



Ensuring Nursing Home Quality:

Continuing Challenges to Oversight and
Enforcement of Nursing Home Reform

FORUM SESSION
ANNOUNCEMENT

A DISCUSSION FEATURING:

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THURSDAY, MARCH 25, 2010
11:45AM–12:15PM—Lunch
12:15PM–2:00PM—Discussion

LOCATION

Reserve Officers Association
One Constitution Avenue, NE
Congressional Hall of Honor
Fifth Floor
*(Across from the Dirksen
Senate Office Building)*

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OVERVIEW

Twenty-three years ago, Congress passed landmark legislation aimed at improving the quality of care in Medicare- and Medicaid-certified nursing facilities. The legislation, known as nursing home reform, set minimum conditions that nursing homes must meet to receive Medicare or Medicaid funds and required improvements in federal and state government oversight and enforcement of nursing home compliance with quality standards. Yet today, many challenges to oversight and enforcement remain, and a significant proportion of homes do not meet quality standards. This Forum session will discuss the Government Accountability Office's most recent findings on the oversight and enforcement of quality standards by the Centers for Medicare & Medicaid Services and states. Speakers will discuss the role of states in the survey process and the role of nursing home ombudsmen in investigating and resolving resident complaints as well as the challenges they face. Speakers will also discuss how state survey agencies and ombudsmen can work together to better ensure that quality care is provided and that residents' rights are honored.

BACKGROUND

For many years, federal and state long-term care policy has focused on improving options for home and community-based care, including a series of initiatives to help the frail elderly and others with disabilities avoid or transition from nursing homes. Although these initiatives have indeed reduced nursing home use, care in nursing homes is a substantial component of the long-term care system. About 1.5 million people reside in 16,000 nursing homes, and spending for nursing homes in 2008 accounted for about 6 percent of national health care spending.

Decades of congressional concern about quality of nursing home care led to the adoption of landmark legislation in the Omnibus Reconciliation Budget Act of 1987 (OBRA 1987). The legislation, heavily influenced by the findings of a 1986 Institute of Medicine report,¹ established a national minimum set of requirements that Medicare- and Medicaid-funded facilities must meet to ensure quality care of residents. Concern about quality has continued, resulting in frequent congressional hearings and reports and a series of Government Accountability Office (GAO) investigations on federal and state efforts

to oversee and enforce nursing home standards. Despite a greater investment by the Centers for Medicare & Medicaid Services (CMS) in monitoring nursing homes than other health care providers, a significant share still do not measure up to the standards required by the law and regulations. In 2008, about one in four nursing homes was found to have poor quality of care that caused harm or immediate jeopardy to residents, and the deficiencies identified varied widely across states.²

OBRA 1987 REQUIREMENTS

On the basis of the OBRA 1987 statutory requirements, CMS regulations define quality standards that focus on delivery of care, resident outcomes, and facility conditions. The standards fall into 15 categories, including resident rights, quality of life, resident assessment, quality of care, transfer and discharge rights, resident behavior and facility protocols, and nursing services.

CMS and the states share responsibility for ensuring that nursing homes meet quality standards and provide a safe environment for residents. CMS contracts with states to carry out periodic surveys of homes' compliance, and performs oversight of state survey activities through its ten regional offices. The survey process is conducted in person by a state team that may include nurses, social workers, pharmacists, and others. Survey visits must be unannounced and conducted at least every 15 months, with a statewide average interval between surveys not to exceed 12 months. Facilities with poor histories of compliance with quality standards may be surveyed more frequently. The state survey team determines whether care and services provided meet resident needs and measures outcomes, such as the incidence of pressure sores and the prevention of weight loss and accidents.

CMS also contracts with states to maintain procedures and staff to investigate and report on nursing home complaints they receive about care in facilities from residents, families, or nursing home staff. The complaint investigation process is intended to respond to a specific allegation regarding inadequate resident care or abridgement of rights.

