HEALTH CARE FINANCING ADMINISTRATION
NATIONAL HEADQUARTERS
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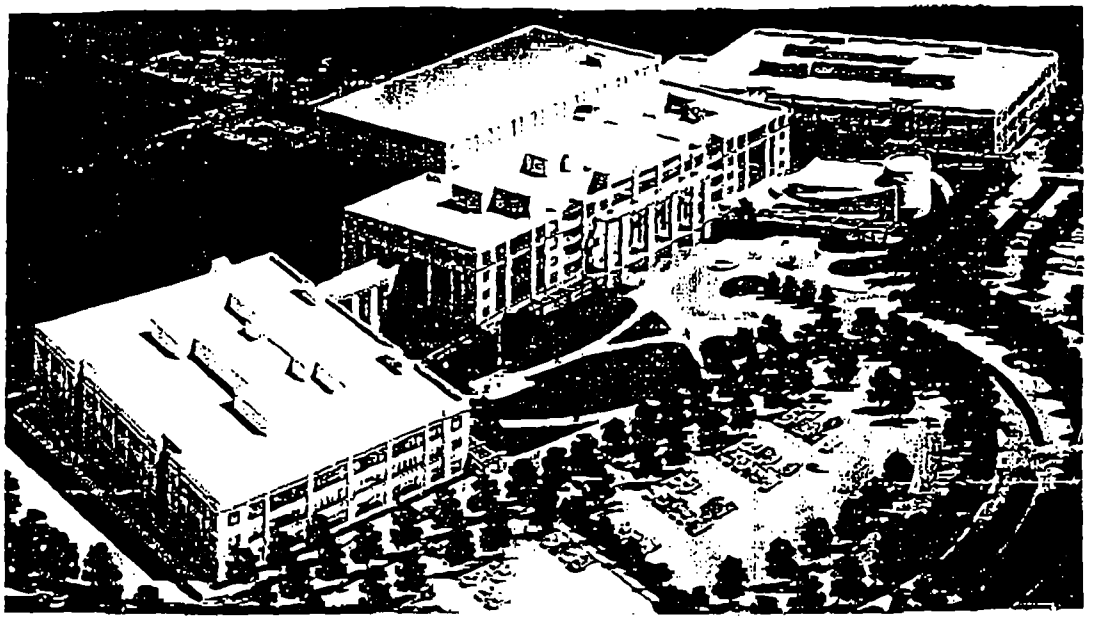
Baltimore, MD 21244-1850



FACSIMILE TRANSMISSION REQUEST

ADDRESSEE:(Name, Organization, Address)
Dvorah

Phone: _____

FROM: Maria Martino
OFFICE OF THE ADMINISTRATOR
C5-26-11-Location
C5-16-03-Mail Stop
Phone: (410) 786-3151 /Fax (410) 786-8060

TOTAL PAGES:	ADDRESSEE'S FAX MACHINE NUMBER	DATE:
Cover + 12	456-5557	8/31/98

REMARKS: Page 1-5 - Draft plan
Excel charts - 4 pages
Occupancy rates by states - 3 pages.

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DRAFT August 31, 1999

Contingency Plans for Protecting Beneficiaries In the Event of Nursing Home Chain Bankruptcy

Purpose

To protect residents in nursing homes in case one or more chains have major financial disruptions, and to identify the relative roles and responsibilities of the Federal government and State governments.

Background

Some large nursing-home chains are publicly reporting financial troubles and have suggested that they may file for Chapter 11 bankruptcy protection to allow them to reorganize with a stronger financial position. A number of large chains exploring this option have assured us and our State partners that such actions would not affect the quality of care or quality of life for their residents, and that they are committed to protecting that quality of care as they reorganize. State survey agencies have intensified monitoring activities in smaller chains that have already filed for Chapter 11 protection and have not found related quality of care problems to date. Affected States are continuing to carefully monitor these situations to ensure that conditions do not worsen.

Reorganization under Chapter 11 and other management actions may improve financial problems faced by the chains. However, there is always some possibility that these approaches may not assure financial viability and subsequent Chapter 7 filings could occur, which would pose greater risks of quality of care problems. HCFA and the States must be prepared in either situation to monitor conditions and take appropriate steps if needed to protect the health and safety of residents in such cases. We have designed this contingency plan to create a process that will allow HCFA and affected States to respond quickly and effectively if the financial situation in a chain(s) places resident health or safety at risk.

Responsibilities for Readiness

In a financial crisis, as in any crisis, the State governments (emergency management agencies, survey agencies, licensure agencies, etc.) have the prime responsibility for the health and safety of its residents. The Federal government should provide available resources and support to the States in protecting nursing home residents.

State Government Responsibilities

The State government will have the responsibility to:

- Monitor care provided in facilities at financial risk;
- Develop contingency plans for protecting nursing home residents;
- Have in place laws and resources necessary for carrying out contingency plans;
- Have in place triggers necessary for implementing the contingency plan, in all or in part;
- Assure quality of life and quality and continuity of care for nursing home residents;
- Identify areas for Federal action where States need approvals, resources, legislation or other support; and
- Exchange information and coordinate with the Federal government, other State governments, industry, consumer and professional organizations.

Federal Government Responsibilities

The Federal government will have the responsibility to:

- Collect and maintain current information about:
  - + chain ownership;
  - + financial status of chains;
  - + State contingency plans; and
  - + State implementation actions
- Facilitate States' development and implementation of contingency plans;
- Coordinate activities across involved Federal agencies:
  - + HCFA;
  - + Administration on Aging, DHHS;
  - + Office of the Inspector General, DHHS
  - + Department of Justice;
- Coordinate activities across States;
- Define resources necessary to support States' actions and possible legislative action; and
- Assure that any federal settlements of actions against chains are supportive of the residents' health and safety.

Actions to Date

HCFA has undertaken the following activities to date.

- Biweekly meetings with the Deputy Administrator to develop strategies and monitor progress;

- Regularly scheduled conference calls with the Department of Justice, the Office of the

Inspector General, Office of General Counsel, Administration on Aging and other Federal partners to exchange information and plan future activities;

- Weekly conference calls with the Regional Offices to gather information from the field and share developments at Central Office;
- Inventory and document State capacity for response (i.e., development of State contingency plans);
- Regional Office consultation with the States to strengthen and enhance contingency planning and evaluate availability of resources;
- Developing a national emergency call list of key Federal officials and officials in each State;
- Maintain liaison with key industry and consumer groups, both nationally and locally;
- In consultation with industry, consumer and government experts, developed protocols for use by the States and Regional Offices in monitoring conditions in at-risk facilities;
- Ongoing analysis of the financial condition of the various chains on the basis of SEC filings and other publicly available information;
- Meet and consult with key corporate officials of chain corporations (with DOJ and IG as needed);
- Developing consistent response plans for each Regional Office, to include information on smaller regional chain organizations; and
- Worked with the Administration on Aging to alert the State Long-Term Care Ombudsmen and provide them with key indicators and monitoring protocols.

Next Steps:

1. Continue to collect and maintain current information
   - Update chain ownership information:
     + hire a contractor to gather and catalogue for larger chains (in process);
     + have the States and Regional Offices (ROS) continue tracking mid-size chains
   - Assess financial status of chains
     + meet with chain and industry representatives;
     + develop tools for States to use in onsite and telephone financial status

review of nursing homes at risk;
+ exchange appropriate information with IG and DOJ;
+ review data available on SEC filings on Internet; and
+ engage an expert in health financial issues to do ongoing assessments of chains' financial status (by contract or with another branch of government)

- Assess State contingency plans
  + we have already collected most plans and will need to update as improvements are made;
  + review individual State plans; and
  + meet with States to determine adequacy of plans.
- Track State implementation actions
  + need to track results of any State monitoring or intervention actions; and
  + share best practices among States
- Establish capacity for a "Nursing Home Financial Distress" Situation Room
  + staff would be responsible for maintaining current information on the financial status of chains and State interventions or plans;
  + produce weekly reports;
  + should include RO and CO staff: and
  + control point should a chain(s) file for bankruptcy (Chapter 7)
- Examine State receivership, trusteeship and other applicable laws to determine options available on a State by State basis.

2. Each State will develop a disaster contingency plan that will address a situation where a significant number of nursing homes in their State are at risk of closing due to the bankruptcy of a chain(s). Plans submitted by the State Survey agencies have focused on situations involving only a small number of homes.
   - Contact Governors' offices in those States with significant risk.
   - Develop consistent RO approaches for cross State support.

3. Assist States in the development of disaster contingency plans.
   - Analyze need for federal laws or model receivership laws for States to address residents' protections in the event there are chapter 7 filings by nursing home chain(s);
   - Increase resources available to States for monitoring and administrating homes under chapter 11 reorganization;
     + review impact on federal survey priorities;
     + assess options to provide appropriate funding; and
     + provide tools to States for use in monitoring facilities -current tool focuses on monitoring for impact of possible financial cutbacks.

DRAFT August 31, 1999

4. Assure that settlements are supportive of resident protection
   - Continue meeting and coordination with Department of Justice and the Inspector General.

Number of Chain-Owned Beds by State for the 10 Largest Nursing Home Chains*

STATE	Life Care Centers Of America	HCR Manor Care, Inc.	Vencor, Inc.	Genesis Health Ventures, Inc.	Integrated Health Services, Inc.	Sun Health Care Group, Inc.	Mariner Post-Acute Network, Inc.	Extendicare, Inc.	Beverly Healthcare, Inc.	Complete Care Services
AK										
AL			632		328	609	788		2552	
AR								158	4385	
AZ	1974	118	887			1509	1717		480	
CA	1530	1063	1971		2085	8595	4808		6843	
CO	2227	307	751		1474	224	3660			
CT			1058	2048	585	2009	340			
DC									355	
DE		452		592	153		99			
FL	791	4128	2166	3045	4895	655	3745	2365	6546	118
GA	248	257	820		1917		1310		2351	
GU										
HI	372								396	
IA		458			344	77	499			
ID	598		866		135	868		220		
IL		3000		1039	244	1114	2111		275	2360
IN	2279	721	3743		243	99	429	2324	3342	
KS	597	330			818				1976	
KY	415	200	2128		80	396		1643	972	
LA			283		2511	1135	1423		200	
MA	1503		3399	4987	697	4545	1385		2173	
MD		1026		3890	181	343	2345	132	330	
ME			831							
MI	641	3254			849		1807		206	
MN								1457	2830	
MO	569	485			663	103			3158	
MS			125		523		1224		1962	
MT			742		60					
NC	200	120	3314	340	1344	1213	4234		1273	
ND		215								
NE	261		163		1021		590		1948	
NH			819	1040	208	419				
NJ		337		4774	684	630	180		120	
NM		282			2303	592				
NV	367	180	283		1844					
NY										
OH	387	4200	2041	1120	3700	675	193	2494	1635	
OK		855			284	135	161			
OR	405		365	326		195		391		
PA	100	6543	200	7751	2039		205	2099	5136	
PR										
RI	292		164	360						
SC	186	818			336		1529		302	
SD		99							1266	
TN	2932		2440		124	1866	693		1101	
TX	690	3068	454		5055	3250	11740	1584	2021	6917
UT	120	138	803							
VA	290	1025	634	1200	111		374		2380	
VI										
VT			310	314						
WA	2049	494	1410		450	1500		1908	819	
WI		1511	2863	922	219		2166	2110	3444	
WV		1000		1861	128	66	186	120	219	
WY							541			
Total	22021	36682	36865	35609	38613	32822	50482	19005	62996	9395

*The 10 largest chains nationally as described by HCIA, Contemporary Long Term Care News, SEC filings, Corporate Web Sites.

