cream applied after her bath today? The nurse stated, "I assumed it was" I then said "please don't assume, I need you to check the records" Her response was "I wasn't here this morning, so I don't know". After receiving that news, I called back and asked to speak to the Director of Nursing and was informed she was not in the office. I then asked to speak to the</p>

Administrator who did not pick up and I left a voicemail message asking her to return my call. That was at 315 this afternoon and as of this writing, 448pm I have not received a phone call back from anyone. I also tried calling the Medical Director's office and they closed at 4 pm. The nonchalant attitude is unacceptable and I would like this facility and the staff to be held accountable for sub-standard care. Thank you for your time and attention in this matter.
Respectfully, [REDACTED]

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is [REDACTED] and their email address is [REDACTED].

Captcha

False

From:

[LTCO \[OB\]](#)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Default

<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [Redacted] 2023, 11:50 AM, [Redacted]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[Redacted]
Last name	[Redacted]
Facility Name	[Redacted]
City	[Redacted]
State	Kansas
Your relationship to the resident	Friends

Information about complainant, if different from resident

First	
Last	
Best phone number to reach you at (including area code)	
Email	
Does the resident know you are contacting the Ombudsman office for assistance?	No
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	Yes
Please describe the nature of your concern or complaint.	He thinks its a prison. Stays in his room all day, staff wont take him outside.

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is [REDACTED] and their email address is [REDACTED].

Captcha	False
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Default
<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [REDACTED] 2023, 04:13 PM, [REDACTED]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[REDACTED]
Last name	[REDACTED]
Facility Name	[REDACTED]
City	[REDACTED]
State	KS
Your relationship to the resident	Other

Information about complainant, if different from resident

First	██████
Last	██████
Best phone number to reach you at (including area code)	██████████
Email	████████████████████
Does the resident know you are contacting the Ombudsman office for assistance?	Yes
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	Yes
Please describe the nature of your concern or complaint.	<p>Patient reports that he has concerns living at ████████ due to neglect. Patient reports that he "will call for assistance and it will take 1-3 hours before anyone comes. Then he is told over and over that they forgot." Patient reports that he has a roommate that is "doesn't sleep in his bed and that the staff tell him they don't know where he sleeps and the staff says they don't care." When nurse called for patient to have the van come and pick patient up from ED I ████████ was told that "they will come when they come and that it may be all day before they come and get patient." They arrived 45 minutes after the time that was given. When called to talk with director or nursing. I was hung up on by ████████ Patient also reports that when he asks to go to the bathroom "they tell them to do it himself."</p>

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities - the Kansas Department for Aging and Disability Services (KDADS). Their phone number is ██████████ and their email address is ██████████

Captcha	False
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From:

[LTCO \[OB\]](#)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Default

<https://ombudsman.ks.gov/Default>

New form submission

[Complaint Form](#)

Submitted on [Redacted] 2023, 12:14 PM, [Redacted]

Complaint Form

You may use this form to submit a complaint to our office. The complaint will be forward to a Regional Ombudsman, who will be in contact with you if they need more information. All information received is Confidential. Your name will not be released without your permission.

Please note: The Office of the Long-term Care Ombudsman is not a first responder. In an emergency, if someone is in immediate danger, please call 911.

Information about the resident

First name	[Redacted]
Last name	[Redacted]
Facility Name	[Redacted]
City	[Redacted]
State	Kansas
Your relationship to the resident	Spouse

Information about complainant, if different from resident

First	████████
Last	████████
Best phone number to reach you at (including area code)	██████████
Email	████████████████████
Does the resident know you are contacting the Ombudsman office for assistance?	No
If the resident is not aware, do we have your consent for us to let the resident know about your complaint?	
Please describe the nature of your concern or complaint.	. When he came back to the nursing home from the hospital after a fall which occurred at ██████████ he has a broken hip. First he fell and got his ribs broken there. I couldn't visit because of Covid for a few days. When I did get there he didn't have his teeth or his hearing aids. They had misplaced his hearing aids for the second time. He cannot hear without them. His pajamas have disappeared, for a long time his socks were missing and they put someone else's on him. They moved him to a room where there is a generator that makes noise and he has hearing aids. Missing clothes from his closet. I had to complain about him needing a bath. He needs lotion on his face for psoriasis which I usually have to put on him. Sometimes no ice in water or it's been put where he can't reach it just like his walker was when he was able to use it. Thank you ██████████

Thank you for contacting our office; your concern will be provided to a regional ombudsman for follow-up. If you included your contact information, the ombudsman may contact you to seek additional information.

The Ombudsman program's mandate is to represent the resident and assist at his or her direction. The Older Americans Act (OAA) requires the Ombudsman program to have resident consent before investigating a complaint or referring a complaint to another agency. When someone other than the resident files a complaint, the ombudsman must determine what the resident wants to the extent possible. The identities of other residents, complainants, and witnesses also may not be revealed without their consent.

Therefore, you may ALSO want to refer your complaint directly to the regulatory agency that licenses and regulates long-term care facilities, the Kansas Department for Aging and Disability Services (KDADS). Their phone number is ██████████ and their email address is ██████████.

Captcha	False
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Exhibit 4

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S3-02-01
Baltimore, Maryland 21244-1850



Center for Clinical Standards and Quality

The Honorable Robert P. Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
United States Senate
Washington, DC 20510

Dear Chairman Casey:

Thank you for your leadership on improving the quality of care in nursing homes. We are responding to your staff's request on April 12, 2023, for more information regarding the Centers for Medicare & Medicaid Services' (CMS') work to maximize existing resources to improve our nursing home oversight efforts.

The COVID-19 pandemic introduced and exacerbated significant challenges across the health care industry, including the work of both state and federal surveyors. The pandemic affected staffing in all areas of health care, including the efforts of State Survey Agencies (SAs), and CMS is working to find better ways to help states address these challenges, including staffing shortages. Many states have said that shortages impact their ability to respond timely to complaints and recertification surveys. In addition, survey and certification funding has been flatlined for 9 years despite Administration requests to increase funding. These resources directly link to a state's ability to hire and recruit staff and ultimately address the health and safety issues arising in nursing homes in those states.

CMS works in partnership with SAs to oversee nursing homes. SAs serve as the frontline responders to address health and safety concerns raised by residents, their families, and nursing home staff. In addition to ensuring that facilities meet all federal requirements, most SAs are also responsible for ensuring that facilities meet state licensure requirements. For example, a state might require that complaints are investigated within 10 business days, while under federal guidelines, SAs must initiate an onsite survey within 15 business days of receiving a non-immediate jeopardy complaint.

Protecting residents of nursing homes is a shared goal between SAs and CMS, and it is critical that we allow SAs to complete their efforts as efficiently as possible and in a way that addresses the unique needs of residents in their state. For example, the survey system needed to serve a large, rural state like Montana may not be the most efficient system to use in a smaller, more urban state like Massachusetts. To carry out their work, some states may use contractors to perform surveys, some may use part-time staff, and some may use surveyors who also survey other provider-types in addition to nursing homes. Regardless of which individual conducts the survey, whether they are a full-time employee or a contractor of the SA, we expect the SA to fulfill its responsibility to ensure that surveyors are complying with all survey requirements. We

also expect that there is quality assurance and supervision to ensure that the requirements of the state's agreement with the Secretary under section 1864 of the Social Security Act to determine compliance by providers with federal requirements (known as the 1864 Agreement) are met. Furthermore, it should be noted that anyone who conducts a nursing home survey on behalf of CMS must also undergo the same long-term care surveyor training as state surveyors, which is publicly available on the Quality, Safety, & Education Portal website.¹

CMS conducts thorough oversight of SAs to ensure that they are identifying deficiencies correctly, performing effective and timely investigations, and meeting all other obligations. We are committed to ensuring that SAs have the tools and assistance needed to succeed, and in addition to maintaining frequent contact, we provide SAs with support through training, guidance, and other efforts. As states continue to work on reducing their survey backlogs, CMS is providing ongoing support for each state's plan for resuming routine operations, identifying efficiencies where appropriate, and prioritizing those surveys and complaints that are alleging significant health and safety issues for residents. While CMS does not routinely collect data from SAs specifically regarding their staffing shortage challenges, we do closely monitor their overall performance through the State Performance Standard System (SPSS) program. CMS is always looking to improve our efforts, including the SPSS, to monitor performance and help SAs improve.

There are multiple factors that can affect SA performance, such as training, staffing vacancies, the volume of complaint surveys, staff tenure, and other issues. The COVID-19 pandemic introduced and exacerbated challenges experienced by SAs, including staffing shortages and staff turnover. To help SAs improve their efforts, CMS remains in regular contact and produces numerous materials, such as guidance and best practice kits. For example, CMS has released and updated several pieces of guidance instructing states on how to prioritize their survey activities throughout the pandemic, especially regarding Special Focus Facilities. This helps SAs prioritize oversight that is most likely to have the largest impacts on patient health and safety. CMS Quality Safety & Oversight memoranda, guidance, clarifications and instructions to SAs and CMS locations are publicly available on the CMS website. Additionally, in a limited number of cases, CMS engages third-party consultants to assess a SA's current state of operations, provide recommendations for improvements, and provide technical training for a more standardized and efficient operational approach. Because of funding limitations, CMS is able offer this type of third-party assistance to only one to three states per year.

CMS also coordinates with SAs to evaluate SPSS results and establish a Corrective Action Plan (CAP). For each SPSS measure that is scored as "Not Met" at the end of the fiscal year, SAs develop and implement a CAP to address identified problems. CMS reviews the plan and follows up to ensure that the SA is progressing toward making corrections. This process is reflected in the FY 2014-2018 documents provided to you by the OIG; however, we do not have similar documents for FY 2019 or later. Because the COVID-19 pandemic severely constrained the types of activities SAs could conduct and the types of activities CMS could assess during a normal performance review, this process was disrupted for FYs 2019, 2020, and 2021. Reporting on FY 2019 was disrupted because of the pandemic in FY 2020. For example, some SPSS measurements were adjusted to focus on assessing the conduct of COVID-19 Focused Infection

¹ <https://qsep.cms.gov/>

Control surveys and the use of the Immediate Jeopardy Template, while other previously planned measures were not assessed. Throughout the COVID-19 public health emergency, CMS remained committed to our oversight of SA performance. During the height of the public health emergency, the CMS Locations were in almost constant contact with the SAs, often talking at least once a day. A more detailed overview of CMS oversight activities on state performance and the SPSS for FY 2020 and FY 2021 is available online in the September 15, 2021 memo to states, “Fiscal Year (FY) 2020 State Performance Standards System (SPSS) Findings, FY 2021 SPSS Guidance, and FY 2019 Results.” In March 2022, CMS released updated SPSS guidance for FY 2022 and in September 2022, we released updated SPSS guidance for FY 2023.

Federal surveyors can also play a limited role in assisting SAs. Sometimes federal surveyors will go out at the same time as state surveyors in cases where there is a federal monitoring survey, or in limited situations where significant health and safety or other concerns are identified. Early in the pandemic, federal surveyors also conducted focused infection control surveys on behalf of some states that were struggling to continue routine operations, particularly those that did not have adequate personal protective equipment. In addition, federal surveyors may occasionally conduct their own survey in response to concerns, such as at a state-owned facility.

While our focus is on making sure SAs have the tools and resources they need to provide appropriate oversight, CMS is also committed to holding states accountable for their performance. If a SA is not fulfilling its duties, CMS will take appropriate action as noted in Ch. 8 of the State Operations Manual (see section 8000G, Available Sanctions/Remedies), such as training, directed quality improvement plan, and technical assistance. For states with the most serious performance problems, CMS has implemented an escalation protocol that can involve contacting senior state officials, including the Governor, with a request for action.

While CMS has taken a number of actions to help SAs improve performance, CMS has few practical options to address intractable problems, such as limited federal funding and chronic staffing shortages in SAs. Foundational issues such as staffing can frequently be tied to inadequate budgets. Anecdotally, we understand that many SAs may be unable to offer salaries that are competitive with local private sector salaries, which weakens their ability to attract employment candidates.

For the last nine years, SAs have been asked to provide increasingly more services without additional long-term federal resources. The CMS Survey & Certification program’s annual discretionary appropriation has remained unchanged since FY 2015, which has limited the program’s capacity to perform initial, complaint, recertification, and validation surveys. The stagnant funding, coupled with the effects of the COVID-19 pandemic, has accelerated the loss of SA surveyor resources and resulted in an ongoing survey backlog. In contrast to the stagnant funding, the number of nursing home complaint surveys being conducted has increased by over 8,700 since FY 2015 (a 16% increase) while the total number of nursing homes decreased by 366. With limited resources, complaint surveys, especially those alleging immediate jeopardy or actual harm to patient health and safety, are the primary oversight provided, outside of statutory recertification surveys. These investigations of the most serious allegations also lead to more severe findings, higher numbers of revisits, and additional enforcement workload. The ongoing

growth in complaints and associated survey workload inhibit the SAs' ability to address issues proactively through standard surveys.

The federal workforce is also constrained. Over the past 10 years, positions within the Survey and Operations Group in CMS's Center for Clinical Standards and Quality have declined 15%, to a total of 227 federal positions. Of those 227 federal positions, CMS currently has approximately 80 federal nursing home surveyors that conduct 1,500 health, life safety code, and emergency preparedness federal monitoring surveys. The number of surveys each surveyor conducts will depend upon the type and complexity of the survey. Federal monitoring surveys include recertification, complaint, or accompaniment of a state to evaluate their performance.

