PROTECTING SENIORS
By Improving – Not Eroding – Nursing Home Quality Standards

Consumer Voice Member Call
June 21, 2018
Agenda

I. Introductions & Opening
   Robyn Grant, Consumer Voice

II. Resident story and background
   Janet Wells, California Advocates for Nursing Home Reform

III. Nursing Home Quality, Oversight & Staffing
   Richard Mollot, Long Term Care Community Coalition

IV. Enforcement of Nursing Home Standards & Federal/State Role in Ensuring Competent, Financially Sound Owners/Managers
   Toby Edelman, Center for Medicare Advocacy

V. Nursing Home and Financial Accountability Issues
   Charlene Harrington, University of California - San Francisco

VI. Policy Recommendations & What You Can Do
   Robyn Grant, Consumer Voice
   • Q&A
   • Closing
Washington Post, May 1, 2018

She modeled in New York and worked for the Navy. At 93, parasites ate her alive at a nursing home.
Rebecca Zeni’s Life

“Her beauty could capture a room.”

- Rebecca Zeni was described as a “modern-day woman of the 1940s and 1950s. Headstrong, career-oriented and hard-working.”
- After high school, she became a Navy employee at the Norfolk naval base.
- Later she moved to New York City and became a model.
- In New York, she also worked as an assistant to Mike Wallace at CBS News.
- Then she became a mother and homemaker.
- At 93, she had Alzheimer’s disease and had been living for 5 years in a Georgia nursing home that was undergoing repeated outbreaks of scabies.
Rebecca Zeni’s Death

“an agonizing death . . . in constant pain”

- Scabies is highly contagious. Parasites burrow under the skin and lay eggs – in Ms. Zeni’s case, throughout her body. Her family’s lawyer said she was “literally being eaten alive.”

- Scabies spreads through human contact or touching surfaces handled by someone who has it. Residents with scabies at Ms. Zeni’s nursing home weren’t quarantined. Staff who had it weren’t required to stay home. Sheets slept on by infected residents were washed with the rest of the linens.

- As many as 20 residents and staff may have been infected. During another scabies outbreak at the facility, a total of 35 staff and residents contracted the disease.
Infection lapses are rampant in nursing homes, but punishment is rare.

Infections are a dangerous problem throughout the healthcare system. They are especially prevalent in nursing homes.

- Basic steps to prevent infections – such as handwashing – are routinely ignored.

- 74% of nursing homes have been cited for infection control lapses.

- Only 1 in 75 received high-level citations that would lead to penalties.
Resources


Nursing Home Reform Law & the ACA

- The 1987 Nursing Home Reform Law (OBRA 87) is the main authority for nursing home regulation and enforcement.
- Select Committee on Aging hearings and a 1986 study by the Institute of Medicine showed that strong federal regulation and enforcement were needed to ensure quality.
- The study was the impetus for the new law, which established: Residents’ Rights. Quality Standards for Participation in Medicare and Medicaid. Regular Inspections. Penalties for Noncompliance.
- In 2010, the Affordable Care Act added mandatory reporting of suspected crimes and greater transparency about nursing home ownership, compliance and staffing levels on Nursing Home Compare. In April, a major improvement was made in the Nursing Home Five Star Quality Rating System with the addition of nurse staffing hours per day based on auditable payroll records.
Requirements of Participation

- The Requirements are the regulatory standards for nursing homes that participate in Medicare and Medicaid.

- In September 2016 -- after a 4-year review and public comment -- the Obama administration issued new regulations that updated federal requirements for the first time since 1995.

- The Trump administration says it plans to “reform” the requirements to remove the burden from providers.
Though Care Has Improved, Serious Problems Persist – and Need Our Attention

- While nursing home care has improved since the scandalous conditions that led to the 1987 Nursing Home Reform Law, abuse, neglect, and substandard care persist.

- Hundreds of thousands of residents, in facilities across the country, are impacted every day.

- New research and public data indicate that substandard care, resident abuse, and neglect may be more serious and widespread than previously understood.

- Congressional action is needed to...
  - Stop further degradation of nursing home safety standards;
  - Ensure that CMS and the State Agencies are fulfilling their mission to protect residents and hold providers accountable for substandard care; and
  - Institute reasonable restraints to prevent bad actors from draining money and resources allocated to provide resident care.

Too often, “Buyer Beware” Defines the Experience of Nursing Home Residents & Families.
HHS OIG: Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries

- An astonishing one-third of residents who went to a nursing home for short-term care were harmed within an average of 15.5 days.