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(In Shaded States No Chain Owns More Than 4 Facilities)

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MS			125		523		1224		1962	
MT			747							
NC	200	120	3314	340	1344	1213	4234		1273	
ND			218							
NE	261		183		1021		590		1948	
NH			819	1040	208	419				
NJ		337		4774	664	630	180		120	
NM		282			2303	592				
NV	367	180	283		1844					
NY										
OH	387	4200	2041	1120	3700	675	193	2494	1635	
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PR										
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SC	186	818			336		1529		302	
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Number of Chain-Owned Facilities by State for the 10 Largest Nursing Home Chains*

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AK										
AL			4		4	5	7		20	
AR								2	38	
AZ	16	1	6			9	14		3	
CA	13	6	17		15	86	43		66	
CO	17	2	6		12	2	34			
CT			8	16	3	14	3			
DC									1	
DE		2		5	1		1	1		
FL	5	12	17	26	38	4	30	23	56	1
GA	2	2	7		18		11		21	
GU										
HI	2								2	
IA		5			5	1	7			
ID	5		9		1	8		2		
IL		24		10	3	10	20		3	25
IN	15	5	24		2	1	3	27	24	
KS	6	3			8				31	
KY	3	1	18		1	5		20	8	
LA			3		19	7	8		1	
MA	11		31	54	5	34	11		20	
MD		9		28	2	2	14	1	4	
ME			10							
MI	3	24			7		13		2	
MN								10	34	
MO	4	3			5	1			29	
MS			1		4		11		20	
MT			3		1					
NC	2	1	28	2	11	11	35		11	
ND		2								
NE	2		1		15		7		22	
NH			3	11	3	5				
NJ		2		34	1	4	1		1	
NM	0	2			23	7				
NV	2	1	3		14					
NY										
OH	3	41	15	13	36	6	2	21	12	
OK		7			3	2	1			
OR	4		3	4		2		5		
PA	1	43	2	51	14		2	18	42	
PR										
RI	2		2	3						
SC	2	7			5		13		3	
SD		1							17	
TN	21	1	15		1	14	6		8	
TX	5	20	3		44	25	103	16	19	73
UT	1	1	7							
VA	4	6	4	8	1		6		17	
VI										
VT			2	3						
WA	19	4	12		3	16		16	10	
WI		10	15	7	2		15	19	31	
WV		7		22	1	1	1	1	3	
WY							6			
Total	170	255	279	297	331	282	428	182	579	99

* The 10 largest chains nationally as described by HCIA, Contemporary Long Term Care News, SEC filings, Corporate Web Sites.

Number of Chain-Owned Facili by State for the 10 L Nursing H Cl s*
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AK										
AL			4		4	5	7		20	
AR								2	38	
AZ	16	1	6			9	14		3	
CA	13	6	17		15	86	43		66	
CO	17	2	6		12	2	34			
CT			8	16	3	14	3			
DC										
DE		2		5	1		1	1		
FL	5	12	17	26	38	4	30	23	56	1
GA	2	2	7		18		11		21	
HI										
IA		5			5	1	7			
ID	5		9		1	8		2		
IL		24		10	3	10	20		3	25
IN	15	5	24		2	1	3	27	24	
KS	6	3			8				31	
KY	3	1	18		1	5		20	8	
LA			3		19	7	8		1	
MA	11		31	54	5	34	11		20	
MD		9		28	2	2	14	1	4	
ME			10							
MI	3	24			7		13		2	
MN								10	34	
MO	4	3			5	1			29	
MS			1		4		11		20	
MT										
NC	2	1	28	2	11	11	35		11	
ND										
NE	2		1		15		7		22	
NH			3	11	3	5				
NJ		2		34	1	4	1		1	
NM	0	2			23	7				
NV	2	1	3		14					
NY										
OH	3	41	15	13	36	6	2	21	12	
OK		7			3	2	1			
OR	4		3	4		2		5		
PA	1	43	2	51	14		2	18	42	
RI										
RI	2		2	3						
SC	2	7			5		13		3	
SD		1							17	
TN	21	1	15		1	14	6		8	
TX	5	20	3		44	25	103	16	19	73
UT	1	1	7							
VA	4	6	4	8	1		6		17	
VI										
VT										
WA	19	4	12		3	16		16	10	
WI		10	15	7	2		15	19	31	
WV		7		22	1	1	1	1	3	
WY							6			
Total	170	255	279	297	331	282	428	182	579	99

*The 10 largest chains nationally as described by HCIA, Contemporary Long Term Care News, SEC filings, Corporate Web Sites.

Average Nursing Home Occupancy Rates by State

STATE	Number of Facilities	Average Occupancy Rate
AK	15	67.2
AL	222	92.8
AR	273	70.9
AZ	166	75.4
CA	1399	81.2
CO	224	81.5
CT	256	92.3
DC	19	93.1
DE	43	75.5
FL	741	81.8
GA	364	90.2
GU	1	61.1
HI	43	88.5
IA	471	77.1
ID	82	77.1
IL	877	76.4
IN	574	72.4
KS	390	81.3
KY	312	86.7

Source: OSCAR, run 8/27/99

STATE	Number of Facilities	Average Occupancy Rate
LA	339	77.2
MA	553	87.4
MD	256	79.4
ME	127	88.7
MI	448	86.2
MN	442	90.6
MO	562	73.8
MS	201	89.2
MT	105	80.6
NC	408	89.0
ND	88	91.8
NE	240	84.0
NH	84	88.8
NJ	356	88.9
NM	81	85.6
NV	46	80.0
NY	660	95.2
OH	1011	76.2
OK	405	72.2
OR	157	78.0

Source: OSCAR, run 8/27/99

STATE	Number of Facilities	Average Occupancy Rate
PA	794	86.9
PR	7	36.1
RI	102	88.9
SC	175	84.3
SD	112	91.9
TN	354	87.4
TX	1279	68.6
UT	93	77.0
VA	274	88.8
VI	1	51.7
VT	44	92.1
WA	282	80.9
WI	425	86.4
WV	138	89.5
WY	41	79.0

Source: OSCAR, run 8/27/99

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Memorandur

Date SEP 14 1998

From June Gibbs Brown
Inspector General

Subject Safeguarding Long Term Care Residents (A-12-97-00003)

To Nancy-Ann Min DeParle
Administrator
Health Care Financing Administration

Jeanette C. Takamura
Assistant Secretary for Aging

Attached are two copies of our final report, "Safeguarding Long Term Care Residents", which provides you an insight into measures taken by States to safeguard residents from abuse in long term care facilities, principally nursing homes. Our observations should be helpful in targeting attention to improved systematic protections. We focused on State requirements and implementation of background checks, reporting abusers centrally in State registers, investigations of alleged abuses and experiences of nursing home officials. Our report is a consolidation of information gathered by audits of two States and surveys of State and nursing home officials. The officials we contacted were sensitive to precautions necessary to promote patient safety and were candid in their remarks.

Building on the results of our audit in Maryland and considering the interest expressed by the United States Senate Special Committee on Aging, we expanded coverage to other States. Accordingly, we audited the State of Illinois, visited 52 nursing homes in 6 States and performed certain supplemental survey work in all the States. Our observations were generally limited to nurse aides working in nursing homes. However, through interviews and surveys we obtained information relative to other health care professionals. In all likelihood, measures needing improvement applicable to nurse aides could be considered for application to other health practitioners in long term care facilities.

There was great diversity in the way States systematically identify, report, and investigate suspected abuse. We also found that background checks were usually limited to State records and too frequently individuals with criminal histories were not recorded in State central registries for use in screening prospective employees. We believe that greater assurance can be given to the protection of frail and dependent elderly if national background checks were implemented and if pertinent data from States are provided to the Administration on Aging to help them direct attention and assistance in preventing elderly

effectiveness of the screens. However, Idaho informed us that between 10 and 20 cases of possible child abuse were identified each week by screening medical records. We could not tell whether elderly abuse screens were equally successful because performance information was not maintained. To further illustrate the likely effectiveness of screens, Oregon did not screen for elder abuse but, like Idaho, this technique was effective in identifying potential child abuse (22 to 72 cases per week). Accordingly, there is a strong likelihood that screens of medical records could offer an opportunity for surfacing elder abuse cases for further investigation.

CONCLUSIONS AND RECOMMENDATIONS

Criminal background checks offer LTC facilities an important measure to help safeguard against hiring persons who abused and neglected vulnerable elderly residents or have been convicted of other serious crimes.

Interviews with nursing home officials in six selected States indicated that they were requesting statewide criminal background checks on all of their applicants, many of whom were not covered by their individual State requirements. From the State officials' perspective, this suggests the requirements for performing background checks by nursing facilities be more inclusive. Further, some persons with abusive histories were not reported to the registry system--a system designed to investigate alleged abuse and neglect cases and record those with substantiated findings.

We are recommending that HCFA:

. Ensure States record convictions for, or findings of, abuse and neglect in the CNA registry.

  Work with State officials to ensure that all convictions which could have an impact upon the safety of residents in LTC facilities are properly reported to the State and Federal law enforcement systems.

  Consider developing a Federal requirement for criminal background checks. There are many factors to assess in establishing this requirement, such as: use of State and/or FBI criminal information systems or State registries; use of fingerprinting to ensure accuracy of identity; types of facilities and nursing home and other LTC staff to be covered; whether periodic checks of employed staff are necessary given the indicated high turnover rates; determine who pays for the checks; whether the registry, instead of the individual facilities request the checks and whether specific crimes should exclude or bar a person from employment after considering such factors as, rehabilitation, nature of crime and frequency.

Consider assisting in the development of a national abuse registry and expansion of the current State registries to include all workers who have abused residents in facilities that receive Federal reimbursement. The registry, using the background check data, should include workers whose behavior outside the facility demonstrates unfitness for working in a health care setting. It should also include workers who were terminated or suspended for abuse and neglect from a nursing home and substantiated by the registry.

The OIG suggests that legislation be enacted to allow the national abuse registry to be included in an expanded version of the current HIPDB, which the OIG has developed as required by the Health Insurance Portability and Accountability Act of 1996. The expanded data bank would be a Healthcare Integrity and Patient Protection Data Bank.

Further, we are recommending that AoA require improved State reporting of abuse statistics to better monitor national trends in the rise or decline of abuse.

The HCFA generally concurs with our recommendations. Earlier the Administration proposed implementing legislation which was forwarded to Congress on July 29, 1998 requiring criminal background checks, expanding State registries, and developing a national abuse registry for nursing facility employees. However, the HCFA indicated that it must examine further whether the expanded version of the HIPDB is the appropriate vehicle for the national registry. It plans to continue discussions with the OIG and to coordinate possible legislative proposals and an implementation plan for the national registry. In addition, HCFA stated it may be useful to conduct further studies to look beyond the perpetrators of abuse to factors in the broader nursing home environment.

The AoA agreed to take action on our recommendation. The AoA will compile State and national totals of abuse complaints reported by the ombudsman programs, compare the increase or decrease of such complaints against the base year 1996, and indicate for 1996 and all subsequent years the number and percentage of total complaints made to ombudsmen which are categorized as abuse complaints, according to the seven specific categories in the National Ombudsman Reporting System. It will utilize the information to target assistance to State programs showing increased instances of abuse. The AoA will provide this information to HCFA and other interested parties for comparison with data from other sources in order to identify any national trends which might emerge over a multi-year period.

APPENDICIES

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400 Centre Street
Newton, MA 02158
Phone (617) 630-8081
Fax (617) 630-8788

Alan D. Solomont
Co-Chairman and Co-CEO

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To:	Chris Jennings	**Fax Number:**	**202-456-5557**
Company:	The White House	**Phone Number:**	202-456-5560
Date:	December 24, 1998	**Time:**	12:20 p
Number of pages including cover:	3	**From:**	Celia D. Harris Assistant to Alan Solomont

Memo:

Devora:

Here is a copy of the letter with the attachment Mr. Jennings requested.

Please let Mr. Jennings know that if he needs to speak with Mr. Solomont beforehand to please leave a message in his voice mail. Otherwise Mr. Solomont will try him next week.

Thank you so much.

Happy Holidays!

