

Congress of the United States
Washington, DC 20515

June 25, 2004

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Secretary:

We are writing to you regarding your April 21, 2004, letter on nursing home staffing levels.¹ Your letter states that HHS will not establish staffing standards because it has “serious reservations about the reliability of staffing data at the nursing home level.” Your letter also states that HHS has known since July 2000 that “the most universal source of nurse staffing data, the Centers for Medicare and Medicaid Service’s (CMS) Online Survey and Certification System (OSCAR) is not sufficiently reliable in this particular respect.”

These are striking concessions with significant ramifications. Your letter indicates that HHS has known about problems with staffing data for almost four years and has apparently not tried to correct the problems. Yet at the same time, HHS has posted this data on the Nursing Home Compare website and urged families to base their nursing home decisions on this apparently unreliable data.

The Nursing Home Compare website is the most popular tool on www.medicare.gov. In 2003, the website had 9.3 million “page views,” mainly by families looking for reliable data on which to select a nursing home for a loved one.² HHS has recommended that families consult Nursing Home Compare as the first step in choosing a nursing home. The HHS publication *Guide to Choosing a Nursing Home* states:

To find out how nursing homes compare in quality in your area . . . select Nursing Home Compare. You can compare the State inspection reports of the nursing homes in your area, and look at other information like . . . staffing levels.³

In January 2004, you called the Nursing Home Compare website a “perfect example of our ability to empower Americans to improve their health through the use of information technology.”⁴

¹ Letter from Secretary Tommy G. Thompson to Rep. Henry A. Waxman (Apr. 21, 2004); Letter from Rep. Henry A. Waxman and Sen. John Edwards to Secretary Tommy G. Thompson (Dec. 15, 2003).

² CMS, *Enhanced Set of Quality Measures Now Available at Medicare’s Easier-to-Use Nursing Home Compare* (Jan. 22, 2004).

³ HHS, *Guide to Choosing a Nursing Home* (2004).

⁴ CMS, *supra* note 2

The staffing data on Nursing Home Compare is some of the most important data on the website. A 2003 report by the Institute of Medicine found:

The relationship between nurse staffing levels and patient outcomes in nursing homes has been shown in numerous studies. Higher levels of registered nurse hours per patient have been significantly associated with patient survival, improved functional status, and discharge from the nursing home. . . . Inadequate nurse staffing has been shown to be associated with malnutrition, starvation, and dehydration in nursing home residents.⁵

Given the critical importance of this data, it is troubling that your April 21 letter calls into serious doubt the reliability of the staffing information that HHS posts on Nursing Home Compare. The data on staffing levels in Nursing Home Compare comes directly from the OSCAR database. According to your letter, staffing data from OSCAR is “not sufficiently reliable.”

The implications of your letter are serious. Millions of Americans look to the Nursing Home Compare website for accurate information on which to base their selection of a nursing home. For many, staffing levels are one of the most important factors to be considered because they reveal how many nurses and nursing assistants are available to care for a loved one. But if your letter is right, these families could be getting inaccurate and misleading information from the website.

A series of recent reports by the HHS Office of Inspector General adds to our concerns. The Inspector General’s office used staff schedules and payroll records to determine actual staffing levels at nursing homes around the country. These reports have found that actual staffing levels are often significantly lower than the self-reported staffing data contained on the Nursing Home Compare website, in one instance by 36%.⁶

⁵ Institute of Medicine, *Keeping Patients Safe: Transforming the Work Environment of Nurses*, 165–166 (2004).

⁶ See, e.g., HHS Office of Inspector General, *Effect of Staffing on Quality of Care at Nursing Facilities - Dublinair Health Care and Rehabilitation Center* (Apr. 2004) (actual 2.91 hours, reported 3.27 hours); HHS Office of Inspector General, *Effect of Staffing on Quality of Care at Nursing Facilities - Glen Haven Health and Rehabilitation, LLC* (Feb. 2004) (actual 3.54 hours, reported 3.92 hours); HHS Office of Inspector General, *Effect of Staffing on Quality of Care at Nursing Facilities - Mountain View Community Living Center* (Feb. 2004) (actual 2.72 hours, reported 2.87 hours); HHS Office of Inspector General, *Effect of Staffing on Quality of Care at Nursing Facilities - ConsultAmerica Health and Rehabilitation* (Feb. 2004) (actual 3.83 hours, reported 5.23 hours).

Clearly, immediate action is needed to ensure that the Nursing Home Compare website provides accurate information to the millions of Americans seeking help in finding care for a loved one. We are thus requesting that you provide the following information:

- (1) A detailed description of the scope and severity of problems affecting the reliability of OSCAR's self-reported staffing data;
- (2) A detailed description of any regulatory or other actions taken by HHS against nursing homes that have inaccurately reported staffing data to state regulatory agencies or HHS;
- (3) A detailed status report, including information as to whether and when the results will be publicly available, on a contract with Abt Associates, completed in 2003, in which Abt was to assess the feasibility of collecting nurse staffing data from payroll records and invoices;
- (4) A regulatory strategy and timeline for ensuring that HHS obtains accurate information on nursing home staffing levels, including using staffing schedules and payroll records to determine staffing levels; and
- (5) A regulatory strategy and timeline for ensuring that accurate information is made available to the public through the Nursing Home Compare website.

In addition, we urge you to take immediate action to ensure that families that have used the Nursing Home Compare website — or that may use the site in the future — are informed of your concerns about the reliability of its staffing data.

Due to the seriousness of this matter, we ask that you respond to this letter by June 30, 2004. The response should be faxed to Rep. Waxman at 225-8185, to Sen. Grassley at 228-2132, to Sen. Edwards at 228-1566, and to Sen. Bond at 224-8149. If you have any questions, you may contact Brian Cohen (Rep. Waxman) at 225-5051, Emilia DiSanto (Sen. Grassley) at 224-4515, Peter Harbage (Sen. Edwards) at 224-4923, or Kara Vlasaty (Sen. Bond) at 224-5721.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives



Charles E. Grassley
Chairman
Committee on Finance
U.S. Senate

The Honorable Tommy G. Thompson
Page 4

Handwritten signatures of John Edwards and Christopher S. Bond. The signature of John Edwards is on the left, and the signature of Christopher S. Bond is on the right.

John Edwards
Senator
U.S. Senate

Christopher S. Bond
Chairman
Subcommittee on Aging
Committee on Health, Education,
Labor, and Pensions
U.S. Senate