



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Tuesday, July 13, 2004

Grassley seeks more reliable and complete information about nursing homes

WASHINGTON — Sen. Chuck Grassley said the federal government should improve the quality of information it makes available to the public about the care provided in the nation's nursing homes.

Grassley based his comments on a report issued today by the Inspector General for the Department of Health and Human Services. The report found that Americans who rely on Nursing Home Compare stand a one in five chance that the information will be accurate. Nursing Home Compare is a Web site that provides information about the past performance of every Medicare- and Medicaid-certified nursing home in the country.

Grassley said that the odds may be even worse for individuals and families searching for information about nursing homes because the data presented by Nursing Home Compare is based on inspection results, and there are serious deficiencies in the federal-state survey and certification process for nursing homes.

Last week, Grassley spelled out his concerns about this process to Mark McClellan, the Administrator of the Centers for Medicare and Medicaid Services. This federal agency oversees enforcement by the states of federal nursing home standards. Grassley said his concerns were based on the findings of his investigative staff. The text of Grassley's July 7 letter to McClellan about the survey and certification process follows the text of Grassley's July 13 letter to McClellan about Nursing Home Compare.

July 13, 2004

The Honorable Mark McClellan
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Dr. McClellan:

Following upon my letter, dated July 9, 2004, which expressed my belief that the survey and certification process is broken, I want to focus your attention on the latest troubling findings about the information that Americans rely upon for accurate, objective and independent data about the operation and activities of nursing homes.

Today, the Department of Health & Human Services, Office of Inspector General (OIG) publicly released a report that questions the completeness and accuracy of information the Centers for Medicare & Medicaid Services (CMS) provides Americans about nursing homes. The OIG concluded that:

Overall, Nursing Home Compare's [NHC] inspection results provide consumers with a valuable resource on the past-performance of Medicare- and Medicaid-certified nursing homes. ... However, *one or more surveys were missing from 19 percent of nursing homes, leaving consumers with incomplete information about those homes' survey and complaint histories.* Inspection results on [NHC] are largely accurate, but one or more deficiencies were missing from 11 percent of nursing homes' inspection results, and [NHC] presents deficiencies not found on survey documentation for 15 percent of nursing homes. Inaccuracies may be due to lack of data entry by State survey agencies, no tracking of accuracy reports by CMS, and failure of State survey agencies to transmit data on amended deficiencies. (emphasis added).

While the OIG suggests that information available to the public about nursing homes is "largely accurate," that finding is only true if the information is taken at face value and only if the odds are on your side. In fact, as the OIG's findings point out, anyone who entrusts their loved one to a nursing home based on CMS's Nursing Home Compare stands a one in five chance that the information relied upon was inaccurate. Couple those odds with the disturbing reality that the very integrity of the quality data contained in the nursing home inspection results and complaint histories has been called into question and the bedrock value of Nursing Home Compare crumbles.

As I mentioned in my letter to you last week, my Committee staff have reported story after story to me about surveyors who question the integrity and effectiveness of the nursing home survey process, as well as the enforcement and complaint process. Likewise, the Government Accounting Office has documented, and continues to document, serious deficiencies in the survey and certification process. American's struggling with the difficult decision to choose a nursing home deserve better information than CMS is providing them. I look forward to hearing whether CMS will step to the plate and address the concerns shared by many about the integrity of publicly available nursing home performance information. Thank you again for your attention to this critical matter.

Sincerely,
Charles E. Grassley
Chairman

July 7, 2004

The Honorable Mark McClellan
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Dr. McClellan:

Since 1997, I have focused considerable attention on improving the quality of care in our Nation's nursing homes, which provide care for about 1.7 million elderly and disabled residents in about 17,000 nursing homes. As former chairman of the Committee on Aging, and presently as chairman of the Committee on Finance (Committee), I have conducted numerous hearings over the years to address the problems that plague nursing home care. In July 2003, I held a hearing updating my previous work on nursing home quality of care. Although it was encouraging that modest improvements in the reported quality care have been made as a result of efforts in recent years, the Committee also heard evidence that called into question the integrity of the quality data. Specifically, we continue to hear that state inspectors understate the existence of serious quality-of-care problems.