December 10, 1998

William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

Because of your leadership, our Nation is now working to ensure that Medicare and Social Security will be fiscally sound and able to meet the needs of America's retiring baby boomers in the next century. But missing from the debate is the issue of long term care and our Nation's ability to provide for this critical, senior health care need in the next century.

Medicaid is the source of payment for two-thirds of all Americans in nursing homes today. Just as the financial integrity of Medicare and Social Security is threatened by the demographic tidal wave of aging baby boomers, the growing demand for long term care will stretch Medicaid beyond its capacity.

Many in government recognize the serious nature of this crisis. But there is no consensus over how or where to address it. As a health care issue, some argue that long term care should be part of the Medicare debate. As a retirement issue, others propose to include it in the Social Security debate. The long term care provider community believes it belongs in both.

Mr. President, your leadership is needed on this. I propose that you raise the issue in your State of the Union Address on January 19. As you suggested, I have provided some background and suggested language for this purpose. Of course, I am ready to provide any additional assistance that might be needed.

Allow me to raise one other issue. In July, you announced a series of new initiatives aimed at improving the quality of care in our Nation's nursing facilities. In order to ensure success, it is critical to engage the provider community in a collaborative effort. This has not been achieved to date. I would like to arrange for a small group of leading providers to meet with you soon to discuss how to achieve the goal of your initiatives, improving the quality of care available to frail elders who require nursing home care.

I will be in touch with your office to follow up on both these suggestions.

Sincerely,

Alan D. Solomont

Long Term Care in Crisis

While Medicare and Social Security are at the forefront of the Nation's policy agenda, a related crisis is going almost unnoticed. Medicaid now pays for long term care for two-thirds of all Americans in nursing homes. Sen. John Breaux (D-LA) and Rep. William Thomas (R-CA) issued this bipartisan warning: "The growing demand for long term care is pushing the Medicaid program into bankruptcy."

The number of seniors requiring long term care will push the cost of Medicaid for home health and nursing home care from $120 billion in 1998 to $215 billion in 2007, according to the Health Care Financing Administration. Support at such levels cannot continue to come from Medicaid alone.

Baby boomers are at an especially precarious crossroad, "sandwiched" between caring for their aging parents, their children and themselves. Most push from their minds their own long term care needs, even though one in every five Americans over age 50 is at high risk of needing this care within the next 12 months. Millions of Americans, self-sufficient all their lives, are forced to "spend down" all their assets to the poverty level to qualify for Medicaid.

One Solution: Public-Private Partnerships

Form a national commission to develop solutions for long term care financing. Encourage market competition and consumer choice to raise quality and set costs for long term care services. Coordinate government assistance with private sector financing options. Implement reforms that encourage individuals and families to plan for their long term care needs, while assuring a broad safety net for those who need it.

The National Challenge (recommended for the State of the Union Address)

"As we work to prepare for the retirement of the baby boom generation, we must assure that we create a system that meets all their needs. Fixing Medicare and Social Security is part of the solution. A comprehensive national plan must also address how we pay for long term care. I challenge the Congress to work with me to find an answer that encourages families to plan for this need while maintaining a system of care that is affordable and ensures the quality of services available to all who need them."

- William Jefferson Clinton, Jan. 19, 1999

Grassley hearings → March

POTENTIAL NURSING HOME ANNOUNCEMENTS

mid to late Feb

Imposing civil money penalties for serious statutory violations. In the spring, the Health Care Financing Administration will publish a regulation requiring enforcement authorities to impose civil money penalities of up to $10,000 on nursing homes for each instance of a serious violation, such as immediately upon finding that a nursing home has committed a serious or chronic violation. Under current practice, enforcement officials often give nursing homes numerous opportunities to come into compliance, rather than imposing immediate sanctions.

Requiring nursing homes to conduct background checks on prospective employees. The President is proposing $10 million in the FY 2000 budget to develop a national registry of individuals with a history of abuse or neglect of nursing home residents or misappropriation of their property. Nursing homes would be required to query this national registry for disqualifying information on any staff person they want to hire, providing an important new measure of security and protection for these vulnerable residents. Currently, State requirements for background checks on prospective nursing home employees vary widely and many are limited to checks of their own State's records which are often out of date, incomplete, or do not include offenses committed in other States. As a result, individuals with a history of abusing nursing home residents or other potentially dangerous behavior can slip through current State screening mechanisms and gain employment in positions that put nursing home residents at risk. This new registry, together with the President's proposal to require all nursing home employees to undergo a criminal background check, will ensure that these individuals are kept out of the system for good.

HHS IGs HRSA practitioner database

includes home health agencies too. HHS Extension

Appropriately prosecuting serious instances of abuse and neglect. The President will propose legislation providing the Department of Justice with the authority to impose criminal and civil penalties that range from up to 5 years in prison to a monetary penalty of up to $---,--- on any nursing home employee or management company that causes physical or mental harm to a nursing home patient by willfully violating nursing home regulations. Currently, although the Health Care Financing Administration can prosecute individual nursing homes for individual violations of nursing home regulations, there is no Federal statute that provides appropriate sanctions specifically for serious patterns of patient abuse and neglect.

Educational campaign to prevent elder abuse and neglect in nursing homes. The Health Care Financing Administration is investing $2.6 in a new, nationwide, educational campaign to begin on 3/1. This campaign is designed to prevent abuse and neglect of nursing home residents and to teach beneficiaries, their families, and nursing home staff how to identify instances of abuse when they occur. These activities are designed to develop a nursing home system that provides a safe and clean environment for residents. This campaign will include producing a video with tips on how to choose a nursing home; updating the "Guide to Choosing a Nursing Home" publication, producing a companion publication "Living in a Nursing Home"; a poster campaign accompanied with information on where to report suspicions of abuse; and other resource materials. Health promotion efforts will target consumers and their family members, as well as health care workers who provide the care.

Grassley
Kohl

Directing the Department of Justice to improve and expand the services available to victims of nursing home abuse and neglect. ~~More details necessary~~.

Directing the Department of Justice to develop model State patient abuse and neglect legislation. The Department of Justice will develop model State patient abuse and neglect legislation that includes tough civil and criminal penalties, mandatory reporting of serious instances of abuse and neglect, and background checks for nursing home employees.

Model States

focus group of experts in terms of assisting victims

2/19 forum

modeled after good state?

Which States are good states?

33 STATES WITH CRIMINAL BACKGROUND CHECK REQUIREMENTS

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
		LAW	REG	STATE	FED	FED & STATE			
Alabama									
Alaska							Nursing Home and Assisted Living	All paid employees, owners and independent contractors	$84; includes State and Federal check and fingerprinting; Employee pays
Arkansas							Long Term Care facility; Home Health Care Service; and Hospice	Operators applying for license, Applicants and employees providing care to elderly/individuals with disabilities. Family members, volunteers, and administrative persons are excluded.	Cost not specified; Employer pays
Arizona									
California							Any facility that employs Nurse Aides and Home Health Aides; Most often this would be a Nursing Home, Home Health Agencies (HHAs), and Hospitals	Nurse Aides and Home Health Aides	$5 for Nurse Aides and $25 for Home Health Aides; part of license renewal
Colorado							Nursing Care Facilities	All Applicants	Fee varies; $14 for Statewide check.; payment as agreed to by employee and employer

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
		LAW	REG	STATE	FED	FED & STATE			
Connecticut									
Delaware									
District of Columbia									
Florida							Assisted Living Adult Family Care Homes	Nurse Aides, Applicants, Administrators, General Partner, and Corporate officers Nurse Aides, Applicants, House-hold members, Relief person, and all staff	$15; Employer Pays
Georgia							Nursing Homes, Personal Care Homes, Group Homes, and Alternative Living Unit	All employees	$27; Employer pays
Hawaii									
Idaho							All Long Term Care Facilities	All employees	$5 for name search and $10 for fingerprint search; State Pays
Illinois							Community Living, Long Term Care, Life Care, Home Health Agency, Community Residential Alternative, Nurse Agencies, Respite Care, Hospice, Mental Health, Community Integrated Living, and Hospitals as defined in Law	Direct care employees and Nurse Aides	$12 for name search and $15 for fingerprint search; Employee or employer may pay

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
		LAW	REG	STATE	FED	FED & STATE			
Iowa							Nursing Facilities, Skilled Nursing Facilities, Intermediate Care Facilities (ICF) for the Mentally Retarded, ICF for Persons with Mental Illnesses, Residential Care Facilities (RCF), RCF for the Mentally Retarded, Three to five Bed RCF for the Mentally Retarded, RCF for the Mentally Ill	All employees, anyone providing services to residents, including independent contractors	$13-$15; Facility pays
Indiana							Health Facility, Hospital based Facility that employs Nurse Aides or an entity in business of contracting to provide Nurse Aides or other non licensed employee of a facility covered in the law	Operators, Administrators, Nurse Aides, and non-licensed employees	$7 to $10; Employer pays but may require employee reimbursement; $32 by private firm
Kansas							Any elderly or disabled residential facility for eight or more persons that is licensed by the State	Operators and Administrative staff	$10; State pays
Kentucky							Any nursing facility (Nursing Homes, Adult Day Care, Domiciliary Care, Psychiatric Hospital, Sheltered Housing, Hospice, and Acute Care Hospital) and Agencies (such as Home Health Agencies) providing services to senior citizens	Nursing facility employees providing direct service to senior citizens	$4; Employer pays
Louisiana							Nursing Homes, Intermediate Care, Adult Residential Care, Adult Day Care, Home Health and Residential Services Agencies, Hospice, and Ambulance Services	Non-licensed direct care employees and licensed ambulance personnel	$10; Employer pays

STATE	NO LAW	REQUIREMENTS LAW	REQUIREMENTS REG	RECORDS USED STATE	RECORDS USED FED	RECORDS USED FED & STATE	FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
Maryland							Adult Dependent Care Programs, Adult Day Care, Domiciliary Care, Group Homes, Home Health Agencies, Sheltered Housing, Residential Service Agency, Alternative Living Unit, and Hospice Facility	Compensated employees having routine direct access to dependent adults, and not licensed or certified under the Health Occupations Article (i.e., RNs, LPNs, and CNPs)	$7 to $18 for State check; $24 for FBI check; Employer Pays
Maine							Nursing Homes, Group Homes, HHAs, Psychiatric Hospitals, and Hospice	Nursing Home employees and Nurse Aides	No Charge
Massachusetts									
Michigan									
Minnesota							Hospital, Boarding Care Homes, Outpatient Surgical Centers, Nursing Homes, Home Care Agencies, Residential Care Homes, Board and Lodging establishments	Persons providing services which have direct contact with patients and residents. (Applicants, current employees, contractors, and volunteers)	$5; Employer pays for State check; $24 for an FBI check
Mississippi									
Missouri							Continuing Care Retirement Community, Health Care Facilities, Long Term Care, In-home Service Providers, and Employment Agencies for Nurses and Nurse Assistants	Applicants for a full-time, part-time, or temporary position that has contact with any patient or resident.	$5 to $22; Employer pays but may require employee reimbursement
Montana									
Nebraska							Assisted Living	Direct care staff of the facility	Not specified

STATE	NO LAW	REQUIREMENTS LAW	REQUIREMENTS REG	RECORDS USED STATE	RECORDS USED FED	RECORDS USED FED & STATE	FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
Nevada							Facilities for intermediate Care, facilities for Skilled Nursing and Residential Facilities for groups providing food, shelter and assistance to some of the most vulnerable residents of the State including aged, infirm, mentally retarded and handicapped agencies providing nursing in the home and assistance to these vulnerable residents	Each applicant for a license to operate a facility for Intermediate Care, a facility for Skilled Nursing, or Residential Facility for Groups; and of each employee of each facility and employees of each agency providing nursing services in the home	$25-$30; finger-printing and a check for the 11 surrounding States $15 additional; Employer pays and may pass up to 50 percent to employees
New Hampshire									
New Jersey									
New Mexico							Skilled Nursing, Intermediate Care, Care Facility for Mentally Retarded, Psychiatric, Rehabilitation, Kidney Disease Treatment, Home Health Agency, Homemaker Agency, Ambulatory Surgical or Outpatient Facility, Home for the Aged or Disabled, Group Home, Adult Foster Care Home, Private Residence that provides Personal Care, Sheltered Care or Nursing Care for one or more persons not related by blood or marriage to the facility's operator or owner, Adult Day Care Center, Boarding Home, Adult Residential Shelter Care Home, any entity that provides respite, companion or personal care services; and any other health or resident care related facility not a care facility location at or performing services for any correctional facility	All employees, Contractors and Volunteers	$5 State check; the FBI check has not been yet been implemented and the cost is unknown; Either employer or employee pays
New York									