GAO FINDINGS

For over a decade, GAO has investigated the extent to which CMS and state survey agencies oversee and enforce OBRA 1987 requirements

and has documented the challenges these agencies continue to face in implementing the legislation. Its investigations have covered federal and state implementation of the survey process and how effectively the agencies investigate complaints made by residents and their families. In general, GAO has concluded that, while CMS oversight and enforcement and complaint investigation have increased significantly over the years, there is still work to be done.³

In an analysis of CMS' monitoring of state survey results, GAO found that some state surveys understate serious care problems in nursing homes and miss deficiencies in quality of care standards, such as ensuring that residents have proper nutrition and hydration and preventing pressure sores. GAO has pointed to certain factors that contribute to understatement of deficiencies. These include lack of experienced state surveyors; workforce shortages; problems in recruiting and retaining qualified surveyors; weaknesses in state surveyors' investigative skills and their ability to integrate and analyze information to make a deficiency determination; predictability of survey timing leading to homes' ability to conceal deficiencies; and, in a few instances, external pressure from stakeholders such as the nursing home industry.⁴

CMS has taken a number of steps to strengthen federal oversight of the state survey process, such as imposing stronger sanctions for homes with a history of poor care, increased oversight of homes, and improving data collection systems on surveys. However, according to GAO, sanctions policies often appear to have resulted in only temporary compliance in some non-compliant homes, and limited federal funding and state staff surveyor shortages have hampered overall efforts.⁵ GAO found that funding for surveys of all health care facilities, including nursing facilities, which comprise most of the survey workload, fell by 9 percent in inflation-adjusted terms from fiscal years 2002 to 2007.⁶ Funding for survey activities has increased recently, and may result in CMS' ability to continue improvements in its oversight and enforcement activities.

In addition to periodic surveys of homes, complaint investigations are intended to provide rapid response to health and safety concerns and allow states to evaluate the quality of care between survey visits.⁷ In response to GAO 1999 recommendations for more timely state investigations of serious complaints and stronger federal monitoring of state investigations,⁸ CMS took a series of steps to strengthen complaint investigations procedures. These actions have included instructions to states to investigate complaints alleging harm within

ten business days of receipt, as well as requirements for on-site facility complaint investigations. In efforts to strengthen federal oversight of state investigation procedures, CMS implemented a national automated complaint tracking system in 2004.⁹ Despite these actions, the 2009 GAO report found that complaint reporting problems persist. State officials say that inadequate funding and staff inhibit their ability to effectively respond to complaints.¹⁰

ROLE OF LONG-TERM CARE OMBUDSMEN

The long-term care ombudsman program, established by the Older Americans Act, is intended to address quality of care and resident rights through consumer advocacy. Ombudsmen are charged with investigating and seeking resolution of resident complaints. Key to the ombudsman function is regular facility and resident visitation by paid and volunteer ombudsmen. Regular ombudsman contact with residents has the potential to address complaints before they become serious quality issues. The most frequent resident complaints reported to ombudsmen are staff failure to respond to requests for assistance, failure to properly plan for resident discharge or eviction, lack of respect for resident rights, failure to properly administer medication, and poor quality food service.

Many state ombudsmen and state survey agencies have successfully worked together to improve quality of care or to protect resident rights. State survey agencies must have a written policy that establishes a process for sharing information between the agencies and state ombudsmen.¹¹ Survey agencies are required to notify ombudsmen when surveyors will be in facilities and to obtain any information about facilities and complaints ombudsmen want to share with the survey team. Despite the important role ombudsmen can play, many states lack sufficient staff and volunteers to make regular visits, leaving many residents without access to ombudsman assistance.¹²

SESSION

Speakers at this Forum session will present the GAO's findings and review both the role of states in conducting nursing home surveys and the role of ombudsmen in investigating and resolving complaints. They will also discuss coordination between state survey agencies and ombudsmen to improve nursing home quality.

KEY QUESTIONS

- What are the major findings of GAO investigations regarding progress made by federal and state governments to improve quality of care in nursing homes? What are the strengths and weaknesses of the nursing home survey and certification process? What challenges do officials still face in overseeing and enforcing quality of care standards and investigating complaints?
- What factors lead to state surveyors' understatement of nursing home deficiencies?
- What effects have limitations in federal funding had on the survey process and complaint investigations?
- What challenges do state survey agencies face in carrying out survey activities? What are the staff recruitment and retention challenges? How much priority is given to surveyor training?
- What is the role of long-term care ombudsmen in nursing facilities, and how do they help residents? What are the major complaints that ombudsmen receive? What challenges do ombudsmen face in assisting residents with their complaints?
- How can ombudsmen and state survey staff coordinate their activities on behalf of residents?