As a result of that hearing, I instructed my staff to independently review the nursing home survey and certification process from the surveyors' perspective. My staff has since interviewed approximately 20 surveyors from around the country to obtain their views, guidance and opinions regarding the survey and certification process.

The purpose of this letter is three fold; to: 1) share with you the serious concerns that were raised to us by the surveyors interviewed; 2) identify the themes and concerns that were repeatedly raised during the interviews conducted; and 3) set forth one or more initiatives for your consideration to address a process that appears to have been corrupted by some unscrupulous individuals.

Surveyors are "on the front lines" in the fight to improve the quality of care provided to our nation's sick and disabled. Indeed, we depend on their eyes and ears to document serious care problems, procedural weaknesses, as well as, improvements. Unfortunately, it is becoming more and more apparent that the survey and certification process, in all likelihood, has been seriously corrupted.

As recently as a few weeks ago it was reported that the Oklahoma Board of Health member Ron Osterhout said, "he received tips during the past six months from sources inside and outside the state Health Department alleging that surveyors are being pressured to go easy on long-term facilities . . . Among those allegedly pressuring surveyors are state lawmakers acting on behalf of facility administrators." The dismal picture painted by such articles and by surveyors interviewed by the Finance Committee must be addressed and corrected if we wish to dramatically improve the quality of care provided to nursing home residents. Former surveyors stated that they resigned or retired from their positions out of sheer disgust at how their hands

were tied while doing their jobs. Listening to their trials and tribulations has been extremely disconcerting. My staff reported story after story to me about surveyors who question the integrity and effectiveness of the nursing home survey process, as well as, the enforcement and complaint process.

Survey and Reporting Integrity and Effectiveness

Surveyors interviewed stated that the survey and enforcement process is in desperate need of improvement. Many stated that high level state bureaucrats, "tie their hands" routinely. Perhaps, most troubling is the fact that several surveyors stated that there is an unspoken "political presence" intertwined in the survey process that puts pressure on surveyors to "overlook" or "downgrade" deficiencies. Still other surveyors told the Committee that they were routinely instructed "not" to cite certain high level deficiencies because it was considered ineffective to "rock the boat" because high level deficiencies would be omitted from the final report anyway.

For example, one surveyor described a very alarming situation. While responding to a nursing home complaint with a police escort, the surveyor witnessed nursing home staff members allegedly using illegal drugs and ignoring patients. Subsequently, the surveyor, who fully expected to return to the home for appropriate follow-up was told not to return. Reportedly, the nursing home owner's friend, who served in a state legislature, called requesting that the facility continue with "business as usual" and not be bothered by further review.

Surveyors frequently described the systematic downgrading of citations. This matter has been repeatedly discussed as a concern by the General Accounting Office (GAO) over the years, most recently in a July 2003 report conducted at my request. Apparently, and according to the surveyors interviewed, the scope and severity of surveys is being low-balled. Surveyors routinely stated that they were "instructed" by their superiors to downgrade citations or not write up facilities for certain high level deficiencies. Some surveyors went on to say that if a high level deficiency is cited, most of the time it would be reduced to a lower level deficiency or completely omitted from the final report by management without consultation with the citing surveyor. Other surveyors advised that they are told to "rewrite" or "change" survey findings to make the facility "look better" than it really was. And still others advised us that, from time to time, multiple violations were bundled and cited as one violation instead of many.

Enforcement and Complaint Process

In addition to a lack of effectiveness and integrity in the survey and reporting process, the surveyors interviewed stated that facilities are given too many "free passes" to correct deficiencies that survive downgrading and re-writing. Surveyors noted that in most instances a facility would, as an initial matter, correct the deficiency only to revert back to its "old ways" once a follow up review is completed. It seems that "roller coaster compliance"—the cycling in and out of compliance without taking care of the underlying care problems—has not been remedied despite being identified and raised as a matter of great concern at Committee hearings.

The majority of surveyors interviewed also complained about what I have reported on time and time again—surveys remain too predictable. As you know, the predictability of surveys has been an issue for many years and the reality is that most facilities know when a survey team is coming for a visit. The GAO reported to me in July 2003 that fully one-third of the most recent state surveys of nursing homes nationwide occurred on a predictable schedule, allowing homes to conceal problems if they choose to do so. Unfortunately, this does not allow for an accurate and fair representation of the operation and activities of the facility. Let me ask: How can we have an effective and efficient survey and enforcement process if there is no element of surprise? While I acknowledge that some efforts have been made to make surveys less predictable, it is just not enough.