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
		LAW	REG	STATE	FED	FED & STATE			
North Carolina							Nursing Homes, Adult Care Home, Home Care Agencies, Domiciliary Care Facility, Group Homes, Residential Service Agencies, Psychiatric Hospitals, Area Mental Health, Developmental Disabilities, Substance Abuse, and Hospice, any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to the sick, the disabled, or the elderly	Non-licensed job applicants and consenting volunteers who provide treatment for or services to the disabled and the elderly, non-licensed applicants for employment in Nursing Homes, Adult Care Homes, and Home Care Agencies	Capped at $14; Either employer or employee pays
North Dakota									
Ohio							Hospice, Home Health Care, Adult Day-Care, Adult Care Facility, Nursing Homes, Residential Care facilities, County and District Homes, Homes for the Aging, Passport Agencies.	All applicants under final consideration for providing direct care to an older adult. Does not include volunteers.	$5 for State check; $25 for FBI check; Facility pays
Oklahoma							Nursing and Specialized Facility, or Residential Care Homes, Adult Day Care, and Home Health or Home Care Agencies	Applicants for employment or contract offers to non-licensed nurse aide or other person providing nursing care, health related services, or supportive assistance	$10; Employer pays
Oregon							Adult Foster Care Homes and Residential Care facilities	Administrators, Direct and Non-direct Care Staff	$36; Employer pays

STATE	NO LAW	REQUIREMENTS		RECORDS USED			FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
		LAW	REG	STATE	FED	FED & STATE			
Pennsylvania							Domiciliary Care Home, Home Health Care Agencies, Long Term Care Nursing Care Facilities, Older Adult Daily Living Center, Personal Care Home	All applicants being considered for employment	$10 for State check and if Federal check is required the State Police may not charge the applicant more that the established charge by the FBI; Employee pays
Rhode Island							Nursing Homes, Home Health Agencies, In-patient Hospice, Nursing Service Agencies, and Assisted Living Facilities	Persons seeking employment at a facility covered by the law	No Charge
South Carolina							Health Facility licensed under this article including, but not limited to Nursing Homes and Community Residential Care facilities	Administrators	$39; Employee pays
South Dakota									
Tennessee									
Texas							Nursing Homes. Adult Day Care, Home Health Agencies, Adult Day Health Care, Intermediate Care, Adult Foster Care, Custodial Care Home, Personal Care, Non-licensed Attendant Care, and Mental Health and Mental Retardation	Direct Contact Employees	$8 or less; Employer pays
Utah									
Virginia							Nursing Homes, Adult Day Care, Hospice, and other State licensed facilities	Compensated employees	$15; Employer pays

STATE	NO LAW	REQUIREMENTS LAW	REQUIREMENTS REG	RECORDS USED STATE	RECORDS USED FED	RECORDS USED FED & STATE	FACILITIES COVERED BY REQUIREMENTS	PERSONNEL COVERED BY REQUIREMENTS	COST AND WHO PAYS FOR BACKGROUND CHECK
Vermont							Nursing Homes, Home Health Agencies, Adult Day Care, and Residential Service Agencies	Employees, Contractors, and Grantees involved in care giving	No Charge
Washington							Nursing Homes, Home Health Agencies, Adult Day Care, Group Home, and Sheltered Housing for the elderly	All prospective employees and volunteers having unsupervised access to vulnerable adults	No Charge for nonprofit and $10 for profit businesses
West Virginia							Residential Care Facility, Home Care, and licensed Day Care Facilities	Compensated employees and contractors	$10; Employer pays
Wisconsin							Nursing Homes and Community Based Residential facilities	All Nursing Home employees	$13; Employer pays
Wyoming									
TOTAL	18	31	2	24	0	9			

CRIMINAL BACKGROUND CHECKS
SUMMARY of STATE REQUIREMENTS AND EXPERIENCES

	IL	IN	MD	MI	MN	OH	VA	WI
State Law?	Y	Y	Y	N	Y	Y	Y	Y
Effective Date	1/96	3/96	7/96	N/A	7/95	1/97	4/93	7/98
Who Pays for Check?	NH	NH Employee	NH	N/A	State	NH	NH	NH
Cost	$12-$15	$7-$32	$7-$24	N/A	$5-$24	$15	$15	$13
Who is Checked?	Direct Care Employees	Non-licensed Employees	All New Employees	N/A	Direct Care Employees	Direct Care Employees	All New Employees	All New Employees
	N	N	N	N/A	N	N	N	N
	Y	N	N	N/A	Y	N	N	Y
	Y	Y	Y	N/A	Y	Y	Y	Y
	Y	Y	Y	N/A	Y	N	Y	Y
	N	N	N	N/A	N	N	N	Y
	Y	Y	Y	N/A	Y	Y	Y	Y
	Statewide	Statewide	Statewide	N/A	Statewide	Statewide	Statewide	Statewide
	2 wks 1-5 wks	N/A 2-6 wks	N/A 1 - 3 days	N/A N/A	2 wks 4 wks	4 wks 3-7 wks	4 wks 1-3 wks	2 wks N/A
Use Federal System?	N	N	N	N/A	N	N	N	N/A
	N	N	N	N/A	N	Y	N	N
	Y	Y	N	N/A	Y	Y	Y	Y
	Y	N	N	N/A	Y	N	Y	Y
	N	N	N	N/A	N	N	Y	N
	N	Y	N	N/A	N	N	N	N
	N	N	N	N/A	N	N	N	N/A
	Y	Y	N	Y	Y	Y	Y	Y
	N	N	N	N	N	N	N	N
	Y	N	N	N/A	N	N	N	N/A
	HIGH MED	HIGH HIGH	HIGH HIGH	N/A N/A	HIGH HIGH	LOW HIGH	MED HIGH	N/A N/A

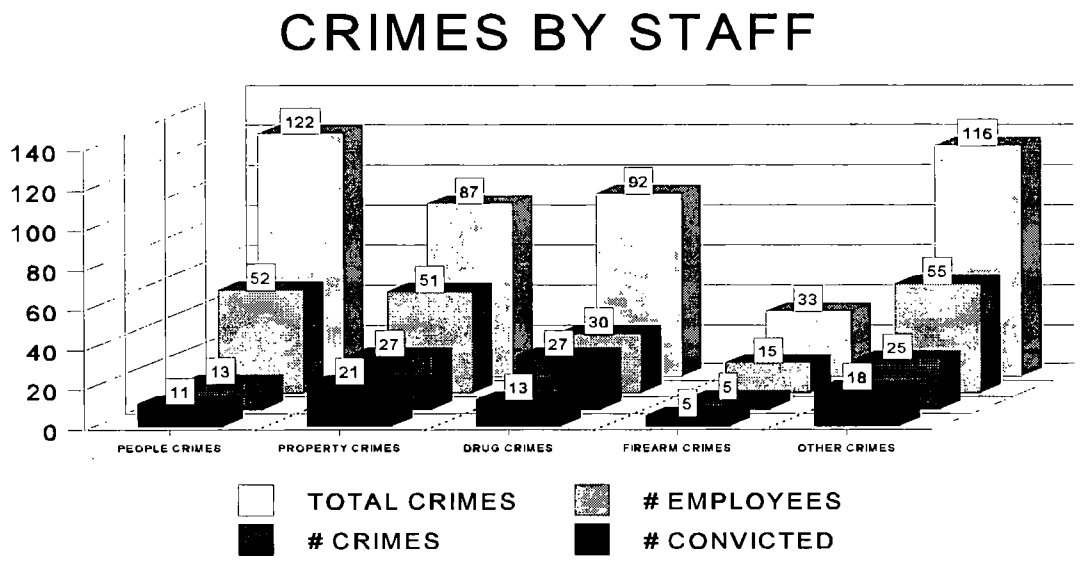
Note 1:
Note 2:
Note 3:
Note 4:
Note 5:

CRIMINAL BACKGROUND CHECKS
SUMMARY of STATE REQUIREMENTS AND EXPERIENCES

	IL	IN	MD	MI	MN	OH	VA	WI
List of Disqualifying Crimes	Y	Y	N	N/A	Y	Y	Y	N/A
Check is Incentive to be Truthful on Application	Y	Y	Y	N/A	Y	Y	Y	N/A
Conviction Data Current	Y	Y	N/A	N/A	Y	Y	Y	N/A
Cost Reasonable per Nursing Home	Y	Y	Y	N/A	Y	Y	Y	N/A
Few Instances of Abuse Reported by Nursing Home	Y	Y	Y	N/A	Y	Y	Y	N/A
Negative Comments:								
Only Statewide Check - Federal System Not Used	Y	Y	Y	N/A	Y	Y	Y	N/A
Fingerprinting Used	Y	Y	Y	N/A	Some Times	N	Y	N/A
Arrests Not Reported: Inaccurate-State System	Y	Y	Y	N/A	Y	Y	Y	N/A
Checks Are An Absolute Deterrent	N	N	N	N/A	N	N	N	N/A
Checks Are Only of New Hires	N	Y	Y	N/A	N	Y	Y	N/A
Some Nursing Homes Checks Include:								
Doctors	N	N	N	N/A	N	N	N	N/A
Nurses	N	Y	Y	N/A	Y	Y	Y	N/A
Volunteers	N	N	N	N/A	N	N	N	N/A
Contractors	N	N	Y	N/A	Y	N	Y	N/A
High Turnover Rates Aides--New Hires	Y	Y	Y	N/A	Y	Y	Y	N/A
NH Involved in Abuse Investigations	N	N	N	N/A	N	N	Some Times	N/A
Employers Immune from Liability on References	N	N	Y	N/A	N	N	N	N/A
Rely on Registry/Board for Abuse Data	Y	N	N	N/A	N	N	N	N/A
Informed of Investigation Disposition	N	N	N	N/A	N	N	N	N/A

450 CRIMES BY NURSING HOME STAFF

The 450 arrests involving 120 employees include:



Note: The total number of employees cited is more than 120 because an employee committed more than 1 crime.

122 crimes by 52 employees were against people, such as assault, battery, child and sexual abuse, robbery with deadly weapon, 11 employees were convicted for 13 crimes against people;

87 crimes by 51 employees were against property such as burglary, robbery, theft, trespassing and shoplifting, 21 employees were convicted for 27 crimes against property;

92 crimes by 30 employees involved illicit drugs, such as possession of cocaine, heroin, marijuana, distribution and manufacture of illicit drugs, as well as forged prescriptions, 13 employees were convicted for 27 crimes against controlled substances;

33 crimes by 15 employees involved firearms, such as carrying and use of handguns, 5 employees were convicted for 5 crimes against firearms; and

116 other crimes by 55 employees involved forgery, welfare and unemployment benefits fraud, resisting arrest, bad checks, and prostitution, 18 employees were convicted for 25 other crimes.

51 Employees with Convictions

Fifty-one employees had been convicted of a crime based on data from both the State systems and FBI system. They were arrested for other crimes, but the dispositions on these crimes was unknown. The following is a list of the number of employees classified by job and the crimes for which they were convicted.

27 Nurse aides were convicted of: assault; simple assault; assault common; assault strong arm; battery; child abuse; theft; grand theft; robbery; possession of controlled substances, such as PCP and Marijuana; possession with intent to distribute; possession of narcotic paraphernalia; welfare fraud; forgery; conspiracy; false pretenses; resisting arrest; driving while intoxicated; intoxication; and disorderly conduct.