Remaining staff in the Survey and Operations Group cover nursing home enforcement cases (over 19,000 cases in FY 2022), surveys and enforcement for all other provider-types, state performance, and data analytics. Similar to other areas of the federal government, many individuals are retirement-eligible, and this is the biggest driver of turnover among federal surveyors; over 50% of separations over the last 18 months are due to retirement. CMS has taken several actions to address these areas including succession planning, active promotion of surveyor positions, flexibility in telework, and engaging in continuous recruitment to speed up time-to-hire.

On each recertification survey, state surveyors review a sample of resident assessments to verify assessment accuracy. When a facility is found to have an inaccurate resident assessment, for example, if a surveyor sees an outcome, such as an adverse event, or other issue, with a resident, and it is not captured in the resident's assessment, the facility is required to correct the inaccuracy. The data from these assessments are then submitted to CMS and used to calculate certain quality measures. Additionally, CMS audits a sample of nursing homes' staffing data each quarter to ensure the data submitted was accurate. Facilities that have submitted inaccurate staffing data have their data removed and are assigned a one-star staffing rating under the Nursing Home Five Star Quality Rating System.

To ensure the quality and safety of care provided to patients in Medicare- and Medicaid-certified facilities, CMS prioritizes the Survey & Certification program funding as required by law, and as guided by policies developed through an evidence-based approach that is informed by stakeholder input, including recommendations from the Government Accountability Office and the Office of the Inspector General. The number of complaints is not expected to decrease and the additional funding provided in the Coronavirus Aid, Relief, and Economic Security Act is available for spending only through September 30, 2023. Unfortunately, the significant strain placed on SAs will continue to have ramifications—including staffing challenges—far beyond 2023. Without adequate long-term funding, these foundational issues will persist.

In addition to assisting SAs in their efforts to maximize their limited resources and conduct continuous, timely survey activities, CMS is committed to publicly sharing information about nursing home performance. The Care Compare website plays a key role in our efforts to ensure beneficiaries and their family members have the information they need to make health care decisions that best fit their needs. CMS takes data integrity very seriously and takes a number of

steps to ensure the information available on Care Compare is accurate and timely. CMS reviews all of our quality assurance processes to reduce the risk of inaccurate data on the website, and we are also taking steps to ensure that the surveyors enter the data correctly initially.

CMS will continue to examine ways to improve the Care Compare website and other forms of communication that provide critical health care information to the public. We appreciate the engagement of your staff and the feedback shared by your office. Please let us know if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee A. Fleisher". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lee A. Fleisher, M.D.
Chief Medical Officer and Director of the Center
for Clinical Standards and Quality
Centers for Medicare & Medicaid Services

Exhibit 5



April 25, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Casey:

I am writing in regard to a conversation held between your staff and myself regarding the staffing issues of the state survey agency in Nebraska. I would first like to express my gratitude to you and your staff for looking into these issues that affect our most vulnerable population.

In Nebraska there have been many vacancies within the state survey agency starting with the manager position. This position was vacant for almost two years, including the time of the COVID pandemic. This vacancy made it difficult for the Long-Term Care Ombudsman program to receive information regarding the direction to give families and residents of nursing facilities. During the pandemic, contracted surveyors were used due to the inability to hire permanent staff to provide the needed infection control surveys. Residents of nursing facilities encountered numerous neglect with things such as bathing, toileting, and many other activities of daily living.

Once the Centers for Medicare and Medicaid Services (CMS) issued guidance that the survey agencies and the Ombudsman were allowed to resume visits, the lack of survey staff was more apparent as annual surveys and complaint surveys were delayed. This was frustrating to families who filed complaints regarding the neglect of their loved ones, and they expressed this to the Ombudsmen across the state.

I am not able to give exact numbers of how many staff positions are or were vacant as the survey agency is reluctant to share any type of information with the Nebraska Long-Term Care Ombudsman Office. I can share that as long as I have been in the Aging Network, the state survey agency has lacked the proper amount of staff to ensure that residents are safe and receiving the care they need and deserve.

The Nebraska Long-Term Care Ombudsman Office is available to answer any further questions you may have.

Sincerely,
Penny Clark
State Long-Term Care Ombudsman

P O Box 95026 ♦ Lincoln, Nebraska 68509-5026
In Nebraska: (800) 942-7830 ♦ (402) 471-2307 ♦ fax (402) 742-8392
An Equal Opportunity Employer

AGING-01338

Exhibit 6



State of Connecticut
Department of Aging and Disability Services
Long-Term Care Ombudsperson Program

4/14/2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Casey:

I am writing as the Connecticut 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. I want 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.

This is a layered and multifaceted issue. These agencies and programs offer protection and accountability to some of the most at risk and vulnerable members of our society. We 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 or for standard surveys to take place, and for accountability to be ensured in skilled nursing facilities. 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. I will add that this is not just a workforce and funding issue for survey and licensure, but also Ombudsman programs across the country.

In Connecticut, we have experienced the impact of retirements related to state employee benefit changes in July of 2022, which further reduced the number of surveyors available. Furthermore, due to the high demand for nurses, many have accepted positions with much higher salaries in the private sector, exacerbating the staffing shortage in the survey and licensing agency. In addition, my colleagues across the country have observed that although

55 Farmington Avenue • 12TH Floor, Hartford, CT 06105-3725

Phone: (860) 424-5200 Toll Free: 1-866-388-1888 • Right Fax: (860) 772-1704 Email: LTCOP@ct.gov

Web: www.portal.ct.gov/AgingAndDisability
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AGING-01333

hiring nurses for survey teams is allowed federally, many states only have nurses on these teams. This is problematic for several reasons, there is a nursing shortage and residents in skilled nursing facilities are more than their medical conditions; they are people who choose to receive long-term services and support in a skilled setting. Therefore, holistic care requires a holistic approach and perspective, which involves addressing all aspects of the residents' lives, needs, and complaints.

Only having nurses on survey teams limits their focus to primarily medical conditions, neglecting other important quality of life issues. While nursing-related concerns are important, most of the complaints filed by residents and their families are related to quality of life, resident rights, quality of care and services they receive. These are not areas that nurses are particularly trained or skilled in assessing, and often we do not see findings related to these areas of concern unless they are related to a medical concern that the nurse can tie back to a negative impact on the resident. This leaves residents and their families feeling unsupported and invalidated, while demonstrating to skilled nursing facilities that there is not the level of accountability that is written into the regulations.

Connecticut is home to several skilled nursing facility corporations that have been facing significant longstanding issues. These issues pertain to the level of care approvals, the rights of their residents to access the greater community and staffing among other areas of concern. However, it is challenging to prove many of these concerns without adequate numbers of surveyors trained in these areas of expertise as well as with the ability to have time to spend and really investigate these concerns at each of the skilled nursing facilities. To cite a violation, the Department of Public Health surveyors must see it for themselves. On a daily basis Ombudsmen observe understaffing, violations of Preadmission Screening and Resident Review, violations of the Olmstead Act and violations of residents' rights. However, for regulatory accountability, surveyors must have the expertise in addition to bandwidth to complete more frequent and in-depth facility surveys facilities. They must be able to spend the time investigating these complex issues to ensure accountability for residents. Unfortunately, this is not the case and therefore we have resident-to-staff ratios of 1 Certified Nursing Assistant to more than 18-20 residents at a time on the day shift. We know there is no possible way these residents are receiving the care and services they need and deserve, yet we do not have the surveyors available to continually assess this and hold the facilities accountable. Residents are being held in facilities without access to the greater community and denied appropriate discharge planning. This is extremely costly to the overall healthcare system, lacks accountability on the part of the facilities and puts thousands of residents at risk of decline, in addition to abuse and neglect.

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I have seen seasoned survey team members who are burned out or overburdened due to the number of complaints and the process of catching up on the licensure gap. Although they are overwhelmed, residents and their families have been waiting for them to arrive and address their concerns. It is critical that they take the time to address each concern and that the team members are diversified in their backgrounds in order to understand all aspects of the regulations that apply to the resident's life and the facility. The survey and licensure team need to ensure accountability not only related to nursing care and services but also a quality of life, residence rights access to community, least restrictive environment as well as a number of other regulatory requirements.

Residents need to be spoken to directly and given time to remember events or issues. There is also a fear of retaliation that both residents and family members speak about. For this reason, moving quickly and pushing to complete the survey to move to the next one results in missed concerns. At times, after the survey team leaves, the resident will be frustrated and call my office wondering why their other concerns were not addressed. When we talk to the survey team, they tell us that they talked to the resident, but it did not come up or it was not addressed. The pace of the survey team's work and the amount of work they are trying to complete does not always allow for personal attention to concerns and complaints, which is ultimately the purpose of the survey process as developed by the Centers for Medicare and Medicaid Services (CMS). I believe this is one of the reasons we continue to see significant negative outcomes across the industry. Again, we need robust diverse survey teams that have the time to spend at each facility, observing, investigating concerns, and speaking with residents in a manner that comports with their abilities to communicate.

I urge you to take action by requiring that all survey teams are diverse and include nurses as well as social workers to address all concerns completely. Appropriate financial resources must be provided to support and maintain high quality state survey and licensing teams as well as Ombudsman. 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 cost savings overall to the greater system. Thank you for your attention to this matter.

Respectfully submitted,



Mairead Painter
State Long Term-Care Ombudsperson

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Exhibit 7



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

April 28, 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 Senator Casey and Senator Braun:

As Indiana's State LTC Ombudsman, I had the pleasure of meeting with members of your staff last week regarding what our local Ombudsmen are seeing in the field regarding state survey agency oversight for the approximately 70,000 residents living in Indiana's nursing homes and licensed assisted living facilities.

The primary purpose of the LTC Ombudsman Program (the Program) is to promote and protect rights guaranteed to long-term care residents under federal and state laws (CFR 45, §1321 and §1324, and IC 12-10-13). Indiana's Program has a decentralized organizational structure, meaning the State Ombudsman and State Office staff are state employees, while local Ombudsmen are employed by host agencies throughout the state. The State Ombudsman/Deputy Director (both certified Ombudsmen) have programmatic oversight while the host agencies have personnel oversight of the Ombudsmen.

As of September 30, 2022, Indiana's Program had twenty-one local certified ombudsmen throughout the state's planning and service areas. FFY22 was a year of significant staff turnover for the Program. Three local Ombudsmen were decertified and terminated from their positions, while four local Ombudsmen resigned. Eight newly-hired local Ombudsmen completed the initial 36-hour training and became certified.



Please know that as the program in Indiana that provides advocacy services for long-term care residents, we appreciate the work you are doing across the country toward ensuring their health and safety. I hope the following examples of residents' experiences in our state will help you more fully recognize these ongoing concerns:

- Ombudsmen are seeing delays in responses to complaints. Several months between filing of the complaint and the investigation is common. As an example, last year the wife of a resident submitted a complaint in 8/2022 regarding her husband's motorized wheelchair being taken away, and despite Ombudsman follow-up efforts, the complaint was not investigated by the survey agency until 1/2023. Significant lag times appear to result in residents and families losing confidence in the survey agency's ability to enforce the regulations and protect residents. When there are such long wait times, it also makes it harder for complaint surveys to effect meaningful change: the issue has passed or has been replaced by newer, more pressing concerns by the complainant, residents cannot remember details about their concerns, staff persons involved are no longer employed at the facility, residents have moved or died, etc.
- Residents and family members have reported to Ombudsmen that they feel their complaints are not taken seriously by the state survey agency because facilities rarely appear to face any repercussions.
- Often, the complainant (the Ombudsman or the resident/family member) does not receive confirmation of a complaint being submitted or the assigned complaint number. This makes it difficult to follow-up with the state survey agency, know when a complaint is being investigated, and/or identify the associated state survey agency findings once the report is issued.
- There have been situations in which the state survey agency does not communicate with residents about their submitted complaints. In two recent cases, state surveyors were in facilities for complaint investigations when the resident(s) happened to be in the hospital. The surveyors closed both cases without talking with the residents. When this occurs, residents continue asking Ombudsmen about their complaints and wonder why no one has reached out to them from the survey agency.
- Finally, Ombudsmen have reported that residents are often made to feel foolish for speaking up, and then fear retaliation because it appears nothing is being done to resolve concerns by those investigating the complaints.

Thank you for the opportunity to weigh in as you work on this critical issue. Please let me know if you have any questions or if I can provide any further information.

Regards,

Lynn Clough

Lynn Clough
State LTC Ombudsman

Exhibit 8

OFFICE OF THE LONG-TERM CARE OMBUDSMAN

EST. WITHIN THE PA DEPARTMENT OF AGING

May 10, 2023

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

Dear and Senator Casey:

Pennsylvania nursing home residents, advocates, and inspectors need your help.

I'm reaching out to you today because of your unparalleled commitment to Pennsylvania's older adults and individuals living with disabilities. The time is now to further the ambitious and historic nursing home reforms announced by President Biden in February 2022. President Biden's reforms focus on quality of care — specifically staffing, enforcement and accountability, and transparency in how nursing homes spend tax dollars.

The advocacy work of long-term care ombudsmen is predicated on enforcement of regulations; the focus must remain on providers who fail to provide adequate care. But how is the Commonwealth of Pennsylvania able to address quality of care and quality of life if we simply do not have an adequate complement of nursing home surveyors empowered to enforce those regulations?

Across the country the inability of federal and state governments to enforce regulations has had a devastating effect on nursing home residents.