SPEAKERS

Walter Ochinko, assistant director in the Health Team at the Government Accountability Office (GAO), will discuss GAO's investigations of federal oversight and enforcement of OBRA 1987 requirements, challenges faced by federal and state officials in implementing the survey and complaint investigation process, the GAO's recommendations to federal officials, and improvements made by CMS. **Rick Harris**, director of the Bureau of Health Provider Standards in the Alabama Department of Public Health, will discuss state responsibilities in ensuring quality of care in nursing homes and implementing OBRA requirements, and challenges faced by state survey and certification agencies. **Becky Kurtz, Esq.**, long-term care ombudsman in the state of Georgia, will discuss the role of long-term care ombudsmen in investigating and resolving resident complaints, the types of complaints investigated, and the challenges the program faces. Mr. Harris and Ms. Kurtz will also discuss how ombudsmen and state survey agencies can work together to help ensure that quality care is provided and that residents' rights are honored.

ENDNOTES

1. Institute of Medicine, *Improving the Quality of Care in Nursing Homes* (Washington, DC: National Academies Press, 1986); available at www.nap.edu/openbook.php?record_id=646.
2. Charlene Harrington, Helen Carrillo, and Brandee Woelsgle Blank, "Latest Data: Nursing Facilities, Staffing, Residents and Facility Deficiencies 2003 through 2008," University of California San Francisco, November 2008; available at www.nccnhr.org/node/227.
3. Government Accountability Office (GAO), "Nursing Home Reform: Continued Attention Is Needed to Improve Quality of Care in Small but Significant Share of Homes," GAO-07-794T, May 2, 2007; available at www.gao.gov/new.items/d07794t.pdf.
4. GAO, "Nursing Homes: Addressing the Factors Underlying Understatement of Serious Care Problems Requires Sustained CMS and State Commitment," GAO-10-70, November 2009, available at www.gao.gov/new.items/d1070.pdf; and GAO, "Nursing Home Reform: Continued Attention Is Needed."
5. GAO, "Nursing Home Reform: Continued Attention Is Needed."
6. GAO, "Medicare and Medicaid Participating Facilities: CMS Needs to Reexamine Its Approach for Funding State Oversight of Health Care Facilities," GAO-09-64, February 2009; available at www.gao.gov/new.items/d0964.pdf.
7. Office of the Inspector General, Department of Health and Human Services, "Nursing Home Complaint Investigations," OEI-01-04-00340, July 2006; available at <http://oig.hhs.gov/oei/reports/oei-01-04-00340.pdf>.
8. GAO, "Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents," GAO/HEHS-99-80, March 1999; available at www.gao.gov/archive/1999/he99080.pdf.
9. GAO, "Nursing Homes: Despite Increased Oversight Challenges Remain in Ensuring High-Quality Care and Resident Safety," GAO-06-117, December 2005; available at www.gao.gov/new.items/d06117.pdf.
10. GAO, "Medicare and Medicaid Participating Facilities: CMS Needs to Reexamine Its Approach."
11. Centers for Medicare & Medicaid Services (CMS), "State Operations Manual: Appendix P—Survey Protocol for Long Term Care Facilities—Part I," rev. 42, April 24, 2009, available at www.cms.hhs.gov/Manuals/Downloads/som107ap_p_ltcf.pdf; and CMS, Survey and Certification Letter S&C-07-26, Communication Between State Survey Agencies (SAs) and State Long-Term Care (LTC) Ombudsmen, July 6, 2007.
12. Carol V. O'Shaughnessy, "The Role of Ombudsmen in Assuring Quality for Residents of Long-Term Care Facilities: Straining to Make Ends Meet," National Health Policy Forum, Background Paper No. 71, December 2, 2009; available at www.nhpf.org/library/details.cfm/2767.