7 LPNs were convicted of : robbery with a deadly weapon, theft, trespassing, larceny, shoplifting, prostitution, driving while intoxicated, disorderly conduct, and possession of narcotic drugs.

7 Housekeeping staff were convicted of: assault, assault common, assault with a handgun, handgun violations, robbery with a deadly weapon, possession of cocaine, violation of probation, driving with suspended license, disorderly conduct, and malicious destruction of property.

4 Dietary aides were convicted of: battery, shoplifting, forgery, possession of marijuana or heroin, distribution of heroin and other narcotics, consuming alcohol, bad checks, and violation of immigration laws.

2 Food service staff were convicted of: handgun violations, and possession of cocaine.

1 RN was convicted of carrying a pistol without a license.

1 Environment services staff was convicted of: possession of PCP and marijuana, and possession with intent to distribute.

1 Laundry staff was convicted of two counts of child abuse.

1 Maintenance staff was convicted of: robbery, possession of marijuana, handgun violation, and violation of probation.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

The Administrator
Washington, D.C. 20201

DATE: SEP 3 1998

TO: June Gibbs Brown
Inspector General

FROM: Nancy-Ann Min DeParle NMD
Administrator

SUBJECT: Office of Inspector General (OIG) Draft Report: "Safeguarding Long Term Care Residents," (A-12-97-00003)

We have reviewed the above-referenced report that examines measures taken by states to safeguard residents from abuse in long-term care (LTC) facilities. The report focused on state requirements and implementation of background checks, reporting abusers centrally in state registers, investigations of alleged abuses, and experiences of nursing home officials.

The report recommends that the Health Care Financing Administration (HCFA) and the Administration on Aging work collaboratively with the states to improve the safety of long-term care residents and to strengthen safegaurds against the employment of abusive workers by elder care facilities. The report further recommends establishing Federal requirements and criteria for performing criminal background checks, expanding the current state registries to include all workers who have abused residents in facilites that receive Federal reimbursement, and HCFA assist in the development of a national abuse registry for nursing home employees. The OIG suggests that legislation be enacted to include the national abuse registry in an expanded version of the current Healthcare Integrity Protection Data Bank (HIPDB).

The Inspector General's conclusions echo our own findings. Nursing home residents and their families deserve compassionate caregivers, not convicted criminals and known abusers. As you know the President on July 21 launched a wide-ranging initiative to better protect nursing home residents and improve their quality of care. This report strengthens the case for the President's, proposal to require criminal background checks for nursing home workers and to create a national abuse registry. On July 29, we forwarded proposed implementing legislation to Congress and we hope that members will take quick action.

We concur with OIG's recommendations for criminal background checks and expanding state registries. We also agree conceptually with the OIG recommendation to develop a national abuse registry for nursing facility employees. However, we must further examine whether the expanded version of the HIPDB is the appropriate vehicle for the registry. While the idea of an integrated database is appealing, a number of operational issues must first be examined. Staff from my office have engaged in preliminary discussions with members of your staff to discuss the capacity of the HIPDB, OIG's proposals for expansion, and the goals of the President's initiative. We plan to continue these discussions and to coordinate possible legislative proposals and an implementation plan for the registry.

In addition to enactment of the legislative proposals, it may be useful to conduct further studies, looking beyond the perpetrators of abuse to factors in the broader nursing home environment. Examining the relationship between abuse of residents and factors such as employee working conditions, pay, and "no-lift" policies to ease injuries may allow us to identify preventive steps that can be taken. The combination of thorough background checks and preventive measures should help reduce abuse of LTC residents.

Additionally, another factor which needs to be addressed is the awareness and sensitivity training which is provided to caretakers in dealing with disabilities common among the beneficiaries who receive LTC. Without understanding these disabilities and how to address them, abuse-even unintentional-can occur because of ignorance and/or frustration, or the lack of adequate accommodations and technical support to properly care for the patient.

Thank you for the opportunity to comment on this report.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Administration on Aging

Washington, D.C. 20201

To: June Gibbs Brown
Inspector General

From: Assistant Secretary for Aging

Subject: Safeguarding Long-Term Care Residents (A- 12-97-00003)

We appreciate having the opportunity to review the draft of this report and to discuss it with staff of the Office of Audit Services.

Regarding abuse data collected at the Federal level, the Administration on Aging's (AoA) role relative to such data and action which AoA is in a position to undertake are provided below and are based upon the following background information.

Background

Beginning in FY 1996, all states submit to AoA annual long-term care ombudsman reports which show numbers of complaints made to the statewide ombudsman programs in 133 specific categories. The first seven of these categories are complaints which ombudsmen classify as abuse, gross neglect or exploitation. These include: physical abuse, sexual abuse, verbal/mental abuse, financial exploitation, gross neglect, resident-to-resident abuse and "other". The definition of abuse used in the instructions for documenting complaints is that contained in the Older Americans Act, which is the same definition used by the Health Care Financing Administration (HCFA); definitions and specific examples of types of abuse are from HCFA's "Survey Forms and Interpretive Guidelines for the Long-Term Care Survey Process," April 1992.

While ombudsmen investigate and document numerous complaints about abuse, other state agencies, including adult protective services, the nursing home survey and certification agency, and the Medicaid Anti-Fraud and Abuse Units, also investigate abuse complaints. Thus, the data reflected in the state ombudsman reports provide only part of the picture of the incidence of abuse which might be occurring in long-term care facilities in a state. Also, many complaints may be classified as abuse which are not really abuse but are injuries due to accidents or mishandling.

Response

The AoA will provide guidance to the states to eliminate complaints which may be classified as abuse but may instead be injuries due to accidents or mishandling. AoA will compile state and national totals of abuse complaints reported by the ombudsman programs, compare the increase

or decrease of such complaints against the base year 1996, and indicate for 1996 and all subsequent years the number and percentage of total complaints made to ombudsmen which are categorized as abuse complaints, according to the seven specific categories in the National Ombudsman Reporting System (NORS). We will utilize the information to target assistance to state programs showing increased instances of abuse. AoA will provide this information to HCFA and other interested parties for comparison with data from other sources in order to identify any national trends which might emerge over a multi-year period.

Again, thank you for the opportunity to comment on this important report.

Jeanette C. Takamura

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

FAX TRANSMISSION SHEET

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DATE: 1/29/99

NUMBER OF PAGES (including this cover sheet): 4

MESSAGE: _____

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

Devorah –

Attached is the earlier paper we sent to you and HCFA. While some of the items need to be updated, a number (e.g., creating a National Level Task Force to implement the enforcement initiative) are still viable.

As to two specific action items that are underway, I have provided the following:

- Direct the Department of Justice to develop model state patient abuse and neglect legislation, including tough civil and criminal penalties, mandatory reporting of serious abuse and neglect, and background checks for nursing home employees.

- Direct the Department of Justice's Office for Victims of Crime to convene a panel of experts to determine how to improve and expand the services available to the victims of nursing home abuse and neglect.

As noted, these are already under development. If there is to be a directive, it will need to be soon.

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.

Nursing Home Resident Protection Act of 1999s
Draft -- 1/29/99 -- Draft

SEC. __1. SHORT TITLE. This Act may be cited as the "Nursing Home Resident Protection Act of 1999".

SEC. _2. PROTECTION OF RESIDENTS IN NURSING HOMES AND OTHER RESIDENTIAL HEALTH CARE FACILITIES.

Title 18, United States Code, is amended by adding the following new section:

"SEC. 1348. Pattern of Violations Resulting in Harm to Residents of Nursing Homes and Related Facilities.

"(a) Criminal offense.—Whoever knowingly and willfully engages in a pattern of violations of Federal or State law, regulation or rule governing the care of individuals residing in the residential health care facility, and where such pattern results in physical or mental harm to one or more such residents, shall be punished as specified in Section 1347 of this title,[1] except that any organization found guilty of an offense under this section shall be fined not more than $2,000,000 per residential health care facility, and any individuals found guilty of an offense under this section shall be fined pursuant to the individual fine provisions of Title 18, Section 3571.

"(b) Civil provisions .--

(1) Civil Penalties -- The Attorney General may bring an action in a United States district court to impose on any individual or entity that engages in a pattern of violations of Federal or State law, regulation or rule governing the care of individuals residing in the residential health care facility and where such pattern results in physical or mental harm to one or more such residents, a civil penalty of --

(A) in the case of an individual (other than an owner, operator, officer or manager of such a residential health care facility) up to $10,000;

(B) in the case of an individual who is an owner, operator, officer or manager of such a residential health care facility up to $100,000 for each separate facility involved in the pattern of violations under this

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[1] The elements of such an offence are:
- knowledge and intent to violate law
- pattern of violations
- of federal or state laws or regulations governing nursing homes or other residential health care facilities
- violations resulted in physical or mental harm

section; or

(C) in the case of a residential health care facility up to $1,000,000 for each pattern of violations, and in the case of an entity up to $1,000,000 for each separate residential health care facility involved in the pattern of violations owned or managed by that entity.

"(2) Other appropriate relief.-- If the Attorney General has reason to believe that an individual or entity is engaging in or is about to engage in a pattern of violations of Federal or State law, regulation or rule governing the care of individuals residing in the residential health care facility, and where such pattern results in or has the potential for resulting in physical or mental harm[2] to one or more such residents, the Attorney General may petition an appropriate United States district court for appropriate equitable and declaratory relief to eliminate the pattern. In pursuing such equitable or declaratory relief under this subsection, the Attorney General shall consult with the appropriate Federal agencies.

"(3) Procedures for this subsection (subsection 1348(b) of this Title) —

(A) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this subsection may be served at any place in the United States.

(B) An action brought under paragraph (1) of this subsection may not be brought more than 6 years after the date on which the violation of this subsection occurred.

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[2] Section by Section analysis: " Physical harm includes acts or omissions that result in death, hospitalization, medical treatment, external or internal bodily injury, illness, disease, infection, loss of consciousness, interruption in breathing, pain, discomfort, sexual assault, unlawful chemical, physical, or mechanical restraint, adverse reaction to medication, poisoning, self-injurious behavior, suicide attempt, substance abuse, ingestion of dangerous substance or object, or deterioration of skills or in level of functioning. The harm may be temporary or permanent. It includes, but is not is not limited to the following: a fracture, sprain, strain, laceration, damage to an internal or external organ, abrasion, contusion, wound, abrasion, skin irritation, bite, burn, scalding, concussion, swelling, bleeding, strangulation, choking, aspiration, edema, hematoma, exacerbation of symptoms of chronic illness. loss of limb, organ, teeth, or bodily function, malnutrition, dehydration, clinically detrimental weight loss or gain, or pressure sores.

Mental harm includes mental anguish, emotional distress, intimidation, humiliation, loss of dignity, fear, or loss of cognitive functioning. It can be measured by either an objective or subjective standard.

(C) The United States shall be required to prove all actions under this subsection by a preponderance of the evidence.

(D) The Civil Investigative Demand procedures set forth in 15 U.S.C. §§ 1311 - 14 and regulations promulgated pursuant thereto shall apply to investigations and actions pursued under this subsection.

(E) The filing or resolution of a matter under this subsection does not preclude any other remedy that is available to the United States or any other person. The Federal Rules of Civil Procedure shall apply to actions brought under this subsection.

"(c) Prohibition against retaliation.– Any person who is the subject of retaliation, either directly or indirectly, for reporting conditions that may constitute a violation of this section shall be authorized to bring an action in an appropriate United States district court for damages, attorneys' fees and other relief.

"(d) Definitions.-- For purposes of this section, the following definitions apply:

"(1) 'Residential health care facility' is defined as any facility (including any facility that does not exclusively provide residential health care services) including but not limited to skilled and unskilled nursing facilities and mental health and mental retardation facilities, that receives Federal funds, directly from the Federal government or indirectly from a third party on contract with or receiving a grant or other monies from the Federal government, to provide health care, or that provides health care services in a residential setting and that, in any calendar year in which a violation occurs, is the recipient of benefits or payments in excess of $10,000 from a Federal Health Care Program.

