

**NURSING HOME REFORM BRIEFING  
REMARKS OF NINA A. KOHN**

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My remarks focus on (1) the need for accountability to ensure that nursing homes provide safe and humane care; (2) how compliance and enforcement efforts can be reformed to create that accountability; and (3) the role that transparency requirements could play in creating proper incentives and promoting accountability.

**THE NEED FOR ACCOUNTABILITY**

The federal Nursing Home Reform Act of 1987 and its implementing regulations set forth minimum standards related to quality and type of care that nursing homes that accept Medicare or Medicaid—which is virtually all nursing homes—must provide. Unfortunately, the current enforcement system largely [fails to hold nursing homes accountable](#) for achieving those outcomes. This gap between what is mandated, and what providers are held accountable for, has created a situation in which the federal standards are often treated as aspirational goals, not requirements. The result? Taxpayers don't get what they pay for, and nursing home residents experience unnecessary suffering and premature mortality.

Currently, the primary tool for holding nursing homes accountable is the state inspection process, which is overseen by the Centers for Medicare and Medicaid Services (CMS). There are two key problems with the process. First, too often inspectors fail to identify problems, or assess those identified as less serious or widespread than they are. Second, regulators rarely impose the type of penalties (such as civil monetary fines and holds on new admissions) that would deter bad behavior. Instead, nursing homes found to have violated federal law, including by endangering residents, are typically just told to fix the problem. Sometimes inspectors do not even [follow-up](#) to make sure its fixed. In this environment, unscrupulous providers can generate profit by operating facilities in ways that unlawfully endanger residents.

The current regulatory approach also suffers from a major blind spot: regulators treat each facility as an independent entity, although many are part of regional, national, or even international chains. For example, an owner with a track record of bad behavior—even one resulting in other facilities being terminated from Medicare and Medicaid—can have new facilities certified for participation in these programs without consideration of the past record. Similarly, when determining what penalties to impose for a violation—something that is supposed to depend on how widespread the problem is—regulators don't account for the fact that the violation may be part of a pattern of illegal behavior occurring across facilities.

**REFORMS TO IMPROVE ACCOUNTABILITY**

Fortunately, there are concrete, straightforward reforms the federal government could implement to close the gap between what Congress has already determined is necessary to protect vulnerable nursing home residents and what nursing homes do.

**Impose meaningful penalties for violations of the Nursing Home Reform Act of 1987.** Much can be done using CMS's current authority: CMS has the ability to impose a wider range of sanctions than it typically does. Likewise, CMS could stop waiving civil monetary penalties—especially where the underlying violations are serious or are part of a pattern of behavior across facilities owned or operated by the same entity.

Congress also has a role in ensuring that penalties are sufficient to deter misconduct. Congress should—as President Biden has proposed—raise the dollar limit on per-instance financial penalties from \$21,000 to \$1,000,000.

**Enhance support for state inspections.** The inspection process is at the core of protecting residents from neglect and mistreatment, and it needs resources. Congress should appropriate funds to support this work. This includes funds to:

- cover the [rising cost](#) of hiring the medical professionals needed to conduct statutorily mandated surveys;
- provide inspectors with the training and ongoing professional development needed to properly identify the nature and extent of violations; and
- expand the Special Focus Facility (SFF) program that identifies the worst-performing nursing homes, subjects them to more frequent investigations, and puts them on the route to termination from the participation in Medicaid and Medicare if improvements do not occur.

**Consider owners’ and managers’ track records when determining whether to certify additional facilities.** It is outrageous that an entity known to operate other facilities in a way that is illegal—that fails to provide residents with the type of quality of care mandated under federal law—that causes residents to suffer unnecessarily and die prematurely because of such failures—that even may have had other facilities terminated from the program—can still have more facilities certified for Medicare and Medicaid as if none of this had happened.

Congress must step in. It must require the Secretary of Health and Human Services, who is responsible for certifying nursing facilities for participation in the Medicare and Medicaid programs, to consider owner and operator’s track record in determining whether one of their facilities is to be certified. Congress should also explicitly prohibit the Secretary from certifying facilities owned or operated by entities whose past conduct indicates they are unlikely to administer the new facility in a way respects resident’s rights and provides high quality care.

**Create transparency as to ownership and management.** Key to holding bad actors accountable is knowing who they are. But the growing complexity in ownership structures means that it is increasingly difficult to figure out who controls a facility or has beneficial ownership.

Accessible, publicly available information about ownership and management would serve two important functions. It would support the types of enforcement efforts just described and make it easier for state licensure bodies to consider owners’ and operators’ track records when making licensing decisions. It also would allow consumers to make more educated choices, creating stronger incentives for good care. Increasingly, nursing homes are owned by investment entities, including private equity and real estate investment trusts, and a growing body of [research](#) shows that these ownership structures are associated with lower quality of care for residents. Consumers should be able to know if such entities are operating nursing homes that they are considering for themselves or for loved ones. The White House’s proposals for reform would be quite helpful in this regard. The Administration has proposed a new database to track and identify owners and operators across states and plans to implement Affordable Care Act requirements regarding transparency in corporate ownership of nursing homes.

**Increase disclosure and transparency as to nursing home spending.** As a [2016 study](#) by the Government Accounting Office found, although CMS collects information about nursing home expenditures, it has not taken the necessary steps to ensure the data is accurate, complete, and accessible to stakeholders. As the GAO explained:

Because of how CMS formats the data, users need certain software packages and programming skills to analyze data for each fiscal year. In addition, CMS has acknowledged that the data files are so large that some users have been unable to download them. One of the researchers we interviewed stated that the amount of time needed to analyze the data typically requires a grant. CMS also does not organize SNF expenditures in a meaningful way for analysis.

In addition, cost-report data currently lacks critical information about related-party transactions. As the GAO study explained, nursing homes can “conceal profit in management fees, lease agreements, interest payments to owners, and purchases from related-party organizations” but “[i]t is not possible to detect this activity using cost report data.” This enables facilities to divert money needed to care for residents to a related party—creating profit that appears to the outside world as an expense.

Congress should appropriate funds to enable CMS to redesign the Medicare cost report system so that its accessible, accurate, and informative.

Transparency would enable policymakers and taxpayers to evaluate the nursing home industry’s claims that it needs more taxpayer money and cannot afford to meet various standards. The current data asymmetry allows the industry to claim it is in dire financial straits, while private equity is snapping up homes. In addition, transparency could help consumers make more informed choices. In choosing a facility, it’s helpful to know: is this a home that spends most of their money on providing care? Or is it one that diverts much of its income to padding investors’ pockets?

## **Conclusion**

Nursing home residents are at risk because of nursing homes are not adequately held accountable for providing the type and quality of care that federal law requires. True accountability will require enhanced enforcement efforts, and far greater transparency as to ownership, management, and expenditures.