

United States Senate

For Immediate Release

Thursday, February 14, 2008

Grassley, Kohl work to improve care in nursing homes

WASHINGTON — Senators Chuck Grassley and Herb Kohl today are introducing legislation to improve the quality of care in nursing homes with more and better information for consumers provided by the federal government on the *Nursing Home Compare* website, requirements for accurate reporting of the staff who are providing direct services in nursing homes, stiffer penalties for serious quality deficiencies, and greater accountability and transparency about who owns and operates nursing homes.

“Improving nursing home care requires constant vigilance,” Grassley said. “Some problems keep coming up. They need to be fixed so nursing home quality continues to improve and stay improved. More transparency, enforcement, and staff training are all needed. That’s what our bill addresses.”

“The federal government now spends \$75 billion annually on nursing homes through Medicare and Medicaid, and spending is projected to rise as costs associated with the boomer generation increase,” Kohl said. “Congress has a responsibility to demand high quality services for residents and accountability from the nursing home industry in return for this huge investment of public resources.”

Grassley is ranking member and former chairman of the Committee on Finance, with jurisdiction over the federal health care programs that cover nursing home care, and former chairman of the Special Committee on Aging. Kohl is chairman of the Special Committee on Aging, a standing committee that conducts oversight of issues related to the health, safety, and financial well-being of older Americans. The Grassley-Kohl bill is the product of their attention to nursing home quality over recent months in their respective capacities.

Supporting the bipartisan bill are the Service Employees International Union (SEIU) and the National Citizens’ Coalition for Nursing Home Reform (NCCNHR).

A summary of the bill follows here. The senators’ floor statements of introduction follow that.

Nursing Home Transparency and Improvement Act of 2008

Increases Transparency About Nursing Home Ownership and Operations

- * Enables the residents and the government to know who actually owns the nursing home
- * Strengthens accountability requirements for individual facilities and nursing home chains, including annual independent audits for nursing home chains

- * Improves Nursing Home Compare by including a nursing home's ownership information, the identity of participants in the Special Focus Facility program, a standardized complaint form and links to nursing home inspection reports
- * Provides more transparency of a nursing home's expenditures by requiring more detail in cost reporting
- * Provides for improved reporting of nurse staffing information so that apples-to-apples comparisons can be made across nursing homes
- * Brings uniformity and structure to the nursing home complaint process by requiring a standardized complaint form and complaint resolution processes that includes complainant notification and response deadlines

Strengthens Enforcement

- * Strengthens available penalties by making them more meaningful.
 - Instead of imposing civil money penalties (CMPs) up to \$10,000, the Secretary would be able to impose a range of penalties of up to \$100,000 for a deficiency resulting in death, \$3,000-\$25,000 for deficiencies at the level of actually harm or immediate jeopardy and not more than \$3,000 for other deficiencies.
 - The Secretary would be able to reduce CMPs for facilities that do not appeal CMPs and for self-reporting deficiencies below the immediate jeopardy level or the actual harm level if the harm is found to be a "pattern" or "widespread" or those resulting in death.
 - Penalties must be collected within 90 days, following a hearing.
- * Equips the Secretary with tools to address corporate-level problems in nursing home chains by giving the authority to develop a national independent monitor program specific to multistate and large intrastate nursing home chains
- * Provides greater protection to residents of nursing homes that close by requiring advance notice of the closure as well as the development of a transfer and relocation plan of residents
- * Requires a study on the role that financial issues play in poor-performing homes
- * Requires a study on best practices for the appointment of temporary management for nursing homes as well as barriers
- * Requires a study on barriers to purchasing facilities with a record of poor care
- * Authorizes demonstration projects for nursing home "culture change" and for improving resident care through health information technology

Improves Staff Training

- *Improves staff training to include dementia management and abuse prevention training as part of pre-employment training
- * Requires a study on increased training requirements either in content or hours for nurse aides and supervisory staff

Statement of Senator Charles E. Grassley
Before the United States Senate
Introduction of the Nursing Home Transparency and Improvement Act of 2008
February 14, 2008

Mr. President, I rise today to introduce the Nursing Home Transparency and Improvement Act of 2008. I introduce this bill along with Senator Kohl, who serves, as I once did, as chairman of the Special Committee on Aging. This is an important piece of legislation that aims to bring some overdue transparency to consumers regarding nursing home quality. It also provides long needed improvements to our enforcement system. This legislation also further strengthens nursing home staff training requirements.