The Committee was also advised that the complaint investigation process needs improvement. Surveyors interviewed stated that complaints are rarely reviewed thoroughly. For example, some surveyors stated that: patients and/or family members are rarely interviewed; administrative and medical records are rarely reviewed; valuable information is routinely recorded incorrectly; and the word of the facility is often taken at face value over that of a resident and/or family member. As a result of these inherent procedural failures, complaints are rarely substantiated and serious quality problems are therefore not corrected.

Quality of Care Concerns

In addition to the problems noted above, most of the surveyors interviewed discussed the everyday problems they faced when they visited nursing homes. One nursing home surveyor reported to my staff that medical charts would be filled out weeks in advance, a concern that has been brought to my attention repeatedly. If true, this constitutes outright fraud. Another example reported to the Committee involved nursing home staff members routinely filling in drug administration information well after the fact and all at once, as opposed to completing the information on a timely basis during the course of the day as the drugs were administered or changed depending on the needs of the patient.

Unfortunately, these quality of care concerns are not new. The GAO has documented, and continues to document, these and other serious quality of care problems throughout the nursing home industry. Indeed, the GAO reviewed a sample of nursing homes with a history of quality-of-care problems, but the nursing homes most recent survey inspection showed no actual harm deficiencies. The GAO determined that 40 percent of these homes in fact had documented incidents of actual harm—such as serious, avoidable pressure sores, severe weight loss, and multiple falls resulting in broken bones and other injuries—despite the fact that none were cited.

Dr. McClellan, it is apparent from our review that the survey and certification process upon which we rely for accurate, objective and independent data on the operation and activities of facilities, is just plain broke. It has been corrupted by unscrupulous individuals and we need to restore the integrity of the system in every state and locale.

Despite years of reports, evaluations, and investigations the surveyors that we interviewed portray a bleak and dismal situation in America's nursing homes. The surveyors themselves are

demoralized when blatant quality of care deficiencies and findings are watered down, substantively altered, and/or blatantly ignored or dismissed. These surveyors have raised enormously disturbing issues for anyone who cares a wit about the very health and safety of frail nursing home residents.

The federal government expends tremendous amounts of money to ensure that surveyors visit facilities routinely and are able to do their jobs efficiently, effectively and most of all, objectively and independently. The survey process, I am sure you will agree, is meant to improve the quality of care for residents, not to ignore it, gloss over it, and most of all, not make it worse. If the survey and certification process is not working—and it looks like it is not—it must be fixed.

The concerns elicited from surveyors during these interviews raise other issues, including questions about the integrity and reliability of the information provided to the public through the Nursing Home Compare website. A plan of attack is needed to restore the integrity of the system. In that regard let me set forth a number of proposals for your consideration.

To begin, perhaps CMS can give consideration to contacting all surveyors periodically and provide them with an opportunity to anonymously report instances of corruption, manipulation of data and other concerns affecting them. In addition, CMS perhaps can begin targeting its look behind survey activities to homes that have a history of poor care that then "improved" to determine if the improvement is "real." Lastly, CMS should conduct exit interviews of surveyors who depart the state survey agencies. One difficulty that my staff had in conducting this investigation was the deep-seated fear of retaliation even among retired surveyors.

Please be advised that the ideas set forth above are by no means all inclusive. I believe that the road to achieving accurate, timely, independent on-site reviews, which in turn will provide accurate information to the public, is a challenge that must be met aggressively and in the near future. Accordingly, I look forward to hearing from you no later than August 17, 2004, regarding the concerns set forth in this letter. In that response, please be prepared to include some specific initiatives to address the many serious concerns relayed to us by surveyors.

In closing, thank you for your attention to this important matter and I look forward to your response. Should you have any questions regarding this letter, please do not hesitate to contact Emilia DiSanto or Michelle Anderson at (202) 224-4515.

Sincerely,
Charles E. Grassley
Chairman