"(2) 'Entity' is defined in this section as any residential health care facility (including facilities that do not exclusively provide residential health care services), any entity that manages a residential health care facility, or any entity that owns, directly or indirectly, a controlling interest or a 50% or greater interest in one or more residential health care facilities.

"(3) 'Federal Health Care Program' is defined as:

(A) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government; or

(B) any State health care program, as defined in section 1320a-7(h) of Title 42, United States Code.

"(4) "Pattern of violations' is defined as multiple violations that are widespread, systemic, repeated or similar in nature, or result from a policy or practice.[3]

"(5) 'Whoever' is defined as in 18 U.S.C. § 921(a)(1).

"(6) 'Attorney General' is defined as the Attorney General of the United States or her designee and 'Secretary for the Department of Health and Human Services' is defined as the Secretary for the United States Department of Health and Human Services or her designee.

"(e) The Attorney General and the Secretary for the Department of Health and Human Services shall develop policies and procedures to reduce the negative impact of actions taken under this section on the residents of the residential health care facility."

SEC. 3. DEFINITION OF FEDERAL HEALTH CARE OFFENSE.

Subsection (a)(1) of section 24 of title 18, United States Code, is amended by adding "1348," after "1347,".

SEC. 4. AUTHORIZED INVESTIGATIVE DEMAND PROCEDURES.

Section 3486(a)(1) of title 18, United States Code, is amended by inserting after "Federal health care offense", "or other allegation of fraud or wrongdoing (whether civil or criminal) made in connection with a health care benefit program (as defined in section 24(b) of title 18, United States Code)".

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[3] Section by section analysis: "The term 'pattern of violations' refers to a repeated violation that is widespread, systemic, repeated, similar in nature, or resulting from a policy or practice. For example, a widespread group of violations, even if not the result of a common policy or practice or not involving the same or similar regulations, could be covered by this section. On the other hand, one or more isolated violations that do not rise to the level of a 'pattern', as described above, would not be covered. The term incorporates a concept of proportionality so that the number of violations required to establish a pattern within an entity operating numerous facilities across the country would be greater than the number of violations required for a single facility. The term also incorporates a concept of severity so that the number of violations required to establish a pattern within a single entity or an entity operating numerous facilities would be fewer, the more severe the harm.

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

SAFEGUARDING LONG-TERM CARE RESIDENTS

JUNE GIBBS BROWN
Inspector General

SEPTEMBER 1998
A-12-97-00003

EXECUTIVE SUMMARY

We found that the States we surveyed used a patchwork of measures to identify persons posing a possible threat of elder abuse to residents in nursing homes and other long term care facilities. Attempts to minimize and prevent patient risk are diverse throughout the States. Without a detailed study of their approaches, we cannot state with certainty what features, if any, appear to be more effective in protecting frail and dependent elderly from abuse and could be considered for adoption by the States. However, we can show anecdotally which features seem to work effectively for certain States.

From a review of records and through discussions with nursing home officials, the use of background checks for applicants, as well as on board staff, is helpful in rejecting and deterring applicants and terminating employed staff with histories of abuse and crime. Many States do require background checks and, in general, they believe it is the most reliable source for information to consider during the employment process. Although statistics are not maintained, a number of nursing home officials believe that background checks have reduced the instances of abuse. This comes at an administrative cost which appears acceptable to nursing homes.

Screening registries of Certified Nurse Aides (CNA) can also be an effective tool in identifying known abusers, provided that information is updated timely with instances of substantiated (validated allegations) abusive behavior from court and investigative findings. We found that in one of the two States reviewed, the nurse aide registry did not always record findings of abuse and convictions of aides who committed elder abuse. State registry officials indicated that facilities are required to report alleged abuse and neglect in order to initiate an investigation to determine if the allegations are substantiated and then record findings in the nurse aide registry. All registry officials surveyed also indicated that there is no systematic reporting to the nurse aide registry convictions or crimes committed outside facilities. Such information could be obtained during background checks and reported to the registry.

Use of the Office of Inspector General Exclusion listing, which identifies individuals and businesses excluded from participation in certain Department of Health and Human Services' health care programs, can make employment screens more effective. However, none of the nursing homes surveyed in six States was aware of this database or its availability on the internet. Therefore, opportunities for identifying potential risk were not fully realized.

At the 8 Maryland nursing homes visited, 51 employees, or 5 percent of the 1,000 employees according to the Federal Bureau of Investigation records, had been convicted for a variety of crimes--many involved serious offenses. The employees included CNAs, as well as staff holding jobs not subject to background checks.

Also, based on our background check of 35 individuals who were convicted of elder abuse in Maryland, 7 had prior convictions for other types of crimes, including those against people.

In Illinois, which requires State criminal background checks, there were a similar number of convictions. Illinois is the only State in our survey which requires criminal background checks on current as well as prospective employees and records the results on the CNA Registry. The State conducted approximately 21,000 criminal checks and found 5 percent had disqualifying crimes. As a result of these checks, employers for 759 CNAs were instructed to terminate their employment and another 216 CNAs were granted waivers to continue working.

In some measure, within our limited review, nursing home staff having a criminal history are being identified. Also, some registries are being flagged appropriately for use by current and prospective employers. However, there is no assurance that nursing home staff who could place elderly residents at risk are systematically identified and excluded from employment.

RECOMMENDATIONS

We are recommending that the Heath Care Financing Administration (HCFA) and the Administration on Aging work with the States to improve the safety of long term care residents and to strengthen safeguards against the employment of abusive workers by elder care facilities. The HCFA should consider establishing Federal requirements and criteria for performing criminal background checks. Also, HCFA should consider assisting in the development of a national abuse registry and expanding the current State registries to include all workers who have abused or neglected residents or misappropriated their property in facilities that receive Federal reimbursement. The OIG suggests that legislation be enacted to allow the national abuse registry to be included in an expanded version of the current Healthcare Integrity Protection Data Bank, which the OIG has developed as required by the Health Insurance Portability and Accountability Act of 1996. More specific recommendations are on pages 11 and 12 of this report.

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In written responses, the HCFA and AoA officials generally agreed with our findings and recommendations. The HCFA and AoA comments to our draft report are included as Appendices D & E and are summarized after our recommendations.

INTRODUCTION

BACKGROUND

Under Health Care Financing Administration (HCFA) regulations, residents of nursing homes and other long term care (LTC) facilities, have the right to reside in a safe and secure environment and be free from abuse and neglect. Title 42, Code of Federal Regulations 483.156 requires the States to establish and maintain a registry of nurse aides that includes information on "any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual" involving the elderly. This Code (483.13) also requires that the LTC facility: "...must not employ individuals who have been found guilty by a court of law or have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property." The regulations also require that nursing facilities "report any knowledge it has of actions taken by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities." The HCFA does not require registries for other health care providers, such as registered nurses (RN), licensed practical nurses (LPN), or medical practitioners.

States are encouraged to conduct national background checks of job applicants by the National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994. However, there is no Federal requirement to conduct criminal background checks of current or prospective employees of federally assisted LTC facilities or to maintain a registry for staff other than CNAs who work in these facilities. The Federal Bureau of Investigation criminal history record system (FBI system) may be accessed by States, under Public Law 92-544, if authorized by State statute. This national system, which contains records of serious crimes, is dependent on the voluntary reporting of crime data by State and Federal courts, prosecutors, and arresting authorities.

There is a Federal requirement that States provide criminal information to the Department of Health and Human Services (HHS), Office of Inspector General's (OIG) national database which includes individuals who have been convicted of elder abuse and neglect by the States' Attorney General (AG) offices. Using this information, the OIG publishes a monthly Exclusion List[1] which is available on the Internet.

Also, the Health Insurance Portability and Accountability Act of 1996 authorized the OIG to develop the Healthcare Integrity Protection Data Bank (HIPDB). The HIPDB is intended to

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[1] Persons are excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant, and Block Grants to States for Social Services Programs. These exclusions are mandated by section 1128(a)(2) of the Act (42 U.S.C. 1320-a-7(a)(2)), and are in addition to any sanction an individual State may impose under the authority of State law.

provide a "one stop shop" data base for public information on the imposition of health care sanctions. It includes information about health care-related criminal, civil, and administrative final adverse actions taken against health care providers, suppliers, and practitioners.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our review were to determine whether all States: (1) maintained registries for various health care workers and if a selected number of those States were properly identifying on their registries individuals involved with elder abuse or other crimes; and (2) required background checks of individuals working in LTC facilities and, if so, to determine the specific provisions as well as their assessment of results obtained from doing background checks. We obtained applicable State laws for the 33 States that require criminal background checks. In a few selected States, we tested the accuracy of the registries in recording (flagging) individuals who were guilty of abuse to residents in nursing homes. We determined whether States voluntarily used their Surveillance and Utilization Review System (SURS) to screen Medicaid records for potential unreported elder abuse.

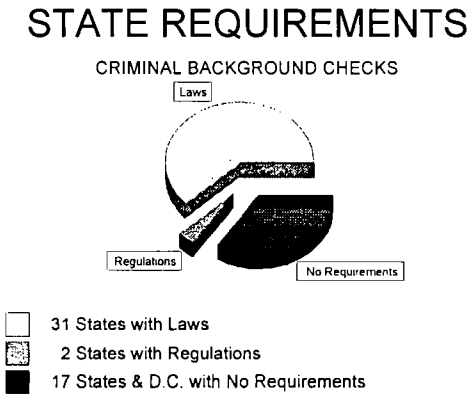
In Maryland, we conducted criminal background checks of all employees at eight randomly selected nursing homes receiving Medicare and/or Medicaid funds to determine if any of these employees had a criminal record, particularly crimes against people. We also compared the individuals convicted of elder abuse by the Maryland Medicaid Fraud Control Unit (MFCU) with those cited in the FBI system and in Maryland's registry to determine if that information was properly recorded and to determine if individuals had prior convictions. In Illinois, we conducted criminal background checks on a selected number of individuals who had a substantiated finding of abuse to determine if any had a prior criminal record. These efforts required the use of the FBI system and the Maryland and Illinois district court and circuit court systems for information on arrests and dispositions. The Maryland and Illinois reviews were done in accordance with generally accepted government auditing standards.

We contacted Federal Administration on Aging (AoA) and HCFA officials, various States' Ombudsmen, Departments of Health, Licensing and Certification offices, Boards of Nursing, Physicians Boards, SURS units and States' AG offices to obtain information and statistical data. We interviewed 52 State nursing home officials in 6 States (Illinois, Indiana, Maryland, Minnesota, Ohio and Virginia) who have been conducting background checks to identify their procedures, practices, and experiences relating to these checks. We also interviewed State registry officials, in these six States, as well as, Michigan and Wisconsin. Our field work was performed from July 1996 through January 1998.

Observations

STATE REQUIREMENTS FOR CRIMINAL BACKGROUND CHECKS

Although there is no Federal requirement for criminal background checks of persons employed or seeking employment in nursing homes and other long term care facilities, 33 States require such checks, either by law (31) or regulation (2). However, there are wide diversities in the States' requirements concerning: facilities and personnel covered, systems used for the check--State or Federal records, use of fingerprinting, types of crimes which disqualify employment, factors for determining suitability for employment, costs, and payments for the criminal background check. See **Appendix A** for a summary of State requirements. Four States (Nebraska, Pennsylvania, Wisconsin and West Virginia) have enacted laws which will become effective in 1998. Seventeen States and the District of Columbia do not require criminal background checks for LTC facilities, although four States have either attempted to pass such legislation or will attempt to in the future.



Diversities in Background Check Requirements

Where background checks are required, the coverage varies. Not all facilities serving the elderly are included. A majority of the States require background checks of CNAs seeking employment, but do not include current employees or other personnel, such as owners, nurses, dietitians, and housekeeping staff. Most States do not include staff currently employed, contractor staff, or volunteers.

