Tom—

Here's the proposal I mentioned to you.

JC

U.S. Department of Justice

Office of the Deputy Attorney General

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Nursing Home Fraud

FAX TRANSMISSION SHEET

TO: Jose Cerda

Phone: 456-5568 **Fax:** 456-7028

FROM: John T. Bentivoglio
Special Counsel for Health Care Fraud

Phone: (202) 514-2707 Fax: (202) 616-1239

DATE: 11/30/98

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MESSAGE:

Note: The information in this facsimile should be considered confidential.

Nursing Home Fraud and Abuse Initiative
(For Discussion Purposes Only)

Summary

The Nursing Home Fraud and Abuse Initiative is a joint effort of the Departments of Justice and Health and Human Services to bolster federal, state and local law enforcement efforts aimed at fraud and abuse in nursing homes and other long-term care facilities, with a particular emphasis on fraud and abuse that results in harm to patients. The Initiative responds to President Clinton's call in July 1998 for stepped up enforcement efforts against nursing homes that commit egregious violations of federal and state laws and fail to ensure humane, safe, and adequate care for nursing home residents. The Initiative also calls for assisting the majority of law-abiding nursing home operators in complying with federal and state laws.

Major Components of the Nursing Home Initiative

- Create a new National Nursing Home Fraud and Abuse Task Force – composed of senior officials from the Department of Justice, HCFA, HHS Office of Inspector General, and the FBI – to implement the Initiative; evaluate the effectiveness of existing laws, regulations, and practices aimed at combating fraud and abuse in nursing homes; and to provide advice on how to improve federal, state and local enforcement and industry compliance efforts.

- Establish new (or expand existing) Nursing Home Fraud and Abuse Task Forces at the state and local level composed of federal, state and local law enforcement, state survey and licensing agencies, and other appropriate agencies to: (1) streamline the process for referring egregious quality of care violations and other potentially fraudulent activity to law enforcement authorities; (2) ensure adequate investigation and/or prosecution at the federal, state or local level; and (3) conduct joint training programs.

- Increase investigative efforts directed against regional and multistate nursing home operators that commit widespread or repeated violations of federal quality of care regulations. Large, multistate providers have escaped such scrutiny due to separate state survey processes and because HCFA currently contracts with individual facilities – not necessarily with the management company or corporate parent. Under the Initiative, HCFA is changing its existing databases to facilitate the identification of nursing home operators that engage in widespread or repeated violations of Medicare rules and regulations.

- Integrate the Veterans Administration into the Nursing Home Initiative to take advantage of the oversight conducted by the VA and to ensure a swift response to abuse and neglect involving VA beneficiaries in nursing homes.

- Expand the assistance currently available to the victims of nursing home abuse and neglect (including, if appropriate, amendments to the Victims of Crime Act and/or the regulations issued under VOCA).

- Assist the majority of nursing home operators who are law abiding by publishing compliance guidance from the HHS Office of Inspector General for nursing homes and other long-term care facilities (similar guidance has been published for clinical laboratories and other segments of the health care industry).

- Increase accountability by toughening the certifications that nursing homes must sign to receive Medicare payments.

- Develop model state patient abuse and neglect legislation, including tough civil and criminal penalties, mandatory reporting of serious instances of abuse and neglect, and mandatory background checks for nursing home employees.

- Conduct several regional training conferences on nursing home fraud and abuse enforcement, with participation from federal, state and local law enforcement agencies, state survey and licensing agencies, and other appropriate participants.

- Propose new federal legislation providing civil penalties and injunctive relief against nursing homes that commit a pattern or practice of violations of Medicare or Medicaid statutes or regulations. Consider criminal sanctions for willful violations of Medicare or Medicaid statutes or regulations, with more serious penalties for violations that result in actual patient harms.

Resources

At this time, the Department of Justice has not requested additional resources for stepped-up enforcement efforts in the FY 2000 budget (currently pending at OMB). Rather, the activities outlined above will be conducted using current resources. However, the use of existing resources will necessarily constrain what can be done and additional resources could be used effectively to implement the Initiative in a more robust manner.

Timing and Status of Interagency Clearance Process

The draft Action Plan, summarized above, has been reviewed at senior staff levels within DOJ and HCFA but has not been fully vetted within each agency. Beyond the necessary substantive review of these proposals, HCFA is (properly) concerned about the resource commitment required to implement this Initiative. HCFA already is devoting substantial resources to the implementation of the efforts announced in July 1998. The final scope of the Initiative may need to be adjusted based on resource limitations.