A December 2022 USA Today article found:

- 76% of nursing homes were not staffed to levels that the federal government pays them to be and of those, only 5% were cited for inadequate staffing.
- There has not been an increase in funding for the state agencies that enforce nursing home laws and regulations since 2014.
- Roughly 1/3 of the over 15,000 nursing homes in the United States are overdue for an annual inspection.
- 1 in 4 states miss critical federal deadlines when investigating complaints regarding nursing homes.

What Pennsylvania needs right now:

- **Funding for more nursing home surveyors**
In order to serve the commonwealth, *our survey agency – the PA Department of Health – is relying on surveyor payroll overtime.* This is not a strategy; it is a stop gap measure.
- **Federal funding to attract and retain qualified candidates to fill these challenging positions**
In this competitive work environment and labor shortage, qualified candidates are opting to choose other less complex positions, with less responsibility, for the same salary.

Recognizing the systemic causes of poor nursing home care and know how to address them in a targeted way, we need the resources to allow federal and state governments to hold providers accountable for their failure to care for the vulnerable elders we've entrusted to them.

Thank you for your continued leadership and efforts to ensure that older Pennsylvanians can live with the dignity and respect they deserve.



Margaret Barajas

State Long-Term Care Ombudsman | Office of the Long-Term Care Ombudsman
Commonwealth of PA Office of Advocacy and Reform

*“Advocate for those who can’t,
support those who can,
and ensure all long-term care consumers
live with dignity and respect.”*

Exhibit 9



April 25, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Casey:

On behalf of Ascellon Corporation (Ascellon), I am pleased to provide the following responses to the letter from your office dated March 31, 2023, requesting information about Ascellon's State Survey Agency contracts.

1. *Please provide the names of all states with which your company currently has active contracts to conduct nursing home surveys.*
 - a. Georgia
 - b. South Carolina
 - c. Missouri
2. *For each of the last five calendar years, please provide:*
 - a. *The number of states with which your company had a contract to conduct nursing home surveys;*
 - 2022 – 3
 - 2021 – 3
 - 2020 – 3
 - 2019 – 2
 - 2018 – 1
 - b. *The total number of recertification surveys that were conducted pursuant to these contracts:*
 - 2022 – 44
 - 2021 – 52
 - 2020 – 0
 - 2019 – 66
 - 2018 – 121
 - c. *The total number of complaint surveys that were conducted pursuant to these contracts:*
 - 2022 – 11
 - 2021 – 26

Ascellon Corporation
8201 Corporate Drive, Suite 1000
Landover, MD 20785

- 2020 – 18
 - 2019 – 16
 - 2018 – 0
- d. *The total number of infection control surveys that were conducted pursuant to these contracts:*
- 2022 – 10
 - 2021 – 122
 - 2020 – 151
 - 2019 – 40
 - 2018 – 0
- e. *Revenue from state survey contracts.*
- \$ 8,700,306.00 (five-year total for 2018 – 2022)
3. *Regarding current survey contracts with states, what are the ranges of rates your company charges for (a) survey teams and (b) individual surveyors? Please include hourly rates, per survey rates, and any other pricing arrangements your company uses for pricing.*
- We charge a fixed rate for surveys that range from \$6,060 for a single surveyor to \$29,000 for a team of surveyors. The fixed rate depends on the length of the survey and number of surveyors on the team. Surveys take three to five days on site plus travel and documentation days. The rate includes the cost of labor, travel, supplies and equipment.
 - We charge a daily rate of \$800 per surveyor for State Survey Agencies that prefer to have a daily rate contract.
 - We do not charge hourly rates for surveyors.
- a. *Please describe the factors that your company uses to determine pricing. Please be as specific as possible in describing these costs. What type of analysis does your company conduct to determine these costs?*
- The primary determinant of our pricing is labor which is driven by salaries demanded by qualified surveyors. The total cost of labor includes fringe benefits and overhead costs for administrative support, management, equipment, and supplies for the surveyors. We also incorporate the cost of travel to the facilities to be surveyed in our pricing. We use Federal Travel Regulations (FTR) to determine reimbursable travel costs.
- b. *To the extent that rates differ from state to state, what is the reason for these variations?*

- Our rate per survey does not differ from state to state. But some states prefer daily rates per surveyor, while others prefer a fixed rate per survey.
4. *Multiple states have raised concern about their ability to schedule contractors for surveys. Some states have cited instances when contractors have been unable to provide survey teams to meet the state's needs in a timely manner and instances when scheduled surveys were cancelled on short notice.*
- a. *How many staff does your company currently employ who are involved in the survey process? Please provide a breakdown of the number of staff who conduct surveys, quality assurance, management, or other functions.*
- Surveyor Staff – 35
 - Quality Assurance Staff – 3
 - Admin and Management – 5
- b. *Have there been instances where your company has been unable to conduct the number of surveys states have requested since January 1, 2021?*
- None. We provide our availability monthly to the State Survey Agency and agree on a survey schedule for the month.
- c. *Have there been instances where your company has had to cancel scheduled surveys with less than a week's notice?*
- None.
5. *Regarding the staff involved in providing contract survey service for states:*
- a. *Please describe the responsibilities and the salary ranges for (a) certified surveyors, (b) quality assurance personnel, and (c) survey management.*
- Certified Surveyor: Under general supervision, conduct surveys in long-term care and other health care facilities to assess compliance with requirements and regulations guiding the quality of care for residents of the facilities. The responsibility of the Surveyor is to apply approved survey protocols for conducting the onsite survey. Requires associate or bachelor's Degree, CMS Survey Minimum Qualifications (SMQT) Test, and current licensure to practice in clinical area. Requires at least three years of experience working in the field of long-term care, geriatrics, acute, hospice or other health care setting and experience in accrediting or certifying facilities that serve the residents of long-term care facilities.
 - Quality Assurance Personnel: Under general supervision, the QA Reviewer performs the quality assurance function on health and safety

oversight projects. The QA Reviewer is key to maintaining delivery of timely, accurate and complete survey reports that meet the investigative and documentation requirements of the survey program. The QA Reviewer is responsible for maintenance of quality in long term care and other facility surveys by evaluating and monitoring the quality of surveys performed by the survey staff. Requires a bachelor's degree in nursing, management or other healthcare related field and current licensure to practice in field of study and/or extensive experience performing quality assurance reviews of healthcare survey reports. Requires at least five years of experience in a position of responsibility in accrediting or certifying facilities that serve the residents of long-term care facilities.

- **Project Administrator:** Provides project coordination and support to the survey team to complete surveys on schedule. Assist surveyors with resources and provide guidance for documentation, scheduling, and status reporting. The position participates in assessment of completed project deliverables and the development of future project work schedules. Serves as liaison with customers and facilitates resolution of issues. Requires a bachelor's degree in business, project management, or related field. Master's degree in a related field is a plus. Requires five years of relevant professional experience; recent experience in project management, planning, administration, coordination, and contract compliance tracking. Must possess excellent verbal and written communication skills.

b. Please provide information about base salary as well as any additional payments made to employees, including but not limited to, pay tied to conducting surveys, bonuses, overtime and travel.

- Surveyor Base Salary -- [REDACTED] based on education and experience.
- Quality Assurance Staff -- [REDACTED]
- Project Administrative Staff -- [REDACTED] based on position.
- There are no additional payments beyond base salary.
- Travel expenses are reimbursed to employees in accordance with company policy.

c. States have raised concern about contractors competing for survey agency staff. What are your company's policies regarding recruiting and hiring staff from state survey agencies or the federal government? Please describe any limitations, restrictions or "cooling off periods," your company has in relation to the recruitment or hiring of staff from states or the federal government.

- Ascellon does not actively seek to recruit surveyors from states or the federal government. All our open positions are posted on our website and

other job boards, and we interview and select candidates based on their expertise. We do not offer any incentives or signing bonus for new employees. Likewise, we do not discriminate against applicants based on their previous or current employer. However, we do not assign new surveyors to survey in states where they had been a surveyor within the previous six months.

6. *Beyond state survey agencies, does your company currently, or has your company previously, provided services to the Centers for Medicare & Medicaid Services, long-term care providers, or other entities involved in providing or overseeing long-term care?*

- Yes

7. *Does your company affirmatively disclose to states other contractual relationships that may present a real or perceived conflict of interest, e.g. those with long-term care providers, the federal government, or other entities involved in long-term care?*

- Yes

8. *Please provide your company's conflict of interest policy, and the date on which it was most recently updated.*

- Our company's COI document is attached.

We appreciate the opportunity to be part of improving the quality of care provided to elderly and disabled residents in long term care facilities. Please contact me at [REDACTED] or via email at [REDACTED] if you have any questions or need additional clarification.

Sincerely,



Ade Adebisi
President

Attachment:

- 1) Employee Personal Conflicts of Interest and Financial Disclosure

**ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE**

Reporting Employee (Also includes Board of Director members or others, as applicable):

- A “personal conflict of interest” occurs when your own interests (for example, financial gain, career development, or reputation advantage), or those of your immediate family, interfere in any way or even appear to interfere with the Company’s legitimate business interests or your ability to make objective and fair decisions when performing your job. Immediate family members include your spouse or former spouse; parents, step- parents, and grandparents (of both you and your spouse); children, stepchildren, and grandchildren (of you and your spouse) and their spouses; siblings and their spouses; and any others living in your household. In order to avoid potential conflicts of interest, employees should avoid any activity that could reasonably be expected to put them in a conflict situation. “Customer” includes direct customers with whom Ascellon has an agreement to provide services and “indirect customer” that include organizations surveyed or audited by Ascellon on behalf of a third party.
- Although not every situation contrary to this policy can be listed here, the following situations are prohibited:
 - Performing any services as an Ascellon employee for any organization where you served as a consultant or as a director, trustee, officer or employee within the previous 24 months.
 - Performing any services as an Ascellon employee for any organization where you hold a significant financial interest (other than ownership of stock of a publicly held company where the amount owned is both less than 1% of the stock outstanding and worth less than \$10,000).
 - Accepting gifts, gratuities or entertainment from any customer, competitor or supplier or vendor of goods or services to the Company, except to the extent they are lawful, consistent with marketplace practices, infrequent and nominal in amount (less than \$50) and are not in cash or offered in consideration for an improper action or in a manner that could hurt the Company’s reputation for impartiality and fair dealing.
 - Using Company property, information, or position for personal gain.
- If you are in doubt whether a situation or certain activity constitutes a conflict of interest, it is your responsibility to seek guidance.
- Please complete the “Reporting Employee Information” below that will identify you as the reporter. Your Personally Identifiable Information (PII) will not be disclosed outside the company.
- Read the instructions for Parts I through IV (Identified in Blue Headers) on the following pages.
- General Statements (Below Reporting Employee Information): If you selected “Yes” for any statement, you must describe the reportable interests in the corresponding Parts I, II, III, and/or IV below in the Purple Header Sections. If additional space is required, please expand the space provided or provide additional pages.
- Sign and date the disclosure of information (your signature will not be disclosed to the Government as it is considered PII). Your Compliance Officer will retain your signature page on file.
- Submit completed documents to your Corporate Compliance Officer.

REPORTING EMPLOYEE INFORMATION

EMPLOYEE NAME	
Home Address	Employee Identification
	Reporting Status Initial __ Annual __ Updated __

General Statements (Reporting Employee - For each statement below, check “Yes” or “No.” For more detail or further instructions, see the following sections I thru IV below.)	Yes	No
I. I have reportable assets or sources of income for myself, my spouse/domestic partner and/or any dependent of the respondent.		
II. I have reportable liabilities for myself, my spouse/domestic partner and/or any dependent of the respondent.		
III. I have reportable outside positions for myself, my spouse/domestic partner and/or any dependent of the respondent.		
IV. I have reportable gifts and/or travel reimbursements for myself.		

**ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE**

Part I: ASSETS AND INCOME

I.A. REPORTABLE ASSETS	
Report for Yourself, Spouse/domestic partner and/or any dependent of the respondent:	Do Not Report:
<ul style="list-style-type: none"> • Healthcare Related Assets held for investment with a value greater than \$10,000 as of the date of disclosure OR assets held for investment which produced more than \$2,500 in income, including but not limited to: <ul style="list-style-type: none"> ✓ Healthcare-related assets, such as stocks, bonds, annuities, trust holdings, partnership interests, investment real estate, or a privately-held trade or business; ✓ Healthcare sector mutual funds (report the <u>full</u> name of the fund, not just the general family fund name); ✓ Holdings of Healthcare Related self-directed retirement plans, such as 401(k)s, IRAs or SEPs (list each holding); ✓ Defined benefit pension plans provided by a Healthcare related former employer (include the name of the employer); and, ✓ Type/location of healthcare related real estate. 	<ul style="list-style-type: none"> • Federal Government retirement benefits • Federal Thrift Savings Plan. • Certificates of deposit, savings or checking accounts. • Life Insurance. • Money market mutual funds and money market accounts. • Your personal residence. • Diversified mutual funds, such as ABC Equity Value Fund or XYZ Large Capital Fund. • U.S. Federal/State/Local Government bonds, bills, notes, and savings bonds. • Money owed to you, your spouse/domestic partner and/or dependent by a spouse/domestic partner, parent, sibling, or child.
I.B. HEALTHCARE-RELATED ANNUAL INCOME, ARRANGEMENTS OR AGREEMENTS	
Report:	Do Not Report:
<ul style="list-style-type: none"> • <u>For Yourself/your Spouse/Domestic Partner and/or any Dependent of the respondent for all Healthcare Related:</u> <ul style="list-style-type: none"> ✓ Sources of salary, ✓ Severance, ✓ Bonuses, ✓ Fees, ✓ Commissions, ✓ Honoraria, and ✓ Other earned income, arrangements or agreements, as well as other non-investment income such as scholarships, patents, royalties, etc. • <u>For yourself only:</u> <ul style="list-style-type: none"> ✓ Continuing participation in an employee pension or benefit plan maintained by a former Healthcare Related employer; ✓ A leave of absence in order to perform duties for this present organization; and, ✓ Known future Healthcare Related employment, including date you accepted employment offer. 	<ul style="list-style-type: none"> • Alimony and Child Support • Veterans' benefits Social Security or disability benefits • Any of the following for spouse/domestic partner and/or any dependent of the respondent: <ul style="list-style-type: none"> ✓ Continuing participation in an employee pension or benefit plan maintained by a former employer; ✓ A leave of absence to perform duties for this present organization; and, ✓ Known future employment, including date you accepted employment offer.

**ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE**

IMPORTANT DEFINITIONS

Dependent – A son, daughter, stepson or stepdaughter who is either unmarried and under age 21 and living in the filer’s house, or considered dependent under the U.S. tax code.	
Diversified Mutual Fund – A mutual fund that does not have a stated policy of concentrating its investments in one industry, business, or single country other than the United States.	
Sector Mutual Fund – A mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single state within the United States.	
REPORTABLE ASSETS AND HEALTHCARE RELATED INCOME, ARRANGEMENTS OR AGREEMENTS (I.A and I.B. Information should be provided in the white space below)	
Notes:	When submitting information, please include the following specific information for reportable assessts and income -
✓	Healthcare related stock, bond, sector mutual fund, etc.: Please indicate the full name and dollar amount of each specific Healthcare related asset or investment. You may add the ticker symbol to the full name.
✓	Healthcare related employer or business, source(s) of fees, commissions, or honoraria, please include the name and brief description of each, as applicable.
✓	Healthcare related real estate investment, please include type/location for each.
✓	You may distinguish any entry for a family member by preceding it with “S” for Spouse/Domestic Partner, “D” for Dependent, or “J” for Jointly held.
✓	If additional space is required, please add an addendum to this disclosure.
Reportable Asset #	Description of Asset
1	
2	
3	
4	

Part II: LIABILITIES

Report for Yourself, Spouse/Domestic Partner and/or any Dependent of the respondent:	Do Not Report:
<ul style="list-style-type: none"> Loans over \$10,000 from an individual, such as a friend or a business associate who is employed by a Healthcare related entity or has a business association with a Healthcare related entity. 	<ul style="list-style-type: none"> Loans that you owe to your parent, spouse/domestic partner, sibling and/or any dependent.
REPORTABLE LIABILITIES	
Name of creditor (include City and State where creditor is located)	Type of liability

**ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE**

Part III: ADDITIONAL POSITIONS

Report for Yourself:	Do Not Report:
<ul style="list-style-type: none"> • All Healthcare or surveyor related positions held at any time during the last 2 years, whether or not you were compensated OR you currently hold that position. Positions include an officer, director, employee, trustee, general partner, proprietor, representative, executor, or consultant of any of the following Healthcare related concerns: <ul style="list-style-type: none"> ✓ Corporation, partnership, trust, lobbying, or other business entity, ✓ Non-profit or volunteer organization, and ✓ Educational institution (For instance, teaching hospital) ✓ Federal health agency entity ✓ State health agency entity ✓ Local government or Town healthcare entity ✓ Non-profit entity with healthcare funding 	<ul style="list-style-type: none"> • Any position with a <ul style="list-style-type: none"> ✓ Religious entity ✓ Social entity ✓ Fraternal entity • Any position held by your spouse/domestic partner and/or any dependent of the respondent • Any position that you hold as part of your current official duties • Any positions reported in Part I.B
REPORTABLE POSITIONS	
Organization <i>(Include city and state where organization is located)</i>	Position
1	
2	
3	
4	

**ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE**

Part IV: GIFTS AND/OR TRAVEL REIMBURSEMENTS

Report for Yourself, Spouse/Domestic Partner, and/or any Dependent of the Respondent:	Do Not Report:
<ul style="list-style-type: none"> • All non-employer Healthcare related travel-related reimbursements totaling more than \$250 during the reporting period; include where you traveled, the purpose, and date(s) of the trip(s); and, • Any gift(s) from healthcare related companies with a fair market value totaling more than \$250. 	<ul style="list-style-type: none"> • Anything received from relatives, the U.S. Government, D.C., state, or local governments; • Bequests and other forms of inheritance; • Gifts and travel reimbursements provided by your organization in connection with your official travel; • Gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises; or,
REPORTABLE INFORMATION	
Source	Description (For Travel, also include purpose of trip)
1	
2	
3	
4.	

**ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE**

**EMPLOYEE SIGNATURE PAGE
(To Be Retained by Compliance Officer)**

CERTIFICATION OF REPORTING EMPLOYEE:	
I, _____, certify that the statements I have made herein and on all attachments are true, complete, and correct to the best of my knowledge.	
Signature	Date (mm/dd/yy)

ASCELLON CORPORATION
ANNUAL PERSONAL CONFLICTS OF INTEREST
FINANCIAL DISCLOSURE

COMPLIANCE OFFICER SIGNATURE PAGE
(To Be Retained by Compliance Officer)

Description of Project:

-

Potential Conflicts for this Project:

- **Employee's Role on Project:**

- **Description of Conflict(s):**

Compliance Officer Assessment: (If none, state "None"):

(Check here if continued on additional page(s) ___)

CORPORATE COMPLIANCE OFFICER REVIEW:	
To the best of my knowledge and belief, based on the information disclosed, all actual, potential and/or apparent COIs have been mitigated.	
Name & Signature of Corporate Compliance Officer	Date (mm/dd/yy)
E-mail Address	Phone Number

Exhibit 10



Eric Whytsell
PARTNER



April 27, 2023

Via Electronic Mail to [REDACTED]

Senator Robert P. Casey, Jr.
Chairman, Special Committee on Aging
United States Senate
Washington DC 20510-6400

Re: Response to March 31, 2023 Request for Information

Senator Casey:

Stinson LLP represents Healthcare Management Solutions, LLC (HMS) in this matter.

This letter responds to your March 31, 2023 correspondence seeking information regarding HMS's role in the oversight of nursing homes in the Medicare and Medicaid programs.

HMS and its personnel are passionate about helping the government protect vulnerable populations. Since its founding, the company has been service-focused. Its survey work is one vital service HMS provides not only to State Survey Agencies (SSAs) and the Centers for Medicare and Medicaid Services (CMS), but also to residents/patients, families, and communities in which it surveys. The company shares your Committee's interest in increasing the quality of oversight for nursing homes and improving the lives of all Americans.

HMS provides the below information about its business in order to help the Special Committee on Aging improve Federal oversight of nursing homes. As you can see, we have organized the information according to the questions you posed, which are highlighted in bold.

1. Please provide the names of all states with which your company currently has active contracts to conduct nursing home surveys.

RESPONSE: Georgia, Hawaii, Idaho, Iowa, Missouri, Minnesota, New Mexico, Nebraska, Nevada, New Jersey, South Carolina, Virginia, Washington, Wisconsin.

2. For each of the last five calendar years, please provide:

a. The number of states with which your company had a contract to conduct nursing home surveys;

RESPONSE:

2018 – 6

424 South Third Street, Suite 206, Bismarck, ND 58504

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2019 – 6
2020 – 9
2021 – 10
2022 – 13

b. The total number of recertification surveys that were conducted pursuant to these contracts;

RESPONSE: Note: Does not include surveys completed under contract with CMS.

2018 – 72
2019 – 101
2020 – 23
2021 – 92
2022 – 245

c. The total number of complaint surveys that were conducted pursuant to these contracts;

RESPONSE: Note: Does not include surveys completed under contract with CMS or in conjunction with another survey type (recertification, etc.).

2018 – 63
2019 – 15
2020 – 24
2021 – 4
2022 – 25

d. The total number of infection control surveys that were conducted pursuant to these contracts; and

RESPONSE: Note: Does not include infection control surveys completed under contract with CMS or in conjunction with another survey type.

2018 – 0
2019 – 0
2020 – 531
2021 – 97
2022 – 1

e. Revenue from state survey contracts

RESPONSE: Note: Because we cannot filter by facility type, the annual revenue figures below include surveys of all facility types, not just Nursing Homes. However, the figures do not include training or management consulting contracts with states.

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2018 – \$ 3,232,442.37

2019 –\$ 4,514,549.62

2020 –\$ 4,042,297.05

2021 –\$ 4,585,009.94

2022 –\$10,007,135.75

3. Regarding current survey contracts with states, what are the ranges of rates your company charges, including hourly rates, per survey rates, and any other pricing arrangements, for:

a. Survey Teams

RESPONSE: The price for a 4-Person Survey Team ranges from \$25,480 (labor only) to \$40,923 (labor and travel costs).

b. Individual Surveyors

RESPONSE: Rates range between \$88 per hour to \$97 per hour.

c. Please describe the factors that your company uses to determine pricing. Please be as specific as possible in describing these costs. What type of analysis does your company conduct to determine these costs?

RESPONSE: The pricing for services under a given contract depends on a variety of factors, including: contract type; cost of travel (airfare, lodging rental car, parking etc.); COVID19 testing requirements; state administration fees; applicable taxes; professional licensing requirements; contact duration (how long the rates have been in effect, how long the rates are effective for, how many days the surveyor(s) will be onsite); whether the surveyor(s) is/are augmenting a state team or we are providing the entire team, and staff availability/capacity. Each of these factors is discussed below.

- **Contract Type:** If the price is fixed for the entire survey including labor, travel costs, quality assurance review, travel arrangements and survey management, HMS must ensure that the price will be sufficient to cover all costs, including travel costs, which can be unpredictable). For contracts that are billed by the hour with travel expenses billed at cost, the risk of additional or unanticipated travel, lodging, and per diem costs and of additional survey time required on site, is borne by the customer (passed through at cost), which may reduce the overall price.
- **Cost of Travel:** The cost of travel to more rural areas and states can be quite a bit higher than that to more populous areas. The number of hours needed to travel to remote areas can also increase costs. Hotel and Meal per diems are higher in some areas and states, especially in more populous areas and resort towns, which increases travel costs.

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- Testing, Admin Fees, Licensing, and Taxes: Some states prices are higher to cover the cost of COVID19 testing requirements, Applicable Taxes, Professional Licensing, and other state fees. HMS passes these additional costs along to its customers.
- Contract Duration: Contracts signed several years ago may have lower rates than more recently awarded contracts. Costs of labor and travel has increased a great deal in the past few years, increasing the company's costs and therefore its prices. When pricing a long-term contract, if prices must remain fixed, HMS takes into account how much its costs are likely to increase during the contract period.
- Role of Team: The overall costs and therefore the price may differ if we are augmenting a team, leading a team, or providing the complete team. If logistical (making team travel arrangements) and report writing (compiling, reviewing and submitting reports) costs are less, for instance, the cost and price would be less.
- Staff Availability/Capacity: During periods when survey demand is low, HMS may decrease its prices to increase its chances of winning work for its staff. But when demand is high, the company might be willing to lose or not bid on a contract based on price because it already has plenty of work.

d. To the extent that rates differ from state to state, what is the reason for these variations?

RESPONSE: Rates differ state to state based upon the factors listed above.

4. Multiple states have raised concern about their ability to schedule contractors for surveys. Some states have cited instances when contractors have been unable to provide survey teams to meet the state's needs in a timely manner and instances when scheduled surveys were cancelled on short notice.

a. How many staff does your company currently employ who are involved in the survey process? Please provide a breakdown of the number of staff who conduct surveys, quality assurance, management, or other functions.

RESPONSE: The breakdown of personnel is as follows:

- Surveyors - 74
- Quality Assurance - 9
- Survey Management - 5
- Other functions related to survey - 19

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b. Have there been instances where your company has been unable to conduct the number of surveys states have requested since January 1, 2021?

RESPONSE: The company has received more requests for surveys than it has had capacity to fulfill. HMS is not in default on any of its contracts, but it is resource constrained due to the same challenges faced by states attempting to hire qualified surveyors. HMS does not accept contracts that require a defined number of surveys unless the company is sure it has the capacity to complete them all. Defined-quantity contracts HMS does enter into are usually short-term and pricing is determined through negotiations with the state. HMS takes a conservative approach to making commitments to perform surveys so it can consistently meet all its commitments. When the company has accepted a survey assignment, it rarely cancels the survey and then only due to surveyor illness or weather conditions making travel impossible.

c. Have there been instances where your company has had to cancel scheduled surveys with less than a week's notice?

RESPONSE: Our cancellation rates are extremely low—we estimate 1% or less. Earlier in the pandemic, unforeseeable and unavoidable environmental factors like COVID-19 and increased instances of illness, quarantine requirements, and pandemic-related travel delays and disruptions impacted survey cancellation rates.

5. Regarding the staff involved in providing contract survey service for states:

a. Please describe the responsibilities and the salary ranges for (a) certified surveyors, (b) quality assurance personnel, and (c) survey management.

RESPONSE: The salary ranges and job responsibilities for the three positions are set forth below.