In America today, there are over 1.7 million elderly and disabled individuals in roughly 17,000 nursing home facilities. As the baby boom generation ages, this number is going to rise considerably.

While many people are using alternatives such as home care or other methods of community-based care, nursing homes are going to remain a critical option for our elderly and disabled populations.

We owe it to them to make sure that they receive the safe and quality care they deserve.

Unfortunately, as in many areas, with nursing homes a few bad apples often spoil the barrel. Too many Americans receive poor care, often in a subset of nursing homes.

Unfortunately, this subset of chronic offenders stays in business, in many ways keeping their poor track records hidden from the public at large, and often facing little or no enforcement from the federal government.

As the Ranking Member of the Senate Finance Committee, I have a longstanding commitment to ensuring that nursing home residents receive the safe and quality care we expect for our loved ones.

But this effort requires transparency in the nursing home industry so that consumers are armed with the information they need to make the best decisions possible. This same transparency also provides additional market incentives for bad homes to improve.

This effort also requires a strong, mandatory enforcement and monitoring system to ensure safe and quality care at facilities that wouldn't take the steps needed voluntarily.

This piece of legislation seeks to strengthen both areas: transparency and enforcement. It's a bill that's good for consumers, good for nursing home residents and good for the nursing home community.

First, let me talk to you about transparency.

In the market for nursing home care, like in all markets, consumers must have adequate data to make informed choices.

For years, people looking at a nursing home for themselves or loved ones had no way of knowing whether that home was a "Special Focus Facility," a designation meaning they had been singled out as a consistently poor performer.

Why shouldn't consumers have access to this information? The government has it and so should consumers. To that end, this bill requires that Special Focus Facility designation be placed on the CMS website "Nursing Home Compare." By giving consumers this information, we will both give

consumers information necessary to make informed choices and poorly performing homes an extra incentive to shape up, or consumers will go elsewhere.

This bill also requires more transparency about ownership information and inspection reports, more accountability for large nursing home chains, and the development and availability of a standardized resident complaint form so there's a clear and easy way to report problems and have them resolved. The bill would also bring more transparency on what portion of a nursing home's spending is used for the direct care of residents and also bring more uniformity in the reporting of nurse staffing levels so that people can make apples-to-apples comparisons between nursing homes.

But even with improved transparency, there are some nursing homes that won't improve on their own. In the nursing home industry, most homes provide quality care on a consistent basis. But as in many sectors – this industry is given a bad name by a few bad apples that spoil the barrel.

So we need to give inspectors better enforcement tools.

The current system provides incentives to correct problems only temporarily and allows homes to avoid regulatory sanctions while continuing to deliver substandard care to residents.

This system must be fixed.

In ongoing correspondence I've had with Kerry Weems, the acting administrator of CMS, that agency has requested the statutory authority to collect civil monetary penalties sooner, and hold them in escrow pending appeal. To that end, this bill requires penalties to be collected within 90 days, following a hearing. After that, they're held in escrow pending appeal.

Penalties should also be meaningful – too often, they are assessed at the lowest possible amount, if at all.

Penalties should be more than merely the cost of doing business; they should be collected in a reasonable timeframe; and should not be rescinded easily.

These changes would help prod the industry's bad actors to get their act together or get out of the business.

In addition to increased transparency and improved enforcement, this bill provides common-sense solutions to a number of other problems as well. This legislation requires the Secretary of Health and Human Services to establish a national independent monitoring program to tackle problems specific to interstate and large intrastate nursing home chains.