The sources used for the criminal background checks also vary. State records are used by 24 States. Nine States have laws permitting the use of both State and FBI records, although two of these States do not, in practice, use FBI records. Officials from these States informed us that they prefer to use their own State system because it provides a quicker response, is less costly, and contains crimes and disposition data that are not in the FBI system.

There are 24 States that have specified crimes which, if convicted, would automatically disqualify a person from employment, but the disqualifying crimes vary by State. Only a few State laws identified factors to consider in determining suitability for employment when a person has a disqualifying conviction, such as the level, seriousness, and date of the crime, the connection between the person's criminal conduct, duties of the position to be filled, and prison, probation, rehabilitation, and employment history of the person since the crime was committed. As a result, nursing home officials particularly in States without disqualification laws use their own judgment in deciding whether to employ applicants with criminal records.

Costs of a criminal background check depend upon the type of search that is requested and whether or not fingerprinting is used in the search. The costs ranged from "no charge" to as high as $84 which included fingerprinting and a criminal background check using State and FBI records. Payments for the criminal background check also varied among the 33 States--in most States the employer pays, while employees pay in 4 States.

STATE REGISTRIES

We contacted 37 States to obtain information on the registries they maintain. All 37 States maintain registries for CNAs, LPNs, RNs, and medical practitioners, although the CNA registry is the only one required by HCFA regulations. The CNA registries are mostly maintained by State officials who issue certificates to approved applicants to practice, whereas the other registries are maintained by respective Boards which issue licenses.

Based on our survey of registry officials, we were informed of the following information about the registries:

> convictions for crimes committed outside of the LTC facilities, which are required to be reported to the CNA registry as well as other appropriate licensing authorities, are not systematically reported to the registry.
>
> 94 percent do not initiate criminal background checks on applicants when they apply for certification or licensure.
>
> 29 percent do not require information of prior arrest or conviction on the renewal application.
>
> 13 percent did not provide for a penalty for making false statements on the certification or license application.
>
> 18 percent are published on the Internet.

The majority of the registry officials stated that when an abuse complaint is filed, an investigation is conducted independently of the court system, and substantiated allegations

are annotated on the registry by the respective board. According to registry officials, their investigations are done because it may take many months or several years before the court renders a verdict.

Test of Nurse Aide Registries

The HCFA regulations require that each State's nurse aide registry includes information on convictions for elder abuse and on findings of abuse, neglect, or misappropriation of property. The information must remain in the registry permanently unless it was in error, the individual was found not guilty in a court of law, or the individual dies. In addition, nursing facilities must report to the State nurse aide registry or to licensing authorities any knowledge they have of court actions against an employee that would indicate unfitness for service as a nurse aide or other facility staff. As explained below, these requirements were not always followed.

Maryland's Nurse Aide Registry

We reported[2] that the State did not maintain an up-to-date and complete CNA registry to record elder abuse committed by nurse aides of LTC facilities. In our review of 45 alleged abuses, there were 7 cases in which an abuse to a nursing home resident occurred. In six of the seven cases, the CNA was terminated, and in one case the aide was suspended for 3 days because the nursing home felt it had sufficient evidence to take action on the nurse aide's abusive behavior. These seven cases were neither substantiated nor prosecuted and consequently not flagged on the registry.

We also reported that many CNAs convicted for abuse by the MFCU within the Attorney General's Office were not flagged on the registry. Of the 24 CNAs found guilty or who pled guilty in a court of law for elder abuse, only 10 were flagged on the registry. Two others were found guilty prior to establishment of the registry and there was no retroactive provision to include them. The remaining 12 CNAs should have been flagged but were not.

Illinois's Nurse Aide Registry

In our review of the Illinois Department of Public Health (IDPH)[3] we reported that IDPH was adequately maintaining the CNA registry for substantiated cases of abuse and the registry was available to the LTC facilities to screen candidates during their hiring process. Illinois is the only State which records criminal background results (both positive and negative) to the registry. However, convictions for crimes, other than those with

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[2]OIG Report "State of Maryland's Ombudsman Program for Processing Elder Abuse and Neglect Complaints and Accuracy of Geriatric Nurse Aide Registry", CIN: A-12-96-00016, issued November 28, 1997.

[3]OIG Report "Review of Elder Abuse Identification and Resolution Procedures for Illinois Long Term Care Facilities", CIN: A-05-97-00010, issued in May 1998.

disqualifying conditions as specified in the Illinois State law, are not provided to the registry or the facility to determine if the CNA is suitable for employment. In Illinois, the disqualifying crimes are: abuse/neglect of an adult or child, arson, assault, kidnaping and abduction, murder, and theft.

We sampled 88 closed cases of alleged abuse and found that the IDPH did not substantiate, through an independent investigation, whether 13 of these allegations occurred, although these employees were terminated from employment or had disciplinary actions imposed. Accordingly, these 13 cases were not annotated on the CNA registry. These terminated and disciplined CNAs were free to seek employment at other LTC facilities or allowed to continue their employment, which could potentially place residents at further risk.

The benefit of implementing the Illinois criminal background check law is evident from the result of our review. The law should mitigate the number of future abuses by not allowing nursing homes to hire prospective employees who have disqualifying criminal convictions. We noted 15 CNAs and 2 non-CNA employees with prior disqualifying criminal backgrounds who were currently working at LTC facilities but would have been identified and excluded had the Illinois law been in place before their employment and had been applicable to workers in addition to CNAs. All 17 of these employees were later involved in instances of alleged elder abuse. Fourteen of the 15 CNAs are no longer employed by LTC facilities. Seven of the CNAs were terminated as a result of substantiated findings of abuse, and the other seven were dismissed by the LTC facility or resigned subsequent to the abuse allegation. The remaining CNA was transferred to a non-direct resident care position. The two non-CNA employees (who, under current Illinois law, are not subject to a background check) were terminated by the facility due to elder abuse.

Other Selected State Registries

We compared the names of individuals contained on the OIG Exclusion List in eight States to the appropriate nurse aide, nurse, and medical practitioner registries and found that, with the exception of Maryland, they generally flagged convictions. Only a few cases were omitted and some of those were due to an administrative oversight.

SELECTED STATE EXPERIENCES WITH CRIMINAL BACKGROUND CHECKS

We selected six States that have been performing background checks using State records to determine their experiences and opinions of the process. Based on our discussions with 52 nursing home and registry officials in these six States, they generally are in favor of background checks (see **Appendix B**). While most of these background check laws contained disqualifying crimes which would bar employment, some of the 52 officials said they would automatically exclude everyone with a criminal conviction. The nursing home officials view the background check as a deterrent, although not absolute, to incidents of

elder abuse because applicants with a history of criminal offenses are either identified through the check, or do not apply for employment because they know the background check will disclose their crimes. We found from the responses received, that many facilities are more comprehensive in their background checks than their State law requires. In most cases, the State law specified certain personnel that are subject to the background check but many nursing home administrators said they check every applicant for employment.

Some may argue that performing background checks for all applicants can be burdensome especially if the current employee turnover rate continues. A number of nursing homes in our survey estimated that the turnover rate for nurse aides averaged 63 percent, with a low of 8 percent and a 300 percent high. However, if the results of all checks, both positive and negative, were to be posted to the registry, as Illinois does, then background checks could be minimized for those who apply for employment in multiple facilities within a specific period of time. Rather than each facility doing a background check of prospective employees, the central registry would already have that information available to them.

Among the positive factors mentioned to us for initiating background checks and utilizing resulting information were: the relatively low cost for the State background check; identification of disqualifying crimes in the State law; motivation for the individual to be truthful on the employment application; State conviction data contains up-to-date convictions; and subsequent to enactment of the background check law, the administrators told us they have experienced fewer instances of abuse. Negative factors include: results of background checks were not always provided timely; arrest outcomes were not always included on the State system; and checks were only statewide and did not cover all employees, such as volunteers and on-board staff.

MARYLAND NURSING HOME EMPLOYEES WITH CRIMINAL RECORDS

Using the FBI system and the list of employees who were on-board at the 8 Maryland nursing homes we visited, we determined that at least 51 or 5 percent of the employed staff were convicted of crimes which should raise concern over their employability. Many of these individuals were working in occupations providing direct care to residents. We believe the number of employees with convictions is understated because the conviction data available in the FBI system, as well as the State's system, were not recorded in more than half of the cases in which a crime was committed. If that information were available, the magnitude of employed individuals working in a nursing home with a criminal conviction could be as high as 10 percent. Illinois, the only State in our survey that requires checks on current and prospective employees, found a similar number of convictions for current staff. Of 21,000 checks conducted, 5 percent had disqualifying crimes. As a result of these checks, employers for 759 CNAs were instructed to terminate their employment and another 216 CNAs were granted waivers to continue working.

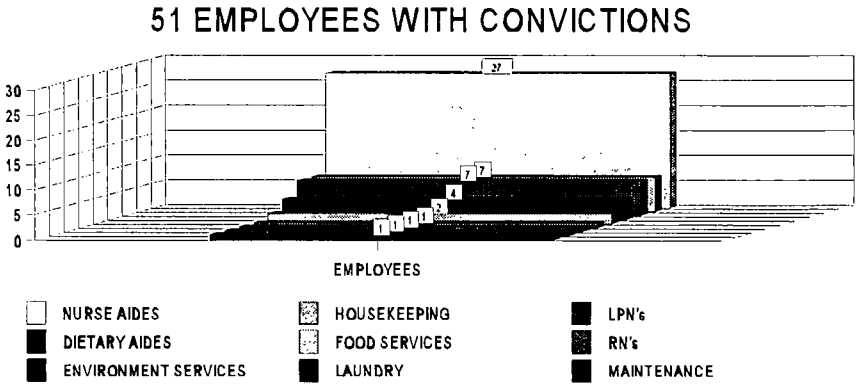
The following is a summary of the arrest and conviction information for employees at the eight nursing homes.

Arrests and Convictions by Nursing Home

Nursing Home	Number of Staff	Number with Arrest Record	%	Total Number of Arrests	Total Number of Crimes	Dispositions (Convictions)			Employees with Convictions	%
						No Convictions	Number of Convictions	Not Known		
A	123	10	8	29	40	13	5	22	4	3
B	37	9	24	26	37	10	5	22	4	11
C	67	11	16	29	43	6	15	22	7	10
D	62	10	16	27	42	8	9	25	5	8
E	156	22	14	66	100	17	16	67	9	6
F	242	24	10	77	116	23	26	67	8	3
G	172	19	11	41	48	19	14	15	8	5
H	209	15	7	20	24	7	7	10	6	3
TOTAL	**1,068**	**120**	**11**	315	450	103	**97**	250	**51**	**5**

Appendix C contains details on these 450 crimes and convictions.

Based on data from the FBI and the State systems, and as illustrated, the 51 employees had 97 convictions for such crimes as assault, child abuse, possession, manufacturing, and distribution of illicit drugs, robbery with a deadly weapon, theft, and handgun violations. See **Appendix C** for details on the convictions for the 51 nursing home employees.



Of the 51 employees with convictions, we found 43 did not truthfully state on their job applications that they had been convicted and 4 did not respond to the question. For the remaining four employees, two appropriately indicated their convictions and two other employee applications did not have a question regarding conviction information.

Crimes after Employment

We found that 15 employees and 1 contractor staff in our sample were arrested for 58 crimes after they had been employed by the nursing homes. They were convicted of crimes such as: assault, battery, disorderly conduct and forgery. The employees involved were: six nurse aides, four dietary aides, four housekeeping staff, one LPN, and one maintenance staff. Dispositions on 28 of the crimes were not recorded on the FBI or State criminal information systems.

Crimes by Contractor Employees

Although contractor staff are not required under Maryland law to undergo background checks, the dietary service contractor at one nursing home allowed us to perform background checks on all 26 contractor employees. For the six employees hired after July 1, 1996, the effective date for Maryland's background check law, the checks showed that five employees had no criminal record and that one had been charged with a crime but the court records did not show the outcome.

