Statement of Robyn Grant, Director of Public Policy & Advocacy, to the Seniors Task Force

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Chairwoman Schakowsky and Chairwoman Matsui, members of the Seniors Task Force, thank you for the opportunity to speak with you today and for your interest in this critically important subject.

I want to talk with you about an issue related to the workforce and that’s nursing home staffing, and more specifically, understaffing.

Understaffing is the number one concern reported to us by nursing home residents and their families. Direct care in a nursing home is provided primarily by nursing staff – certified nursing assistants (CNAs), licensed practical or vocational nurses (LPNs) and registered nurses (RNs). Everyday in our office we hear about residents who are not getting the care they need because there aren’t enough nursing staff. They tell us that frequently there may only be one nursing assistant to care for 20 residents on a wing. CNAs provide the majority of hands-on care.

- They assist with personal care and toileting needs
- They help residents eat and drink
- They walk, reposition and help residents in an out of bed or a wheelchair
- And they also keep residents comfortable and respond to requests for help.

It is impossible for one aide to carry out all these tasks for 20 residents. As a result, many of these essential daily tasks are simply not done. Residents are not taken to the bathroom, teeth are not brushed, baths are not given. Residents frequently have to wait a long time to get the help they need. Recently a nursing home resident in Maryland told us that she waited 4 hours for someone to help her.

There also aren’t enough registered nurses in facilities. RNs conduct clinical assessments, identify changes in a resident’s condition, communicate those changes and respond with appropriate actions in a timely manner to avoid poor outcomes. They bring skills and knowledge that are beyond the scope of what LPNs and nursing assistants are permitted to do.
Understaffing has devastating consequences to residents. Residents may experience –

- Painful pressure ulcers
- Contractures
- Malnutrition
- Dehydration
- Incontinence
- Avoidable declines in physical functioning
- Injuries
- Preventable hospitalizations
- And even death

The terrible harm that residents can suffer was reinforced by a recently released Department of Health and Human Services Office of Inspector General (OIG) report entitled, “Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries.” The OIG investigation found that one third of skilled nursing home residents are being harmed, and in some cases, even dying, due to the care provided - or not provided - by the facility.

The OIG also found that almost 60% of these events were preventable and resulted from substandard care, inadequate resident monitoring and failure or delay of necessary care, all of which relate to nursing duties. These poor, often tragic and largely preventable outcomes found by the OIG are exactly what result when there are insufficient numbers of nursing staff.

While you cannot put a price on human suffering, you can certainly put one on hospitalizations. The OIG estimated that hospital treatment for the harm caused in the facilities they investigated cost Medicare $208 million in August 2011, amounting to $2.8 billion for all of FY 2011.

Low staffing levels are the single most important contributor to poor quality of nursing home care in the United States. Study after study, including CMS’s own study the Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes have shown there are strong correlations between nursing home staffing levels and quality of care. We even know what minimum level of staffing is needed. In 2001. Part Two of the CMS report I just mentioned recommended a daily minimum staffing standard of 4.1 hours of total CNA, LPN and RN time per resident per day. The study found that 4.1 hours was the minimum amount of time needed to prevent common care problems such as pressure ulcers and weight loss. Even though we know that increased levels of staff lead to better care and we know what levels are needed, understaffing persists.
The reason in our view is because those levels are not mandated; there is no federal minimum staffing requirement. The Nursing Home Reform Law which was passed in 1987 and then implemented through regulations only requires that nursing homes provide services by sufficient numbers of nursing personnel to meet the needs of each resident. Sufficient is a term that is vague, ambiguous, subjective, very hard to measure and almost impossible to enforce.

Because there is no federal minimum standard, staffing is left up to states or up to the facility itself. If a state does have a staffing standard, it is usually extremely low and certainly well below the recommended 4.1 hours per resident per day. When it’s the nursing home that determines the staffing levels, there is no floor below which it cannot go. This means that a facility can cut staffing to the bone. Staffing costs money. Studies have shown that for-profit facilities, particularly those owned by multi-state chains, are more likely to reduce spending on staffing and to divert it to profits and corporate overhead. The public is shocked to find out there is no federal minimum staffing standard and also shocked to hear that RNs are not required to be in a facility around the clock. A nursing home only has to have an RN 8 hours a day, 7 days a week.

Since there are no mandates, consumers want to know what the actual staffing levels are in nursing homes. The answer is that we don’t know because we don’t have credible, reliable data. The information is self-reported by nursing homes and not audited. CMS itself acknowledges that the data are flawed.

Over the years, efforts have been made to address the problem of understaffing and staffing data.

From early 2000 on, there have been at least 3 attempts to pass legislation mandating minimum staffing standards, including the Nursing Home Quality Protection Act introduced by Representatives Waxman and Schakowsky. Unfortunately those bills all died.

At the same time, there has been a parallel track to publicize information about staffing levels. That effort also began around 2000 with Representatives Waxman and Schakowsky introducing a bill calling for publication of staffing levels on an HHS website. It was at that time that CMS began to do what the Representatives had called for and started publicly reporting staffing information on Nursing Home Compare. Later in 2008, CMS created the Five Star Quality Rating system, which included staffing data in calculating a facility’s rating. Accurate data are essential. Consumers need accurate information about the number and type of staff in order to make informed decisions when choosing a nursing home.

Currently, on a daily basis, the public is turning to a trusted government website, getting flawed data and using that data to select a nursing home for themselves or a loved one. As
members of Congress, you also need reliable information in order to consider important policy issues such as how to tie nursing home quality to payment, or to determine how the billions of dollars nursing homes receive from Medicare and Medicaid are being spent. Others - researchers, nursing homes and CMS itself - need good, reliable data as well. In 2010, we took a giant step forward when you passed the Affordable Care Act. Within the ACA there is a provision sponsored by Senators Grassley and Kohl that requires nursing home staffing information to be collected through payroll data. Since payroll data can be audited and verified, the result would be reliable, accurate data.

CMS was to implement this requirement by March 2012. It’s May 2014 and the payroll data collection system has yet to be created. CMS has conducted feasibility studies, and demonstrations, such as the recently completed Nursing Home Value-based Purchasing Project. It has expended countless hours and taxpayer dollars. Yet the system still does not exist.

What can be done about inaccurate staffing data and lack of adequate numbers of staff? Where can we go from here?

There are four concrete steps you, as members of Congress, could take that could make an enormous difference

- First, you could send a letter separately or with colleagues to CMS urging the agency to implement the payroll data collection without further delay.
- Second, you can support full funding of the President’s budget request for survey and certification. CMS recently told us that if the President’s budget is fully funded, they think they might be able to move forward with the payroll data collection system.
- Third, CMS is currently revising the long-term care facility requirements of participation that are the nursing home regulations and is still accepting comments. There are two opportunities here to have an impact: 1) You could submit your own comments to CMS right now, recommending that they incorporate the minimum staffing standards and 24 RN in the regulations; and/or 2) this fall, if the proposed rules don’t include these staffing provisions, you could weigh in and again push CMS to include these staffing requirements.
- Finally, the fourth step would be to sponsor or support legislation mandating a minimum staffing standard with a RN 24 hours a day. Certainly we hope that these requirements will be part of the revised regulations, but experience has shown that we can’t count on that.
The Consumer Voice hopes that the death and injuries to the residents in the OIG report will not be forgotten and will serve as a call to action. Staffing is the lynchpin to quality nursing home care. Scores of studies and investigations have proven the link between staffing and quality outcomes, as well as the high cost of poor care. Even top notch nurses and nursing assistants with the best training and skills can’t deliver quality care if there aren’t enough of them.