This legislation directs the Government Accountability Office to:

- conduct studies on the role, if any, of financial problems in the poor performance of Special Focus Facilities,
- identify best practices at the state level in temporary management programs, and
- determine what are the barriers preventing the purchase of nursing homes with a record of poor quality care.

Finally, in the case of a nursing home being closed due to poor safety or quality of care, this bill

requires that residents and their representatives be given sufficient notice so that they can adequately plan a transfer to a better performing home.

I am very sensitive to the fact that nursing home residents are often old and fragile. Moving them into a new facility is often very traumatic. So---we've got to make sure these residents are transferred appropriately and with the time and care they deserve.

This bill would also strengthen training requirements for nursing staff by including dementia and abuse prevention training as part of pre-employment training.

The Grassley-Kohl Bill also requires a study on the appropriateness of increasing training requirements for nurse aides or supervisory staff.

So I'm glad to introduce this bill today along with Senator Kohl. Mr. President, the Chairman of the Aging Committee and I have a long history of working on elder care issues.

We'll continue to do everything we can to make sure America's nursing home residents receive the safe and quality care they deserve. Increasing transparency, improving enforcement tools and strengthening training requirements will go a long way towards achieving this goal.

Statement of Senator Herb Kohl (D-WI)
Before the United States Senate
Introduction of the Nursing Home Transparency and Improvement Act of 2008
February 14, 2008

Mr. President, I rise today to introduce the Nursing Home Transparency and Improvement Act of 2008 with my distinguished colleague, Senator Grassley. Senator Grassley conducted a great deal of valuable oversight for nursing homes during his tenure as Aging Committee Chairman from 1997 through 2000, and he continues to make major contributions in this area today. Working toward higher standards of nursing home quality is a tradition of which I am proud to be a part.

It is staggering to think that the most recent major law dictating federal standards for quality, for data reporting, and for enforcement was passed in 1987. Twenty-one years later, we know that it has spurred important improvements in the quality of care provided in nursing homes. Yet we are far from finished, and there are additional improvements that need to be made.

The first is in the area of transparency. If consumers can easily tell which homes have a solid enforcement track record, which are well-staffed, which are owned by a chain with a good reputation for providing excellent services—and which homes are not—then this sort of disclosure can serve as a powerful motivation for homes to provide the best possible care, to hire and keep the most dedicated staff, and to always prioritize the interests of residents. The court of public opinion and the strength of market forces are powerful and inexpensive tools we should be putting to good use.

Our legislation will make sure all this information is available to consumers in a timely and easy-to-use fashion. We want Americans to be able to use the federal government's website, *Nursing Home Compare*, with ease. We want Americans to have access to the type of information that matters, such as the number of hours of care their loved one will receive from staff every day. We want Americans

to be able to use this website to lodge complaints of mistreatment or neglect. These are simple, effective ideas, and our bill will make them a reality.

The second area in need of improvement is our government's system of nursing home quality enforcement. Under the current system, nursing homes that are not providing good care, or — even worse — are putting their residents in harms way, can escape penalty from the government by abusing a lengthy appeal process, while they slip in and out of compliance with federal regulations. This is unacceptable. We need the threat of sanctions to mean something—and under my bill with Senator Grassley, they will. Our legislation will require that all civil monetary penalties be collected and placed in an escrow account as soon as they are levied, pending the final resolution of any appeal. Financial penalties will be increased for serious quality deficiencies that cause actual harm to nursing home residents, or put them in “immediate jeopardy.”

In addition, our policy enables regulators to respond effectively when serious quality problems are evident in order to protect the safety of residents. The bill requires that states and facilities provide a secure and orderly process when relocating residents due to a nursing home closure. It also proposes national demonstrations to promote innovations in information technology and “culture change” in order to improve resident care.

The federal government now spends \$75 billion annually on nursing homes through Medicare and Medicaid, and spending is projected to rise as costs associated with the boomer generation increase. Congress has a responsibility to demand high quality services for residents and accountability from the nursing home industry in return for this huge investment of public resources. I urge my colleagues to join Senator Grassley and myself in sponsoring this commonsense piece of legislation.

Thank you, Mr. President, I yield the floor.