However, for the contractor's other 20 employees who were hired before July 1, 1996, we found a different situation. Based on the FBI system, 4 of these employees had 37 arrests for 54 crimes, as well as 18 convictions for such crimes as fourth degree sex offense, various assault charges, battery, larceny, armed robbery, manufacturing and distribution of illicit drugs, and handgun violations.

REPORTS ON BACKGROUND CHECKS

A number of nursing home officials informed us that the background check laws resulted in a decline in abuses. In the 33 States that had requirements for performing criminal background checks, we attempted to determine if there was a rise or decline in the number of reported cases of elder abuse by seeking national data from AoA Headquarters. However, since AoA did not have elder abuse data for all States over several years, we could not perform this analysis. The AoA was only able to furnish elder abuse data from 29 States for 1995, which the States provided on a voluntary basis.

With the exception of Maryland, the remaining 32 States performing background checks did not have data to show whether the checks were beneficial. In Maryland, the State legislation required the Maryland Association of Nonprofit Homes for the Aging (MANPHA) and the Health Facilities Association of Maryland (HFAM) to report on the effects of criminal background checks. These reports did not comment on the potential need and impact of mandating national criminal records checks, but offered information indicating benefits obtained from performing checks.

The MANPHA's report stated that, of the 1272 job applicants checked for 70 health care facilities statewide in the last calendar quarter of 1996, about 19 percent had criminal records. This was a decrease from the 22 percent in the third quarter of 1996. The report stated that it "would appear that the new procedures have reduced the number of applications submitted by individuals with criminal backgrounds."

The HFAM's report, which covered such facilities as nursing homes and hospitals, stated that during the period between July 1996 and January 1997, over 10,000 background investigations were conducted and that 22 percent of the individuals had criminal records. There was no other information reported to show whether this was a change from the prior period.

CONVICTED MARYLAND NURSING HOME STAFF

Between 1989 and 1996, Maryland's MFCU identified 35 nursing home staff who were found guilty, or pled guilty in a court of law. All of these individuals were sanctioned/ excluded from participation in certain HHS health care programs by the OIG for criminal offenses against the elderly. We found that many of these individuals' arrest and conviction data, however, were not recorded on either the State or FBI systems. Specifically, 10 of the 35 did not have a record of either the abuse arrest or the outcome in either system. The State criminal information system lacked data on 17 arrests and 17 convictions, and the FBI system lacked data on 28 arrests and 33 convictions. As a result, facilities that request State or FBI criminal history information on these individuals would not be informed of all arrests and convictions for elder abuse. Both the State and Federal systems depend on such sources as the arresting agency, the prosecutor, or the court having jurisdiction over the crime to submit arrest and disposition data to the criminal information systems. We did not determine where the breakdown in reporting occurred.

The benefit of performing background checks is again shown by further examination of the 35 nurse aides. Seven nurse aides who were convicted for elder abuse or neglect also had a prior conviction. Since these crimes were committed before Maryland began requiring criminal history checks, the nursing homes were likely unaware of the arrests and convictions when the employees were hired.

SURVEILLANCE AND UTILIZATION REVIEW SYSTEMS

Each State is required, under HCFA regulations, to establish a SURS to safeguard against erroneous payments and unnecessary or inappropriate use of Medicaid services. Although there is no Federal requirement, a few SURS screen medical records of Medicaid patients for the purpose of identifying potential elder and child abuse and referring suspicious findings to appropriate State offices for investigation. These States had identified a limited number of potential elder abuse cases, but generally information was not available to show the overall

Gaylee 54908

Nursing home initiative

#35 HCFA discretionary
18.1 surveyor
10.0 patient abuse registry
6.9 State surveyor oversight

15.6 HCFA mandatory State insp.
9.5 QIC funds
≈50.0 user fees (more exact when leg)

- HCFA study
- National campaign to begin this spring
- publication of rea CMP
- resubmission of requiring criminal background checks & national registry of nursing home workers who have been convicted of patient abuse.
- legislation to allow imposition of penalties against chain owners.
- abuse prevention

1. 10.0 pts abuse same as leg?
2. NHI lump # ?
3. where is ad campaign $ coming from?
4. DQs when ready?
5. CMP what constitutes serious violation
6. survey & cert

target repeat offenders w/o lessening targeting of other facilities

- survey
- ad camp.
- forum / AoA coordination
- CMP
- DOJ

poor performing facility → more facilities subject to sanction

states can hit serious offense

18/6.9

addtl training for States
$2 million

States that are doing a poor job in surveying will lose their survey authority → no $

Potential Nursing Home Initiative Announcements

In July 1998, the Clinton Administration embarked on an ambitious new initiative to provide enhanced protections for nursing home residents and to target specific needed improvements in nursing home standards and requirements. In the past six months, HHS has made considerable progress in implementing these far reaching initiatives for improving the quality of care and life for nursing home residents.

Administrative Actions to Improve Quality for Consumers/Beneficiaries

- The Health Care Financing Administration has a new consumer information source that allows consumers to compare survey results and safety violations when comparing nursing homes. The Nursing Home Compare site provides detailed information in an easy-to-use format for residents and their families. Users can search nursing homes by name, county and zip code, and compare data from two or more homes. The Internet site for this information is WWW.MEDICARE.GOV.

- HHS has convened a national abuse prevention & detection forum consisting of representatives from groups concerned with the frail elderly and disabled. A protocol developed through the forum workgroup for evaluating abuse and neglect prevention processes in nursing homes will be implemented nationally by May of 1999.

- HHS this spring will begin a national campaign to educate residents, families, other consumers, nursing home staff and the public at large about the risks of malnutrition and dehydration as well as nursing home resident's rights to quality care. A related campaign will emphasize preventing abuse and neglect of nursing home residents. ($400,000)

- The Department of Justice (in conjunction with HCFA) is interested in examining how to improve and expand the assistance currently available to the victims of nursing home abuse and neglect.

- HCFA also is planning to work with the Administration on Aging (AoA) on a study on how to meet consumers' needs for reporting and investigating complaints on poor quality of care. Since both HCFA and AoA, as well as some individual States, have separate complaint systems which may or may not fully meet consumer needs, it is important to assess consumer expectations before developing alternatives for coordinating and integrating existing complaint systems at the Federal and State levels.

Stronger Enforcement

- In August 1998, HCFA required that corrections by nursing homes cited for serious violations be verified through onsite visits by surveyors to nursing homes.

- In September 1998, HCFA required that nursing homes found guilty of a second offense for violations that harm residents will face remedies without a grace period to correct

problems and avoid penalties.

- In January 1999, State survey agencies began conducting more frequent inspections for nursing homes with repeat serious violations without decreasing inspections at other facilities. State survey agencies were also instructed to stagger surveys with a set amount done on weekends and off hours when quality and staffing problems often occur.

- HHS expects to publish a regulation permitting States to impose a civil money penalty for each instance of a serious violation. This will allow States to ensure that all serious violations are punished. draft to OMB

- HCFA will be working with DOJ, other HHS and State and local representatives to bolster Federal, State and local law enforcement efforts aimed at fraud and abuse in nursing homes, particularly fraud and abuse that result in harm to patients. A national steering committee composed of DOJ and HHS representatives will lead and coordinate these efforts which can include, for example: ensuring that appropriate cases for prosecution under Federal or State criminal or civil statues are referred to the proper authorities in a consistent and timely fashion; ensuring that the enforcement and/or prosecution efforts (including temporary managers) by the various authorities are fully coordinated and in the best interests of patient health and safety.

Nursing Home Initiative Budget

The President's FY 2000 Budget requests an HHS-wide total of $60.1 million to implement the NHI, including money for HCFA, the General Counsel Office, and Departmental Appeals Board. Of this total, the budget proposes:

- $35 million in discretionary HCFA funds, including: $18.1 million to strengthen State surveyor inspection and enforcement efforts, $10.0 million to establish a national patient abuse registry; and $6.9 million to improve Federal oversight of State surveyor efforts.

- $15.6 million in mandatory Medicaid funds to supplement State inspection and enforcement activities in dually-certified and Medicaid-only nursing homes; and

- $9.5 million in discretionary funds for the General Counsel and Departmental Appeals Board to handle increased litigation and appeals resulting from stepped up nursing home enforcement efforts.

Legislative Proposals

- The Administration will submit legislation requiring nursing homes to conduct criminal background checks of employees; and establishing a national registry of nursing-home workers who have been convicted of abusing residents. This proposal is similar to the one submitted to the Congress in FY 1998.

U.S. Department of Justice

Office of the Deputy Attorney General

Special Counsel for Health Care Fraud *Washington, D.C. 20530*

January 22, 1999

To: Chris Jennings
Deputy Assistant to the President

From: John T. Bentivoglio

Subj: Concept paper for nursing home abuse and neglect legislation

Attached please find a concept paper that describes our latest thinking on the nursing home abuse and neglect legislation. While I recognize the need for expedited preparation of this proposal, this is a situation where – as the old cliche goes – the devil is in the details. Moreover, there are differing views within DOJ on some of the important issues (e.g., we are still fine tuning the definition of pattern). Finally, while the Attorney General, Deputy Attorney General, and other leadership officials are aware of our efforts, they have not had an opportunity to make final decisions on this proposal. Thus, this should be considered a working draft that still may undergo revisions.

With all of these caveats, I am hopeful that the final language will follow the attached summary. In addition, we are currently pulling together justification materials (e.g., additional legal analysis, examples of widespread abuse and neglect where we were unable to use other tools to sanction the conduct, etc.). I hope to have a package worthy of circulation within a week or ten days.

cc: Mike Hash
Deputy Administrator
Health Care Financing Administration

DRAFT

Nursing Home Abuse and Neglect Legislation
Concept Paper

Justification

Current federal law contains serious gaps in the ability to impose appropriate sanctions against serious patterns of abuse and neglect in federally funded nursing homes and related facilities. There is no general federal patient abuse and neglect statute (as there is in virtually every state). The Health Care Financing Administration (HCFA) may impose civil money penalties and other programmatic sanctions (e.g., termination) against specific facilities - but does not have authority to impose sanctions against the corporate parent or management company that is operating the facility. On the other hand, the Department of Justice is limited to reliance on the civil False Claims Act and other statutes that focus on financial fraud/false claims to address patterns of abuse and neglect. While the FCA is an appropriate tool in some cases, in a substantial number of cases involving widespread and serious instances of abuse and neglect it will be difficult to establish that the facility knowingly submitted false claims.

As a result, there is a need for statutory authority to impose appropriate sanctions against nursing homes (and their corporate parent or management company) for serious patterns of abuse and neglect that do not necessarily involve the submission of false claims.

Essential Elements of the Proposed Statute

Facilities:

The statute would cover nursing homes and other residential health care facilities (e.g., some psychiatric facilities). It would not cover hospitals and other non-residential facilities.

Federal Jurisdiction:

Limited to facilities that receive at least $10,000 annually from a federal health care program (Medicare, Medicaid, etc.).

Violations:

The statute would create criminal and civil penalties for any person (individuals and corporations) who knowingly engages in a pattern of violations of nursing home regulations where such violations result in physical or mental harm. While the definition of pattern is still under development, it probably will include widespread, repeated, or systemic violations and multiple violations involving a common policy or practice. It will not include single violations or isolated violations that are not in related in some manner.

Penalties:

Civil and criminal penalties against individuals and corporate entities. The criminal provisions will require knowing or willful conduct). The criminal penalty probably would be 0-5 years, with an enhancement for conduct that results in serious bodily injury or death (which tracks existing provisions in the US Code for health care fraud, 18 USC 1347). The amount of the civil penalties are still under discussion but probably will include a graduated tiers for individuals (other than owners, operators, or managers); individuals are owners, operators, and managers, and corporations.

Injunctive relief:

The federal government would be able to petition a court for injunctive relief to prevent ongoing violations of the statute.