- Certified Surveyor: [REDACTED] per hour

Conducts surveys of long-term care (LTC) and/or acute and continuing care (ACC) providers throughout the United States and its Territories. Participates in Initial, Recertification, Revisit, Complaint, Focused, and Pilot surveys as directed by HMS. Conducts surveys in accordance with the State Operations Manual (SOM) and prepares a deficiency report in accordance with the CMS' Principles of Documentation (PoD) and the HMS Writing Style Guide. Communicates their survey findings to the appropriate leadership staff using the specified forms.

- Quality Assurance Staff: [REDACTED] per hour

Analyze survey findings to ensure that CMS Statements of Deficiencies (CMS Form 2567s) prepared by surveyors are consistent with the Principles of Documentation. Edit surveyor's written submissions for the CMS 2567s, monitor surveyor performance, and develop and utilize training tools and methodologies to educate new surveyors and improve quality of

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existing surveyors. Assess citation patterns for individual surveyors to assess surveyor performance and inter-rater reliability. Identify indicators related to areas in need of improvement, collect and analyze data, monitor surveyor performance noting improvements made, and report results. Must be a Certified Surveyor and participate in facility surveys.

- Survey Management: [REDACTED] per hour

Responsible for all survey activity including scheduling, reporting and customer communications. Directly oversees survey contracts and effectively manages project staff, as well as resource planning for expansion or completion of any project. Responsible for: (1) overall management of assigned projects, beginning with planning, continuing with implementation, and evaluation, (2) monitoring project budget and schedule, and (3) project compliance including quality or other measures inherent to project specifications. Responsible for ensuring all deliverables are submitted on-time and are of the highest quality.

b. Please provide information about base salary as well as any additional payments made to employees, including but not limited to, pay tied to conducting surveys, bonuses, overtime and travel.

RESPONSE: HMS pays surveyors and QA staff on an hourly basis for all hours worked including survey time, travel time, overtime, and report writing time. Overtime pay is 1.5 times the surveyor's base pay rate for hours over 40 per calendar week. Surveyors are eligible for bonuses in accordance with the company's bonus policy but are not guaranteed any bonuses. Survey Management personnel are paid on a salary basis and are not eligible for overtime, but they are eligible for bonuses.

c. States have raised concerns about contractors competing for survey agency staff. What are your company's policies regarding recruiting and hiring staff from state survey agencies or the federal government? Please describe any limitations, restrictions or "cooling off periods," your company has in relation to the recruitment or hiring of staff from states or the federal government.

RESPONSE: HMS does not recruit employees who work for state or federal survey agencies. The company does hire those who have left those agencies, but it does not interview them or offer them jobs while they are still employed with those agencies. If a candidate leaves their government position on their own accord, HMS waits at least 30 days to begin discussions if the candidate approaches the company. New hires are not permitted to perform surveys in the state for which they worked for a period of three years.

6. Beyond state survey agencies, does your company currently, or has your company previously, provided services to the Centers for Medicare & Medicaid Services, long-term care providers, or other entities involved in providing or overseeing long-term care?

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RESPONSE: In addition to state survey agencies, HMS also currently provides survey services to the Centers for Medicare & Medicaid Services (CMS). HMS does not provide survey services, management consulting, or other technical services to long-term care providers. In this way the company avoids the potential for a conflict of interest if it is subsequently asked to survey a provider. In addition, HMS does not contract with and is not affiliated with other entities involved in providing or overseeing long-term care.

7. Does your company affirmatively disclose to states other contractual relationships that may present a real or perceived conflict of interest, e.g. those with long-term care providers, the federal government, or other entities involved in long-term care?

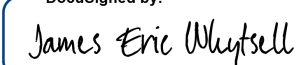
RESPONSE: HMS is diligent about reviewing potential conflicts of interest. In order to avoid any real, potential, or perceived conflicts of interest, the company discloses all survey and technical assistance contracts to the Federal government. HMS also affirmatively asserts to CMS that it does not have any other contractual relationships, like those with long-term care facilities, that may present a real or perceived conflict of interest with Federal or state government. HMS believes all states are aware of its contractual relationship with CMS but the company does not provide a list of the other states with which it is working unless asked. However, HMS routinely provides state contacts as references to other state agencies when requested. In addition, HMS personnel attend the Association of Health Facility Survey Agencies (AHFSA) conferences annually (along with other vendors). There, they are able to exhibit and speak with survey agencies about their support needs. Through AHFSA, state leadership is also able to discuss support needs and their experience with vendors and with one another.

8. Please provide your company's conflict of interest policy, and the date on which it was most recently updated.

RESPONSE: See attached.

HMS thanks you for your continued attention to the very important topic of increasing and improving the oversight of long-term care providers in our country. We look forward to seeing the good work you and your office complete in the near future.

Very truly yours,

DocuSigned by:

Eric Whytsell
Stinson LLP



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Phone: 304.368.0288 • Fax: 304.368.0389 • Toll-Free: 866.275.4671 • Website: www.hcmsllc.com

Organizational Conflict of Interest Mitigation Plan

Prepared by:

Healthcare Management Solutions, LLC
1000 Technology Drive Suite 1310
Fairmont, WV 26554


www.HCMSLLC.com

Revised April 26, 2023

1.0 HEALTHCARE MANAGEMENT SOLUTIONS, LLC

Healthcare Management Solutions, LLC (HMS) is a West Virginia Limited Liability Company. HMS is a small, employee-owned (8a graduate) business with its headquarters in north central West Virginia and offices in Columbia, Maryland. We provide solutions for our health care related clients including: 1) research, 2) data collection, 3) abstraction, 4) validation and analysis, 5) healthcare facility inspections, and 6) customized web-based applications. Other operational solutions include: 1) assessing productivity, workflow, technology and environment; 2) conducting regulatory impact analysis; 3) performing compliance audits; and 4) delivery of education and training. HMS has substantial expertise particularly in working with the Centers for Medicare and Medicaid Services (CMS), and understanding the rules and regulations related to Medicare and Medicaid.

This Organizational Conflict of Interest (OCI) Plan has been developed to ensure that relationships entered into by HMS or work performed by HMS does not create organizational conflicts of interest (OCI). This OCI Plan addresses actual, apparent, and potential organizational conflicts of interest, and monitoring to identify and mitigate future conflicts. The OCI Plan is designed to assist HMS in meeting regulatory and contractual obligations in accordance with contracts with the Department of Health and Human Services (HHS) or other governmental agencies.

2.0 COMPANY COMMITMENT AND OBJECTIVE

2.1 Company Commitment

HMS is committed to a proactive, disciplined, and fully integrated OCI Plan that is actively promoted and maintained at all levels. From the company to the individual employee level, this OCI Plan seeks to avoid, neutralize, and/or mitigate all conflicts of interest. HMS will strive to aggressively enforce a conflict-free operating environment that meets or exceeds the expectations of its customers.

2.2 Company Objective

The primary objective of this OCI Plan is to ensure that relationships established by HMS or work performed by HMS does not comprise or create an OCI. Adherence to this OCI Plan will instill confidence that adequate safeguards have been implemented to ensure that the activities of HMS will not create an OCI.

This OCI Plan describes the procedures, processes, and practices developed and implemented at HMS to comply with company imposed OCI requirements. The Plan includes a comprehensive "action plan" for creating OCI awareness that will

assist its Leadership, managers, employees, and subcontractors to identify, avoid, neutralize, and mitigate any actual, apparent, or potential OCI.

2.3 Company Organization

June 1, 2022, Healthcare Management Solutions, LLC (HMS) was sold to HMS Holdings Inc. (Holdings). As of this revision date, Holdings' Board of Directors include Leah Heimbach, President, Laura Reeder, Chief Executive Officer, Jason Cunningham, Chief Technology Officer, and Kelley Leonette, Vice President of Survey and Technical Assistance. Holdings is wholly owned by an Employee Stock Ownership Plan Trust whose Outside Trustee is Stephen C. James, Founder and Chairman of SCJ Fiduciary Services.

3.0 KEY OCI RISK AREAS

As a general matter, an OCI could arise where, due to other activities or relationships with other persons: (a) a person is unable or potentially unable to render impartial assistance or advice to the Government; or (b) the person's objectivity in performing the contract work is or might be otherwise impaired; or (c) a person has an unfair competitive advantage. (See FAR 2.101 and 9.5.) HMS' CEO shall undertake such educational, monitoring, and certification activities as are necessary to ensure compliance with these requirements.

In the case of HMS, OCI risk areas include:

- Financial Conflicts of Interest (Healthcare Management Solutions, LLC)
- Financial Conflicts of Interest (Healthcare Management Solutions, LLC's President, Senior Management Team, Project Managers, and Employees)
- Conflicts of Interest arising from providing services to healthcare facilities which HMS may later inspect for compliance with Medicare and Medicaid regulations.
- Conflicts of Interest attributable to Healthcare Management Solutions, LLC's subcontractors
- Compensation, Gifts, and Gratuities from Reviewed Entities

Each of these potential OCI risk areas is discussed in greater detail below:

3.1 Financial Conflicts of Interest (HMS)

HMS' financial interests, activities, and relationships with other entities and individuals could raise a financial conflict of interest. Because the potential types of financial conflicts of interest are so diverse, the Chief Executive Officer will categorize each relationship as presenting: (1) no conflict; (2) an actual conflict; (3) an apparent conflict; or (4) a potential conflict. An avoidance, neutralization, or

mitigation strategy will be utilized to address any relationship or activities giving rise to an actual, apparent, or potential conflict of interest.

To identify potential of conflicts of interest, HMS' Chief Executive Officer may consider:

- Business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest
- Ownership in any other entity
- Income generated from other sources
- Current or known future compensation arrangements, regardless of size, with any entity to which HMS provides a service.

3.2 Financial Conflicts of Interest (HMS' President, Senior Management Team, Project Managers, and Employees)

Individual conflicts of interest can arise from the direct or indirect interests, activities, and relationships of HMS' Senior Management Team, Project Managers, and employees. Again, because the potential financial conflicts of interests an individual may have are so diverse, the Chief Executive Officer will categorize each relationship as presenting: (1) no conflict; (2) an actual conflict; (3) an apparent conflict; or (4) a potential conflict. To implement this process, all HMS employees must prepare and submit a Disclosure Statement to the Human Resources Department both upon hire and at least annually. If there is a material change, the Disclosure Statement must be revised and re-submitted to the Human Resources Department within fifteen (15) days. All material changes must be identified by the employee and immediately brought to the attention of the appropriate member of the Senior Management Team. The Disclosure Statement requires the Senior Management Team members, Project Managers, and employees involved in the work to disclose: (1) Business or contractual relationships or activities that may be viewed by a prudent business person as a conflict of interest; (2) Current or known future contracts or arrangements, regardless of size, with any insurance organization or a subcontractor of an insurance organization, and with any providers or suppliers furnishing health services for which payment may be made under the Medicare program; and (3) Financial or ownership with any business entity in which they or their family has a financial or ownership interest.

Such disclosures include indirect financial relationships (i.e., where the ownership or investment interest is held in the name of another but provides benefits to an HMS employee). These disclosures also include the financial relationships of the discloser's immediate family (i.e., spouse, child and all persons living in the discloser's household).

3.3 Conflicts of Interests Attributable to HMS Subcontractors

A potential conflict may arise if a subcontractor of HMS has an actual or potential conflict of interest. For example, a subcontractor may have a financial relationship with an organization HMS reviews, inspects/surveys or investigates. Therefore, to ensure that a subcontractor does not create an OCI, HMS flows down the requirements of the prime contract clause related to OCI to all of its subcontractors performing work on an HMS contract. This places a contractual obligation upon HMS' subcontractors to ensure no conflicts exist or arise.

To ensure that a subcontractor does not create an OCI, HMS requires complete disclosure from each subcontractor guaranteeing adequate mitigation procedures, if warranted, are in place. HMS will review all subcontractor OCI submissions annually and will require a new OCI Mitigation Plan for those subcontractors that have had changes to their organization.

3.4 Compensation, Gifts, and Gratuities from Reviewed Entities

Neither HMS, nor any of its Senior Management Team, Project Managers, or employees (or their families), may receive any fee, compensation, gift, payment of expenses, or any other thing of value, from any entity that contracts with HMS.

4.0 OCI AVOIDANCE AND MITIGATION STRATEGIES

This OCI Plan is designed to avoid or mitigate OCIs wherever possible. Close communication among the Senior Management Team, Project Managers, and employees is essential to ensure a conflict-free environment exists. When an actual or potential OCI is identified, it must be documented, and a strategy to mitigate the conflict must be developed by the appropriate Senior Management Team member and implemented. HMS has identified and put in place a number of strategies to avoid, neutralize, and mitigate OCIs. The most important of these strategies are discussed below.

4.1 Employees

4.1.1 Data and Process Usage/Disclosure Safeguards

As a user and maintainer of customer information, HMS understands its responsibilities to protect information from unauthorized access, disclosure, duplication, modification, diversion, destruction, loss, misuse, or theft -- whether accidental or intentional. All HMS Senior Management Team members, Project Managers, employees, and certain individuals

providing administrative support services are required to sign a Non-Disclosure Agreement governing the protection and use of information.

Additionally, all HMS relevant employees are required to sign a Non-Disclosure Agreement prohibiting the disclosure of the identity of entities HMS reviews, inspects/surveys or investigates in its performance of its contracts with CMS.