- Close to 60% of that harm was preventable and likely attributable to poor care.
LTCCC Study of State Survey Agency Performance

In 2015, LTCCC published the first ever (to our knowledge) report on state survey agency performance that focused on resident-level, rather than facility-level, quality assurance.

We looked at three areas identified as key to quality and program integrity:

- Pressure Ulcers
- Antipsychotic Drugging
- Staffing
Nursing Home Quality and Enforcement

Pressure Ulcers

- CDC: “[p]ressure ulcers are serious medical conditions and one of the important measures of the quality of clinical care in nursing homes.”

- Clinical Journal: While some pressure ulcers are unavoidable, research and experience indicate that, “[i]n the vast majority of cases, appropriate identification and mitigation of risk factors can prevent or minimize pressure ulcer (PU) formation.”

 Nevertheless, pressure sores remain a significant, often horrifying, problem for too many of our nursing home residents.

  - 7.5% of residents (over 95,000 individuals) have unhealed pressure ulcers (2018).
  - Though pressure ulcers are largely preventable, states cite nursing homes the equivalent of less than 3% of the time that a resident has a pressure ulcer.
  - When states do cite a facility for inadequate pressure ulcer care or prevention, they only identify this as harmful to residents about 25% of the time.
Antipsychotic Drugging

- Inappropriate antipsychotic drugging is a serious and widespread problem in nursing homes across the United States. Antipsychotics are extremely dangerous, particularly for elderly individuals with dementia. They are indicated only for certain clinical conditions. They are not indicated for so-called dementia behaviors.

- Too many residents receive these drugs as a form of chemical restraint, and as a substitute for good care.

- In 2012, the HHS Inspector General stated, in regard to the “overmedication of nursing home patients” that the “[g]overnment, taxpayers, nursing home residents, as well as their families and caregivers should be outraged - and seek solutions.”

- Nevertheless, inappropriate antipsychotic drugging continues to be a significant and acute problem in too many nursing homes:
  - 20% of residents (over 250,000 individuals) are currently receiving these drugs.
  - Less than 2% of the population will ever have a diagnosis for which CMS risk-adjusts for potentially appropriate use of antipsychotic drugs.
  - 0.31% – the average state citation rate for inappropriate drugging (2015).
  - 2% – the percent of these citations identified as causing resident harm.
Nursing Home Quality and Enforcement

Staffing

- Though sufficient staff is acknowledged as critical to good care, and insufficient staffing is known to be a widespread problem, insufficient staffing is rarely cited.

- The annual rate of staffing deficiencies per resident is infinitesimal: 0.036%.

- Less than 5% of those deficiencies are identified as having caused resident harm.

The benefits of higher staffing levels, especially RNs, include lower mortality rates; improved physical functioning; less antibiotic use; fewer pressure ulcers, catheterized residents, and urinary tract infections; lower hospitalization rates; and less weight loss and dehydration.

Nursing Home Quality and Enforcement

LTCCC Report: *Chronic Deficiencies in Care: The Persistence of Recurring Failures to Meet Minimum Safety & Dignity Standards in U.S. Nursing Homes*

- “Chronic deficiencies” -- three or more citations for the same health or safety standard in a three-year period.

- Our analysis of three years’ of data posted on Nursing Home Compare found that an astonishing 42% of nursing homes had chronic deficiencies.

Too often, serious problems continue for years while residents, rather than operators, pay the price for substandard care.
Nursing Home Staffing

In November 2017, fulfilling an Affordable Care Act mandate, CMS made available, for the first time, auditable, payroll-based data on nursing home staffing.

What do the data show?  
What do the data indicate?

- Insufficient Staffing Widespread:
  - 82% of nursing homes report total direct care staffing at 4.0 hours per resident day or less. A landmark federal study in 2001 indicated that 4.1 hours of direct care staff time is typically needed to meet a resident’s clinical needs.
  - 30% of nursing homes report total direct care staffing of 3.0 hours per resident day or less.
Nursing Home Staffing

**RN Staffing of Particular Concern:**

- Registered nurses are critical to the safety and quality of care provided in a nursing home. They are the only care staff with the licensure and skills to assess residents and provide appropriate supervision of care and services provided to residents.
- **70% of nursing homes report RN care staffing at 0.5 hours per resident day or less.** The 2001 federal study indicated that 0.55-0.75 is typically needed to meet a resident’s needs.
- CMS “concerned with recurring instances or aberrant patterns of days with no RN onsite.”
  - 6% of facilities have 7 or more days where no hours for RNs were reported.
  - 80% of all days with no RN hours were weekend days.
- Hundreds of nursing homes have the equivalent of **zero hours of RN care staff per resident per day – every day.**