4.1.2 Orientation and Training

HMS provides annual training to help ensure HMS' Senior Management Team, Project Managers, and employees fully understand their obligations under this OCI Plan. As part of their training, HMS' Senior Management Team, Project Managers, and employees will view a training program concerning business ethics and conflicts of interest which includes a test to assess understanding. This training includes instruction on the responsibilities of HMS, and of its Senior Management Team, Project Managers, and employees, with respect to the identification, avoidance, neutralization, and mitigation of OCIs under this OCI Plan.

4.1.3 Disclosure Statements

HMS' Senior Management Team, Project Managers, and employees are required to complete a Disclosure Statement. The Disclosure Statements will be obtained and retained by the Human Resources Department. An HMS executive will review the Disclosure Statements for the purposes of identifying any actual, apparent, or potential conflicts of interest. HMS' Chief Executive Officer and/or the appropriate Senior Management Team member will formulate an appropriate avoidance, neutralization, or mitigation strategy and take all steps necessary to mitigate any actual or potential conflicts. In the event that an actual conflict is identified, these steps may include but are not limited to requiring the overseeing member of the Senior Management Team, Project Manager, or employee to divest the interest or cease the relationship or activity that gives rise to the conflict. If a material conflict cannot be adequately mitigated, the Senior Management Team Member, Project Manager, or employee will be removed from working on the contract.

4.1.4 OCI Annual Compliance Certifications

All HMS Senior Management Team members, Project Managers, and employees are required to prepare and submit an Annual OCI Compliance Certificate to the Human Resources Department. The OCI Compliance

Certificate certifies all HMS employees have read and understand this OCI Plan, and to the best of their knowledge and belief, no facts exist relevant to any past, present, or currently planned direct or indirect interest or activity (financial, contractual, personal, organizational, or otherwise) that could create an OCI as defined by the OCI Plan or that any potential OCI has been disclosed to HMS. The Compliance Certificate must be submitted annually. If a material change is made to this OCI Plan, then HMS employees will be asked to submit a new OCI Compliance Certificate. The Annual OCI Compliance Certifications will be secured and retained by the Human Resources Department.

4.2 Subcontractors

4.2.1 Data and Process Usage/Disclosure Safeguards

As a user and maintainer of customer information, HMS understands its responsibilities to protect information from unauthorized access, disclosure, duplication, modification, diversion, destruction, loss, misuse, or theft -- whether accidental or intentional. All subcontractors working with HMS and certain individuals providing administrative support services are required to sign an agreement governing the protection and use of information.

Additionally, when required, all relevant employees of the subcontractor are required to sign a Non-Disclosure Agreement prohibiting the disclosure of the identity of entities HMS reviews, inspects/surveys or investigates in its performance of its contracts.

4.2.2 Subcontract Clauses and Responsibility

To ensure that an actual or potential OCI does not arise from an HMS subcontractor that provides work for a contract, the requirements of the prime contract OCI clauses are flowed down to those subcontractors who provide goods and/or services to HMS. The Chief Executive Officer is responsible for ensuring the requirements of the prime contract OCI clause are flowed down to subcontractors and HMS' subcontractors comply with these requirements.

4.2.3 Disclosure Statements

HMS' subcontractors and their appropriate personnel either initially, or upon renewal, will be required to disclose and provide a plan of mitigation for all actual, perceived and potential conflicts of interest identified during

the term of the contract on behalf of the entity and individuals involved in the project. Any OCI Disclosure Statement or Mitigation Plan will be obtained, reviewed, and retained by the Chief Executive Officer. HMS' Chief Executive Officer will review the Disclosure Statements for the purposes of identifying any actual, apparent, or potential conflicts of interest. The HMS Chief Executive Officer will formulate an appropriate avoidance, neutralization, or mitigation strategy and take all steps necessary to mitigate any actual or potential conflicts. In the event that an actual conflict is identified, these steps may include but are not limited to requiring the subcontractor to divest the interest or cease the relationship or activity that gives rise to the conflict. If a material conflict cannot be adequately mitigated, the subcontractor will be removed from working on the contract.

4.2.4 OCI Annual Compliance Certifications

When requested, subcontractors may be required to prepare and submit an Annual OCI Compliance Certificate to the Chief Executive Officer. The OCI Compliance Certificate requires the subcontractor and its appropriate employees to certify that, to the best of their knowledge and belief, no facts exist relevant to any past, present, or currently planned direct or indirect interest or activity (financial, contractual, personal, organizational, or otherwise) that could create an OCI. If a material change arises, the subcontractor must submit a new OCI Compliance Certificate.

5.0 COMPLIANCE MONITORING AND REVIEW

Monitoring compliance with this OCI Plan is a continuous and ongoing activity that is integral to maintaining a conflict-free environment. Compliance monitoring will be the responsibility of the Senior Management Team, supported to the extent appropriate by administrative staff. Monitoring and review consists of: (1) annually, or more frequently if a material change occurs, reviewing the financial interests, activities, and relationships of HMS, and its Senior Management Team, Project Managers, employees and subcontractors, to detect previously undetected actual, apparent, or potential OCIs, (2) regularly monitoring and reviewing HMS' proposed and actual avoidance, neutralization, and mitigation strategies to ensure their effectiveness; (3) reviewing all agreements, contracts and solicitations prior to execution or submission, to ensure they do not cause any actual or potential conflicts; (4) developing remedial measures to address any instances of non-compliance with the conflict of interest requirements of this OCI Plan that are identified in the course of the review; and (5) otherwise assessing whether the conflict of interest requirements of this OCI Plan are compliant.

6.0 REVIEW PROCESS

In-process reviews play a major factor to ensure a high quality, proactive approach exists for achieving company-wide OCI Plan compliance and HMS operates in a conflict-free environment. The Chief Executive Officer conducts in-process reviews. Such reviews are conducted periodically as circumstances dictate, such as the release of a new solicitation or receipt of a new contract or subcontract agreement as detailed below.

6.1 Contractor/Subcontractor Review

The Chief Executive Officer reviews all contracts to ensure contracts/subcontracts for HMS services do not create a conflict. When requested, subcontractors may be required to annually submit OCI certifications and disclosures that satisfy all HMS OCI requirements and restrictions. If a material change occurs, the subcontractor will be required to update their OCI certification and disclosures as applicable.

6.2 Solicitation – Unique Requirements Review

Specific solicitations may present unique conflict of interest requirements. Therefore, the Chief Executive Officer reviews all solicitations prior to proceeding with a proposal development by HMS to ensure any potential conflict is identified.

6.3 Records Reports and Files

The safeguarding, maintenance, and dissemination of all records, reports, files, and all other information generated on OCI issues are the responsibility of the HMS Chief Executive Officer and Human Resource Director. Information contained in the reports, records, and files will be kept in the highest confidence.

7.0 OCI RESOLUTION AND REPORTING

In those instances, where the Senior Management Team identifies an actual, apparent, or potential conflict of interest exists, but determines it to be immaterial or possible to avoid, neutralize, or mitigate without a divestiture of the interest or cessation of the relationship or activity, the interest, relationship, or activity may be continued with the approval of the Chief Executive Officer so long as an appropriate avoidance, neutralization, or mitigation plan is implemented.

7.1 Organizational Conflict of Interest Resolution

Once a conflict of interest issue has been identified, the resolution process begins with the isolation, containment, and documentation of the issue, and reporting it to the appropriate Senior Management Team member. Following these actions, HMS' Senior Management Team member must assess whether there is an actual, apparent, or potential conflict. If so, the Senior Management Team member shall develop, assess for adequacy, and implement a strategy for avoiding, neutralizing, or mitigating the conflict.

7.2 Isolation, Containment and Documentation

When a conflict is identified, the facts and/or data surrounding the incident must be isolated, contained, and documented. This isolation, containment, and documentation process is essential to facilitating the reporting, analysis, and resolution process. Isolation refers to setting aside facts and/or data involved. Containment is associated with minimizing dissemination of the information until a report can be prepared and analysis performed to determine if a conflict actually exists. Once the facts and/or data have been isolated and contained, then documentation of the incident should be prepared and filed with the Chief Executive and Human Resources Director.

7.3 Reporting

Reporting a conflict of interest issue to the Senior Management Team is the responsibility of every employee. OCI awareness, early detection, and timely reporting play a key role in satisfactory resolution of conflicts. Accurately reporting the facts is an important aspect of resolution and each individual involved in a situation raising a conflict issue is responsible for ensuring that a conflict incident report is made to HMS' Senior Management Team.

7.3.1 Employee Reporting Responsibilities

Employees are instructed to contact their supervisory member of the Senior Management Team as soon as a potential OCI issue is suspected or identified. Each individual involved with, or knowledgeable about, an OCI-related issue is responsible for accurately documenting the facts surrounding the issue and making sure the Chief Executive Officer is made thoroughly aware of the issue.

7.3.2 Manager Reporting Responsibilities

Senior Management Team members are responsible for constant vigilance in the area of awareness, detection, isolation, reporting, and notification of

conflicts. They are responsible for ensuring that the President is involved as early as possible and for working with the Chief Executive Officer in avoiding, neutralizing, and mitigating actual, apparent, or potential conflicts.

8.0 DISCIPLINARY ACTION

The Chief Executive Officer will investigate any detected or reported violation of the OCI Plan requirements. Appropriate disciplinary action will be taken for violations, up to and including termination.

Exhibit 11



The Honorable Robert
P. Casey, Jr.

United States Senate
Chairman, Special
Committee on Aging

Washington, DC 20510

April 17th, 2023

Dear Senator Casey,

Thank you for your letter dated March 31, 2023. It is encouraging to see the Special Committee on Aging taking an interest in the oversight of nursing homes and other health care facilities. It is an area that is underserved and yet so vital to the protection of our most vulnerable citizens.

I have provided our responses to the questions included in your letter on the following pages. I understand the Committee's focus is related to concerns the states have raised related to utilizing contract surveyors, however, I have also provided a list of some of the benefits that CertiSurv provides that may not be apparent to the states since they are not looking at the regulatory needs of the entire nation.

I have enjoyed my conversations with the Committee thus far and welcome further opportunities to work together to ensure utilization of the best solutions for health care oversight. Please feel free to contact me anytime for additional input or with additional questions.

Sincerely,

Robert Feurer
CEO

112 W 7th St. Ste C
Columbia, TN 38401



AGING-01322

Benefits provided by CertiSurv

These are three benefits that we provide to the surveyor marketplace. There are others, but these are the three that may not be apparent to the states since their focus is on their state's specific needs, rather than the nation as a whole.

1. Retention of surveyors

Due to the ability of private companies to provide a more flexible work schedule, many surveyors who would exit the field due retirement, job dissatisfaction or work-life balance issues, can be retained by CertiSurv and still provide a contribution to the overall national oversight needs. While they may not work as much as a full-time surveyor, even a low amount of work is preferable to the alternative of them not doing any survey work at all.

2. National capacity balancing

Some states are facing extreme shortages of staff, while other states are not. Which states are facing shortages, and which are at capacity, can change over time. CertiSurv provides a way for surveyors in states that are fully staffed and are no longer hiring to be utilized in states that are facing shortages. This also helps to keep those surveyors in the surveyor career until a later date when their residence state may need them to return to the state agency.

3. Improved training and performance improvement options

When a state agency has a surveyor that is not performing well, they often must keep that surveyor working due to the amount of time it takes to train a replacement. By using CertiSurv, a state can remove that surveyor from the field rather than risk them performing inaccurate surveys. While CertiSurv is performing the work of the former employee, the state can take the time needed to train a new surveyor properly and then cease using the CertiSurv staff once the new surveyor is trained.

Requested Information

I have repeated the questions from your letter prior to each answer to avoid any confusion.

1. Please provide the names of all states with which your company currently has active contracts to conduct nursing home surveys.

Alabama, Arkansas, Colorado, Georgia, Hawaii, Iowa, Kentucky, Missouri, Nebraska, New Jersey, South Carolina, Wisconsin

We also perform surveys in Kansas for all facility types except nursing homes.

2. For each of the last five calendar years, please provide:
 - a. The number of states with which your company had a contract to conduct nursing home surveys;
2019: 1
2020: 4
2021: 6
2022: 14
2023 (YTD): 13 (three additional states are currently reviewing proposals)
 - b. The total number of recertification surveys that were conducted pursuant to these contracts;
2019: 9
2020: 47
2021: 103
2022: 339
2023 (YTD): 89
 - c. The total number of complaint surveys that were conducted pursuant to these contracts;
2019: 5
2020: 194
2021: 264
2022: 149
2023 (YTD): 61
 - d. The total number of infection control surveys that were conducted pursuant to these contracts; and
2019: 0
2020: 309
2021: 18
2022: 73
2023 (YTD): 24
 - e. Revenue from state survey contracts.
As a private company we choose not to release this information

3. Regarding current survey contracts with states, what are the ranges of rates your company charges for (a) survey teams and (b) individual surveyors? Please include hourly rates, per survey rates, and any other pricing arrangements your company uses for pricing.

Prices can vary significantly depending on survey type, team size and facility type. For nursing home recertification surveys, prices are typically in the range of \$6,000 - \$9,000 per surveyor per survey. Most state contracts are publicly available and will provide more pricing details for your research.

- a. Please describe the factors that your company uses to determine pricing. Please be as specific as possible in describing these costs. What type of analysis does your company conduct to determine these costs?

Factors used to determine prices offered include:

- Expected surveyor expenses
- Expected travel expenses
- Survey requirements of the state
- Past work history (if any) with the state
- Current survey capacity vs upcoming demand
- Income tax rates within the state
- Employment regulatory requirements in the state (for example, California compared to other states)

Analysis of expenses includes reviewing historical actual expenses as well as reviewing expected trends to help predict future expenses.

- b. To the extent that rates differ from state to state, what is the reason for these variations?

See factors listed in question 3.a.

4. Multiple states have raised concern about their ability to schedule contractors for surveys. Some states have cited instances when contractors have been unable to provide survey teams to meet the state's needs in a timely manner and instances when scheduled surveys were cancelled on short notice.

- a. How many staff does your company currently employ who are involved in the survey process? Please provide a breakdown of the number of staff who conduct surveys, quality assurance, management, or other functions.

As of the date of this letter, our staff consists of the following:

- 71 Surveyors (includes 3 Supervisors and 2 Trainers)
- 13 Quality Assurance Reviewers (includes 1 Supervisor)
- 6 Office support staff
- 3 Executive Managers (CEO, CTO, & Director of Survey Operations)

- b. Have there been instances where your company has been unable to conduct the number of surveys states have requested since January 1, 2021?

No. For all contracts that have had a specific number of surveys required, all the required surveys have been completed. However, some states have open ended contracts that allow us to do “as many surveys as possible” and in those instances, there are times that states would like us to do more surveys than we are able to do.

- c. Have there been instances where your company has had to cancel scheduled surveys with less than a week’s notice?

No. We maintain a large pool of surveyors which enables us to replace surveyors that may need to cancel due to illness or family emergency. We have not had to cancel any surveys with less than a week’s notice.

5. Regarding the staff involved in providing contract survey service for states:

- a. Please describe the responsibilities and the salary ranges for (a) certified surveyors, (b) quality assurance personnel, and (c) survey management.

- Surveyor compensation is variable and is based upon the number of surveys completed. The average surveyor traveling approximately 50% of the year will earn [REDACTED] per year
- Quality Assurance Personnel annual salaries range from [REDACTED]
- Survey Supervisor annual salaries range from [REDACTED]

- b. Please provide information about base salary as well as any additional payments made to employees, including but not limited to, pay tied to conducting surveys, bonuses, overtime and travel.

As a private company we choose not to release this information.

- c. States have raised concern about contractors competing for survey agency staff. What are your company's policies regarding recruiting and hiring staff from state survey agencies or the federal government? Please describe any limitations, restrictions or "cooling off periods," your company has in relation to the recruitment or hiring of staff from states or the federal government.

We do not utilize targeted recruitment activities involving employees who work for states that we currently have contracts with, however we do not turn away employees who contact us seeking employment. Some states have restrictions regarding surveyors from their state performing surveys for CertiSurv in their state. Most of these restrictions last 1-3 years after a surveyor leaves the state agency. We do not currently have a contract with the federal government, and therefore no such restrictions are in place for federal employees.

6. Beyond state survey agencies, does your company currently, or has your company previously, provided services to the Centers for Medicare & Medicaid Services, longterm care providers, or other entities involved in providing or overseeing long-term care?

CertiSurv does not currently provide services to CMS, health care providers or any other entities involved in providing or overseeing health care.

In 2022, CertiSurv provided consulting services to three different long term care facilities. Fees for these services were less than 0.3% of CertiSurv's total revenue.

We do occasionally speak at provider trade shows, such as the AHCA national and state level events, however these engagements are provided for free. CertiSurv does these events to provide education to the provider community as part of our mission to ensure the best care is being provided to residents and patients.

7. Does your company affirmatively disclose to states other contractual relationships that may present a real or perceived conflict of interest, e.g. those with long-term care providers, the federal government, or other entities involved in long-term care?

We do not have any contracts with LTC providers, the federal government or other entities involved in long-term care. However, if we did have contracts with any of those entities, we would disclose them to states.

8. Please provide your company's conflict of interest policy, and the date on which it was most recently updated.

Each state has its own conflict of interest policy that we are required to follow as part of each contract.

Exhibit 12



State Agency Plans

[Home](#) [SA Plans Survey](#) [Change Password](#)

Please select your state:

Please answer the following question regarding your state's non-CLIA surveyors.

If you have all your budgeted surveyor positions filled, does it provide your state with sufficient resources to complete the assigned workload?

If no please check all that apply

- Volume of workload
- Compleity of workload
- Non-survey duties also assigned
- Surveyor training issues
- Other (please specify)

1000 Character Limit

Please answer the following questions regarding your state s CLIA surveyors.

If you have all your budgeted CLIA surveyor positions filled does it provide your state with sufficient resources to complete the assigned workload?

If no, please explain.

1000 Character Limit

Is your state CLIA program under the same state agency director that has oversight for all other provider and supplier types?

Does your state have a CLIA specific director or other member of the management team that has been in that position for two years or less?

Please fill in the data below. If data for the exact dates are not available, please provide the count for the closest possible date.

	01/01/2020	12/31/2020	Present
Number of Surveyor positions budgeted for Fed mandated work.	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of Surveyor positions budgeted for CLIA mandated work.	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of ALL Surveyor Surveyor positions required (this may be the same or different than the number included in the budget).	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of CLIA Surveyor positions required (this may be the same or different than the number included in the budget).	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of ALL Active Surveyors (SMQT Qualified and/or available to survey across 1 or more of the 17 provider types).	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of Active CLIA Surveyors (Qualified and available to survey independently).	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of ALL of budgeted Surveyor positions open.	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of budgeted CLIA Surveyor positions open.	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of ALL surveyors hired, but still in training.	<input type="text"/>	<input type="text"/>	<input type="text"/>
Number of CLIA surveyors hired, but still in training.	<input type="text"/>	<input type="text"/>	<input type="text"/>

Which factors drive vacancies and/or turnover in your surveyor workforce? Check all that apply.

- Lack of qualified candidates
- New hires unable to certify or meet quality standards
- Pay and compensation
- Competition with other industries
- Required level of travel
- Resources find the job more difficult than anticipated at hiring
- Workplace and/or team culture
- Perceived lack of purpose or meaning
- Overwork and/or burnout
- Retirement
- Seeking new career challenges or opportunities
- Other (please specify)

1000 Character Limit

Please answer the following questions regarding your state's nursing home and Acute and Continuing Care (ACC) surveyors.

For which categories do you have at least one qualified surveyor? Check all that apply.

- Ambulatory Surgical Centers
- Community Mental Health Centers
- Comprehensive Outpatient Rehabilitation facilities
- Critical Access Hospitals
- Dialysis or ESRD facilities
- Emergency Preparedness
- Home Health Agency
- Hospice
- Hospitals and Psychiatric Hospitals
- Intermediate Care Facilities for Individuals with Intellectual Disabilities
- Life Safety Code
- LTC Survey Process for Recertification and Abbreviated Surveys
- Outpatient Physical Therapy and Speech Language Pathology
- Portable X-Ray Suppliers
- Psychiatric Residential Treatment Facilities
- Rural Health Clinics and Federal Qualified Health Centers
- Transplant Centers

How many qualified surveyors do you have for each of the following categories?

	Number of Surveyors
Ambulatory Surgical Centers	<input type="text"/>
Community Mental Health Centers	<input type="text"/>
Comprehensive Outpatient Rehabilitation facilities	<input type="text"/>
Critical Access Hospitals	<input type="text"/>
Dialysis or ESRD facilities	<input type="text"/>
Emergency Preparedness	<input type="text"/>
Home Health Agency	<input type="text"/>
Hospice	<input type="text"/>
Hospitals and Psychiatric Hospitals	<input type="text"/>
Intermediate Care Facilities for Individuals with Intellectual Disabilities	<input type="text"/>

Life Safety Code	<input type="text"/>
LTC Survey Process for Recertification and Abbreviated Surveys	<input type="text"/>
Outpatient Physical Therapy and Speech Language Pathology	<input type="text"/>
Portable X-Ray Suppliers	<input type="text"/>
Psychiatric Residential Treatment Facilities	<input type="text"/>
Rural Health Clinics and Federal Qualified Health Centers	<input type="text"/>
Transplant Centers	<input type="text"/>

Across ALL current state surveyors, what is the average years of experience?

Across all current state CLIA surveyors, what is the average years of experience?

Does your state have a training plan for surveyors?

If yes, please briefly summarize the training plan.

1000 Character Limit

Other Specify

1000 Character Limit

Do you monitor the completion of CMS online training available for the various provider types for your surveyors?

If yes, please briefly summarize the monitoring process in 3-4 sentences.

1000 Character Limit

Does your state have a director or other member of the management team that has been in that position for two years or less?

How will your state disseminate pertinent information provided at SETI and SADOc to all staff? Please explain in 2-3 sentences.

1000 Character Limit

What are some ways your state supports new and current leadership? Check all that apply.

- Onboarding program
- Mentor program
- Encouraging further education/certification
- Other (please specify)

1000 Character Limit

State Survey Agency Complaint Data

Instructions: Requested data will be submitted by July 9, 2021 and every two months thereafter.
Please fill in the Complaint Data for all open complaints using the most recent data available.

Number of active facilities (all provider types)

	Number of active facilities
SNF/NF:	<input style="width: 60px;" type="text"/>
*Hospital (Acute, CAH, Psych):	<input style="width: 60px;" type="text"/>
ESRD:	<input style="width: 60px;" type="text"/>
ICF/IID:	<input style="width: 60px;" type="text"/>
Other (remaining cert. programs data combined):	<input style="width: 60px;" type="text"/>

** Instructions: Combine data for acute, CAH, and psych.*

Number of complaints received by your State Agency, but not yet entered into ACTS

	Number of complaints received by your State Agency, but not yet entered into ACTS
SNF/NF:	<input type="text"/>
*Hospital (Acute, CAH, Psych):	<input type="text"/>
ESRD:	<input type="text"/>
ICF/IID:	<input type="text"/>
Other (remaining cert. programs data combined):	<input type="text"/>

** Instructions: Combine data for acute, CAH, and psych.*

Number of complaints and Facility Reported Incidents (FRI) that have not been triaged

	Number of complaints and Facility Reported Incidents (FRI) that have not been triaged
SNF/NF:	<input type="text"/>
*Hospital (Acute, CAH, Psych):	<input type="text"/>
ESRD:	<input type="text"/>
ICF/IID:	<input type="text"/>
Other (remaining cert. programs data combined):	<input type="text"/>

** Instructions: Combine data for acute, CAH, and psych.*

Number of complaints entered in ACTS triaged as requiring onsite investigations, but not investigated

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

** Instructions: Non-deemed only for providers with deeming option triaged as NIJM or NIJL*

Number of complaints entered in ACTS triaged as requiring onsite invest. and have been investigated but not closed

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

* Instructions: Non-deemed only for providers with deeming option investigated but not closed triaged as NIJM or NIJL

Number of complaints in ACTS that are less than 30 days overdue

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

* Instructions: Non-deemed only for providers with deeming option

Number of complaints in ACTS that are 30-90 days overdue

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

* Instructions: Non-deemed only for providers with deeming option

Number of complaints in ACTS that are 91-180 days overdue

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

* Instructions: Non-deemed only for providers with deeming option.

Number of complaints in ACTS that are 181-365 days overdue

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

* Instructions: Non-deemed only for providers with deeming option

Number of complaints in ACTS that are 366+ days overdue

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>
NIJL	<input type="text"/>	* <input type="text"/>	* <input type="text"/>	<input type="text"/>	* <input type="text"/>

* Instructions: Non-deemed only for providers with deeming option.

Number of FRIs entered in ACTS triaged as requiring onsite invest. but have not been investigated

	SNF/NF
U	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Number of FRIs entered in ACTS triaged as requiring onsite invest. that have been investigated but not closed

	SNF/NF
U	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Number of FRIs in ACTS that are less than 30 days overdue

	SNF/NF
U	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Number of FRIs in ACTS that are 30 90 days overdue

	SNF/NF
U	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Number of FRIs in ACTS that are 91-180 days overdue

	SNF/NF
IJ	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Number of FRIs in ACTS that are 181-365 days overdue

	SNF/NF
IJ	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Number of FRIs in ACTS that are 366+ days overdue

	SNF/NF
IJ	<input type="text"/>
NIJH	<input type="text"/>
NIJM	<input type="text"/>
NIJL	<input type="text"/>

Average time for recert. Surveys conducted by SA when complaints are included

	SNF/NF	Hospital (Acute, CAH, Psych)*	ESRD*	ICF/IID	Other (remaining cert. programs data combined)
IJ	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJH	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJM	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
NIJL	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Recovery Plan Information

Instructions: The SA will complete an initial recovery plan by July 9, 2021 and every two months thereafter.

What is the projected recovery plan completion date?

Is this your state's initial recovery plan or revised recovery plan?

Recovery Plan Point of Contact Information

Recovery Plan Point Of Contact First Name

Recovery Plan Point Of Contact Last Name

Recovery Plan Point Of Contact Title

Recovery Plan Point Of Contact Email Address

Recovery Plan Point Of Contact Phone Number

Is the Point of Contact the same person who is updating the recovery plan?

If no, please enter the contact information for the person updating the recovery plan below.

Person Updating Recovery Plan Contact Information First Name

Person Updating Recovery Plan Contact Information Last Name

Person Updating Recovery Plan Contact Information Title

Person Updating Recovery Plan Contact Information Email Address

Person Updating Recovery Plan Contact Information Phone Number

Please describe the overall completion goals and strategy for addressing complaint/FRI and recertification survey backlog (a recertification survey backlog includes any recertification survey that is overdue e.g., 15.9 months for a LTC facility).