**Appropriate staffing is possible!**:

- 25% nursing homes – including for-profit and not-for-profit facilities – provide .55+ hours of RN care staff time per resident day.
# Nursing Home Staffing

## Useful Information is Available...

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<th>State</th>
<th>Provider Name</th>
<th>Resident Census</th>
<th>RN Hours</th>
<th>LPN Hours</th>
<th>CNA Hours</th>
<th>Total Direct Care Staff Hours</th>
<th>Avg Staffing Hours Per Resident Day</th>
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LTCCC collects and publishes, on a quarterly basis, information on care staff for every nursing home that has reported to CMS. Individual state files can be downloaded and are easily searchable and sortable at [www.nursinghome411.org](http://www.nursinghome411.org).
Thank You For Your Time

Visit us on the Web at www.nursinghome411.org
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Follow us on Twitter at www.twitter.com/LTConsumer
ENFORCEMENT OF NURSING HOME STANDARDS & FEDERAL/STATE ROLE IN ENSURING COMPETENT, FINANCIALLY SOUND OWNERS & MANAGERS

June 21, 2018
ENFORCEMENT

Nursing Home Reform Law (1987) requires

• Range of remedies/sanctions (civil money penalties, denial of payment for new or all admissions, directed plan of correction, monitor, termination from Medicare and Medicaid programs).

• Use of more significant remedies for more serious, uncorrected, and repeated deficiencies.
IMPLEMENTATION OF ENFORCEMENT

- Historically, enforcement has been weak.
- Regulations categorize deficiencies by scope (number of residents affected) and severity (seriousness).
- More than 95% of deficiencies are called “no-harm.”
- The result: Financial remedies are rarely imposed.
MYTH OF BURDENSOME REGULATIONS

- Most problems in care (deficiencies) are not cited and, if cited, are not enforced with financial penalties. Generally, only the most serious deficiencies are likely to have any sanctions imposed.

- Small penalties are “cost of doing business.”

- When enforcement is so rare, the regulations cannot fairly or accurately be described as burdensome.
TRUMP ADMINISTRATION
WEAKENED ENFORCEMENT

Through subregulatory guidance (Survey & Certification Letters addressed to state survey agencies); no public notice or comment

- Per instance CMPs made default (reversing Obama Administration guidance, 2014, that made per day CMPs the default) (Jul. 2017)
- Maximum per instance CMP is $20,965; per day CMPs have no dollar limit.
SMALLER AND FEWER CIVIL MONEY PENALTIES IMPOSED

- 2016 (full fiscal year, Oct. 2015-Sep. 2016):
  - 1728 per day CMPs (average $53,845.66)
  - 942 per instance CMPs (average $3,161.93)
  - 1923 per day CMPs (average $71,581.52)
  - 2147 per instance CMPs (average $6,969.83)
- 2018 (Oct. 1, 2017 - May 7, 2018)
  - 310 per day CMPs (average $84,887.71)
  - 721 per instance CMPs (average $10,057.49)
OTHER CHANGES TO ENFORCEMENT

- Begin fines at time of survey (not earlier, even when noncompliance began earlier).

- QSO 18-18-NH (June 15, 2018) includes:
  - Limiting mandatory CMPs for immediate jeopardy to deficiencies where there is “serious injury, harm, impairment or death”
  - Directs Regional Offices, in selecting remedies, to consider whether noncompliance results from “one time mistake, larger systemic concerns, or an intentional action of disregard for resident health and safety”
CHANGING NURSING HOME INDUSTRY

- Originally, individually and locally owned
- With Medicare and Medicaid reimbursement, shift to for-profit ownership
- Multi-state chains
- Private equity firms bought chains
  - Chains and private equity firms separated ownership and management; multiple companies involved.
RECENT UPHEAVALS IN NURSING HOME INDUSTRY

- Landlords (real estate investment trusts) forced chains into bankruptcy (e.g., HCR ManorCare)
- Chains shifting their focus, owning the property and buildings, but transferring management to unknown operators
SKYLINE

- Unknown New Jersey company; bought 110 facilities in 6 states since 2015.
- Between end of March 2018 and end of April 2018, Skyline stopped meeting payroll and paying vendors.
- States went to court to take over the facilities to protect residents.
CONCERNS ABOUT SHIFTS IN OWNERSHIP/MANAGEMENT

- Insufficient state and federal oversight of new owners/managers
  - California State Auditor’s recent report finds state does not follow its own rules on relicensing facilities.
  - Vermont law calls for review of state oversight, especially financial issues and owners of real estate.
Nursing Home Financial & Accountability Issues

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Who Pays for Nursing Home Care – $192 Billion 2020

Medicare: 42%
Medicaid: 24%
Self pay: 9%
Private insurance: 26%

66% of revenues paid by government
Ave revenues $10 million each NH

NCHS 2016 Payers in 2015
Myth: SNF payment rates are not high enough for good care

Medicare Payment Advisory Commission
Medicare rates are adequate for good care
Recommended no SNF increases 2018 & 2019

CMS announced
$850 million increase in rates in 2018
$2 billion in savings over next 10 years

For-profit nursing homes will reap windfall from tax reform law – ($140,000 in savings for every $1 million in revenue)
Lack of Accountability with Medicare NH Prospective Payment

- Medicare prospective payment system pays higher rates based on self-reported resident acuity
- Encourages false inflation of acuity
- Audits of acuity and cost reports are not conducted by CMS
- SNFs are allowed
  - to cut staffing levels and labor costs
  - shift money from care to profits
Where Does the NH Money Go?

California NH Expenditures as % of revenues 2016

- Nursing: 37%
- Ancillary & support: 30%
- Administration & profit: 23%
- Property & other: 10%

CA OSHPD cost reports
Percent Medicare Nursing Home Profit Margins By Ownership

For-Profit
Non-Profit

MedPac Reports 2018
Nursing Home Hidden Profits

- Leases to related party property companies
- Management company payments to related party owners
- Inflated payments to pharmacy, staffing, therapy, and other related party companies
- Interest rates on loans to owners
- Owner direct withdrawals
- Artificial reductions in taxes
- Related party transactions increased 66% in 3 yrs to over $1 billion annually in CA

Harrington, Ross, Kang. 2015 Hidden Owners, Hidden Profits. IJHS. CA auditor. 2018
Nursing home profits come from real estate investments

Source: SNL. 10 year period ended 12/31/2017

www.LTCreit.com/shareholder-value/
MLR is the share of revenues spent on patient care as opposed to administration and profits

Adopted for health plans in the ACA and saved billions

Could adopt for nursing homes by requiring 80% of revenues be spent on nursing care and services (limit administration & profits to 20%)

Recoup excess administrative expenses and profits

There is a clear need for greater nursing home financial accountability and limits on administrative costs and profits.
POLICY RECOMMENDATIONS: WHAT YOU CAN DO

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#1 Protect regulatory standards and strengthen – not weaken – enforcement

A) Ask HHS Secretary Azar and CMS Administrator Verma to:

- **Retain** the federal nursing home regulations as issued in October 2016
- **Reverse**:
  - The moratorium on the complete enforcement of 8 vital nursing home regulations
  - The decision to set per-instance, rather than per-day, civil money penalties (CMPs) as the default financial remedy for violations
- **Strengthen** enforcement by ending the persistent under-identification of resident harm
#1 Protect regulatory standards and strengthen – not weaken – enforcement

B) Ask your Senators and Congressperson to contact Secretary Azar and Administrator Verma with the same message!
Send a letter

• See handout: WHAT YOU CAN DO TO HELP SAVE NURSING HOME PROTECTIONS FOR RESIDENTS!
#2 Require financial stewardship – accountability and responsible use of public monies

Talk with your members of Congress about the need for legislation requiring:

$ Greater financial accountability and audits in Medicare nursing homes

$ Detailed financial reporting for related party companies on administrative costs and profits

$ A medical loss ratio on nursing homes to limit administrative costs and profits
#3 Ensure owners/managers are competent/financially sound

Recent Headline News

Skyline payroll issues force Kansas to seek its largest-ever nursing home takeover

Thousands of nursing home patients nationwide affected by NJ company’s financial trouble

Talk with your members of Congress about the need for legislation requiring:

- Development and state enforcement of procedures that assess purchasers before a transfer of ownership and management occurs, including their:
  - Financial capacity to operate the facilities
  - Compliance & quality of care history
#4 Set minimum staffing standards

Talk with your members of Congress about supporting legislation requiring:

- Minimum safe staffing for Medicare and/or Medicaid-funded nursing facilities
Your Advocacy Matters!

• We are stronger and more powerful together
• If we don’t speak up for residents, who will?

IF NOT US THEN WHO?
Contact Information

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