1000 Character Limit

Instructions: The plan should outline strategies consistent with current guidance previously provided by CMS such as QSO-21-16, QSO-20-20 and QSO 20-31 or guidance released by CMS. General considerations that should be reflected in the plan should reflect review of data available to the State Agency including the data contained in the ASPEN data systems and should be consistent with data provided as part of this questionnaire. Each plan should also include the following as appropriate: The date since last recertification survey; The age of the complaint intake; Facility history; For SNFs/NFs, consideration for SFF or SFF Candidates; Abuse/neglect violations; Infection control violations; Transfer/discharge violations; Insufficient staffing/competency violations; Other Quality of Care Issues (falls, pressure ulcers, etc); SAs should consider scheduling investigations/recertification surveys not covered above with priority given to facilities with a history of IJ or Harm/COP level deficiencies in the last 3 years and: Prioritize remaining investigations with priority given to facilities with five or more pending investigations with priority given to providers with pending allegations with the highest priority levels. The plan should: reflect efforts to coordinate open complaint/FRI intakes with recertification surveys; Utilize current guidance such as the revised LTCSP guide allowing for additional intakes to be included in recertification surveys; and consider open enforcement cases needing additional information to complete processing.

Please identify any concerns related to data integrity utilized to develop this plan. (Check all that apply.)

- Backlog of data needing entry into the system.
- Surveys that cannot be uploaded and are not reflected in the system.
- SA staff need additional training to ensure data is consistently entered into the system correctly.
- Other

Please identify sources of data used to respond to this questionnaire

Please provide your instructions to survey schedule staff and survey staff for combining pending complaints and recerts.

1000 Character Limit

Instructions: For SNFs/NFs, utilizing provisions in the revised LTCSP Guide for adding additional residents based on complaints should be considered. Use subject of complaints as sample for recertification survey where possible to cover as many open complaints possible should be considered

What options are available to your state for increased survey support? Check all that apply.

- Contractual Support
- Reciprocity with other states
- Emergency Operations MOA
- Applicability of established COOP plan
- Other (please specify):

What options are available to your state for increased survey support?

1000 Character Limit

Please describe the number of survey hours anticipated for any items that are checked above.

1000 Character Limit

Please describe your state's plan for recruitment and hiring new survey staff.

1000 Character Limit

Please describe your state's plan for monitoring implementation of the plan.

Instructions: Refer to Attachment A for reports and other strategies the State Agency should consider for monitoring implementation of the plan.

Please use the space below to include any additional information or comments.

1000 Character Limit

Part II: The questions in this section solely address CLIA survey activities.

Please fill in the Initial and Recertification survey data requested. Numbers should be based on the original expiration dates, not the certificate extensions that occurred due to the Public Health Emergency.

Number of laboratories that need to be surveyed with original expiration dates prior to FY2020

Number of laboratories that need to be surveyed with original expiration dates in FY2020.

Number of laboratories that need to be surveyed with original expiration dates in FY2021

What is the total number?

If your state does not have a backlog can you please inform us of the methodology your state uses to complete your survey workload?

1000 Character Limit

Please fill in the Complaint Backlog data requested using the most recent ACTS data available.

Number of complaints received by your State Agency, but not yet entered into ACTS.

Number of complaints that have not been triaged

	CLIA
IJ	<input type="text"/>
Non-IJ	<input type="text"/>

Number of complaints entered in ACTS triaged as requiring onsite investigations, but not investigated

	CLIA
IJ	<input type="text"/>
Non-IJ	<input type="text"/>

Number of complaints entered in ACTS triaged as requiring onsite invest. and have been investigated but not closed

	CLIA
IJ	<input type="text"/>
Non IJ	<input type="text"/>

Number of complaints in ACTS that are 366+ days overdue

	CLIA
IJ	<input type="text"/>
Non-IJ	<input type="text"/>

Please describe the overall completion goals and strategy for addressing CLIA complaints, initial, and recertification survey backlog. How do you plan on reducing the backlog and completing your current survey workload?

1000 Character Limit

What options are available to your state for increased CLIA survey support? Check all that apply.

- Contractual Support
- Reciprocity with other states
- Ability to hire retired annuitants
- Other (please specify):

What options are available to your state for increased CLIA survey support? Check all that apply. Other specify

1000 Character Limit

Please describe the number of survey hours anticipated for any items that are checked above.

1000 Character Limit

Please describe your state's plan for recruitment and hiring new survey staff.

1000 Character Limit

Please describe your state's plan for monitoring implementation of the plan.

1000 Character Limit

Please use the space below to include any additional information or comments.

1000 Character Limit

Plan Status

In Progress ▼

Instructions:

Not Started - Indicates that the survey has not been started.

In progress - System will automatically change this status to 'In progress' when the survey is started.

Complete - When finished with the survey, please change to 'Complete'.

Save

Cancel

Exhibit 13



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

JOYCE MASSEY-SMITH, MPA • Director
Division of Aging and Adult Services

May 1, 2023

The Honorable Bob Casey, Jr.
Chairman
U.S. Senate Special Committee on Aging
G16 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Casey:

Ref: Staffing shortages in State Survey Agencies

Senator Casey, and the U.S. Senate Special Committee on Aging (Aging Committee), I am pleased to present this letter for the record on behalf of residents in North Carolina's long-term care facilities. Thank you for your ongoing support for all residents who reside in long-term care facilities in the United States of America. Like all advocates, families, and resident representatives, we welcome your letter dated September 12, 2022 to all state survey agencies. I'm certain that most of us agree with what is contained in your letter that state survey agencies are integral to ensuring the health and safety of Americans who are reliant on our nation's health care providers ranging from hospitals to nursing homes, to intermediate care facilities and more.

Last January, a report from the Office of the Inspector General for the Department of Health and Human Services (OIG) identified staffing shortages as a root cause of State survey performance problems.

While I am not a surveyor and does not work within a state survey agency, I as an advocate and a state long-term care ombudsman, can offer some perspectives on the following: (a) staffing shortage in survey agencies, (b) does the shortage impact the job surveyors do? and (c) does the staffing shortage indirectly impact long-term care residents?

In the past three years and since the beginning of COVID-19, nursing homes and health care providers as well as state survey agencies across the country began and continue to report significant staffing challenges which may affect their ability to perform their survey duties as mandated and as required in a timely manner. When a state survey agency is adequately staffed, they are able to perform all duties as mandated and as required, and within reasonable response time, thus ensuring that facilities are held accountable for not providing the highest

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF AGING AND ADULT SERVICES

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AGING-01361

quality of care for residents.

The OIG report clearly identified states that are experiencing staffing shortages. With this identification, every effort should be made at the federal and state levels to provide the resources needed so that state survey agencies can be adequately staffed.

Adequate staffing ensures that surveyors can perform all types of activities which may include certification, inspection of care and other complaint types. When these are done, facilities are held accountable for compliance with federal standards. This guarantees that the quality of care for long-term care residents are at the highest level required by law.

The staffing shortages began at a time when the residents had increased needs due to the unintended consequences of the forced isolation that for many resulted in weight loss, failure to thrive, incontinence, overall general decline and in some cases even non-COVID related death. Staffing shortages continue to be an ongoing issue. When residents and their representatives submit care-related complaints about not being assisted with important daily activities such as receiving medication dressing, eating, and toileting, their expectation is that those complaints will be investigated timely, and nursing homes will be held accountable for not providing the care that residents were promised at admission. Furthermore, the facilities continue to be compensated by residents, Medicaid and Medicare etc.

When state survey agencies do not have adequate staffing to visit and investigate the complaints, residents may be left at the mercy of non-caring facility staff and ownership who are not held accountable and yet are paid to provide sub-standard care to residents.

This negatively impacts not only the physical well-being of residents, but their dignity and emotional health as well. There is not enough staff to shower them, get them up in time to go to the dining room, to actively participate in recreation or spend time with family members and peers.

Consequences of staffing shortage in long-term care industry includes job stress, employee dissatisfaction, patient care may be compromised, physical exhaustion, employees are less productive, and may be susceptible to workplace injuries. Surveyors are not different from their peers in the long-term care industry and other industries across the nation. Over exhaustion can lead to a lack of focus that may necessitate lack of engagement in the duties being performed.

Conversely, staffing shortage could lead to surveyor burnout, high turnover rates, increased mistakes and decreased employee morale. These attributes are not good if we expect surveyors to perform adequately and hold facilities accountable.

When facilities are not held accountable, they may provide sub-standard care for long-term care residents. There is ample evidence.

In view of the staffing shortage evidenced in the IOG Report, one can conclude that the cadre of new surveyors are not seasoned enough to conduct the survey. They are new and do not possess the capacity to conduct a survey that is thorough because they have not been afforded adequate training. Invariably, there will always be two outcomes.

Facility is not held accountable, and long-term care residents continues to receive sub-standard

quality of care.

Surveys are conducted to make sure that facilities meet federal and state standards. One of the best ways to make sure that residents are receiving adequate care is to make sure that facilities perform as required by law. If and when surveyors are not available in a timely manner due to staffing shortage to conduct the annual and complaint surveys, allegations may be unsubstantiated. Residents and their representatives become increasingly disillusioned with the process. They do not see any reason to submit complaints.

On occasions, survey reports indicate that allegations are not substantiated. Perhaps they were not substantiated because of lack of evidence and perhaps they were not substantiated because the complaints were not prioritized as belonging in Infection Prevention, Immediate Jeopardy (IJ) or Non-Immediate Jeopardy (Non-IJ) categories.

When the complaints did not belong in the categories above, surveyors may not accord those complaints with immediate response and investigation. Consequently, the complaints may be unsubstantiated. Residents and representatives could make an argument that facilities had the extra time to correct errors by the time surveyors arrived.

Again, this negatively impacts resident care because facility is not held accountable for providing sub-standard care to residents, yet facility continues to be reimbursed by private-paying residents and by taxpayers.

In my state, the surveyors are keeping up with infection control, IJ and non-IJ complaints. The agency required all facilities to submit infection control plans.

The relationship between surveyors and facilities should be a relationship of collegiality whereby surveyors and facility staff could have the time to discuss thoroughly and explore best practices during the survey visit. Unfortunately, this may be something of the past because every entity is short staffed, over worked, stressed, and simply desiring to close out the visit, submit deficiency reports which may include listing of unsubstantiated allegations and move on to the next assignment. It impacts everyone especially long-term care residents.

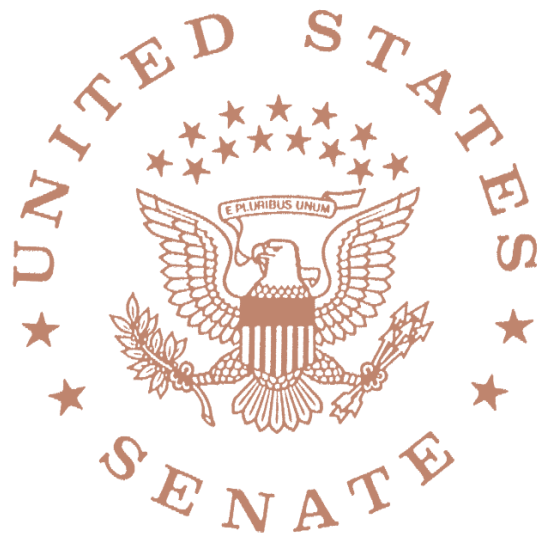
Thank you for your attention to the needs of residents in nursing facilities and the impact of staffing shortages at state survey agencies.

Sincerely,

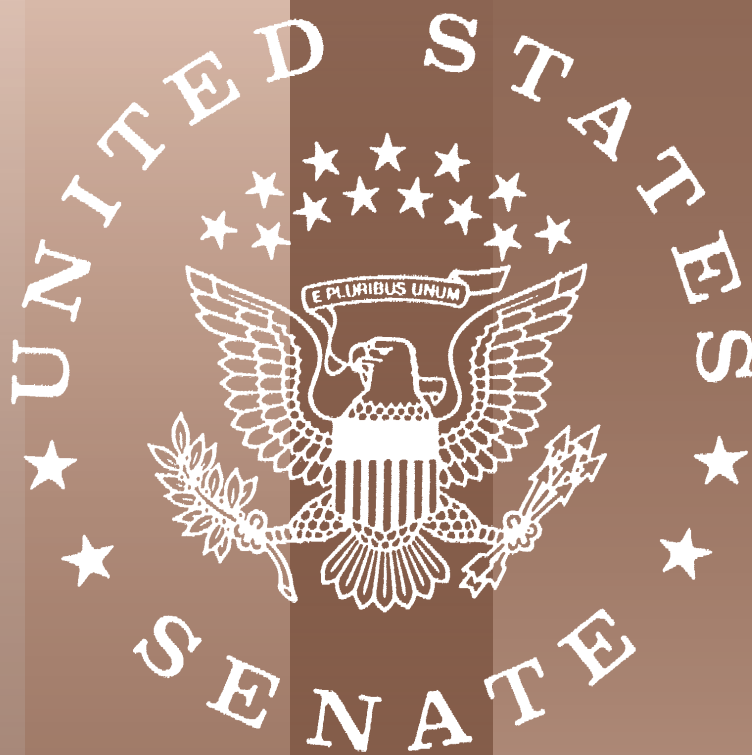


Victor Orija, MPA

State Long-Term Care Ombudsman
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**A REPORT BY THE
MAJORITY STAFF OF THE
U.S. SENATE SPECIAL
COMMITTEE ON AGING**