

# THE NURSING HOME INITIATIVE: A TWO-YEAR PROGRESS REPORT

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## HEARING BEFORE THE SPECIAL COMMITTEE ON AGING UNITED STATES SENATE ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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# **THE NURSING HOME INITIATIVE: A TWO-YEAR PROGRESS REPORT**

**THURSDAY, SEPTEMBER 28, 2000**

**U.S. SENATE,  
SPECIAL COMMITTEE ON AGING,  
Washington, DC.**

The committee met, pursuant to notice, at 8:32 a.m., in room 562, Dirksen Senate Office Building, Hon. Chuck Grassley, (Chairman of the Committee) presiding.

Present: Senators Grassley, Breaux, and Kohl.

## **OPENING STATEMENT OF SENATOR CHUCK GRASSLEY, CHAIRMAN**

The CHAIRMAN. I thank everybody for coming early to accommodate Senator Breaux and my conflict that would have come at 10 because of the Finance Committee meeting, and that is why we are getting started extra early.

And I want to say that this is a continuation of our evaluation of the implementation of the Nursing Home Initiative and this was announced 2 years ago in the summer of 1998. During that early time, at least in part in response to hearings scheduled by this committee, the administration announced a Nursing Home Initiative designed to improve enforcement of the standard of care of nursing home residents required under the Nursing Home Reform Act of 1987.

For the past 3 years, this committee has engaged in trying to make sure that the Health Care Financing Administration and the state survey agencies effectively carry out this initiative and, consequently, enforce the standards of care requirements for nursing homes that were required under that act 13 years ago. Our working assumption has been that effective enforcement of the act will lead to improvement of quality of care for residents.

Today we will hear that although some successes have been achieved, much remains. We still have problems. So it is also clear from testimony today that sustained efforts from the Health Care Financing Administration and the next administration will be essential if the Nursing Home Initiative is to be successful. I hope that we will be able to turn a corner on improving quality of care in nursing homes with sustained efforts from the Health Care Financing Administration and from the states.

Enforcement is one of the keys. We also hope to hear suggestions for other ways care in nursing home facilities might be improved, in addition to improvements in enforcement of the Nursing Home

Reform Act, that we and HCFA can consider as we continue our efforts to assure quality of care in the nursing homes.

When it becomes too difficult for families and friends to help loved ones manage at home, even with home- and community-based services, it becomes clear that a reliable, trustworthy, local nursing home is a critical community resource. We rely on the many good-hearted and dedicated people working in nursing homes to provide this valuable care for our loved ones.

In turn, we rely upon state survey agencies to assure us, the Congress and the public, that high quality care is being provided.

Concerns have been raised about the work of state agencies. We will hear today that state agencies are not able to live up to their obligations to survey every nursing home on an average of every 12 months. We will hear that they are unable to carry out the Nursing Home Initiative that requires complaints to be investigated within 10 days. We heard in July at the committee's hearing on nursing home staffing that the staffing numbers, generally accepted by survey agencies from nursing home administrators, are so unreliable that researchers choose other methods to assess staffing levels.

We will hear today additional reasons to question the reliability of the information gathered by state surveyors, ranging from allegations of bribery in Oklahoma to allegations that claims deficiencies in a state audit were inappropriately removed from inspection reports.

I firmly believe that when nursing home operators comply with the standards required by the Nursing Home Reform Act, vulnerable nursing home residents can receive appropriate services in a caring environment. Two years ago at our hearing on quality of care, and that involved California nursing homes, we heard that all too often, nursing home operators were not complying with the law.

Last year at a hearing held by this committee on the status of the administration's Nursing Home Initiative, we heard about efforts on the state, Federal and nursing home level to improve care. I hope to see measurable results and improvement in quality of care resulting from these activities but we have no faith in the validity of the data used to describe the level of quality being provided unless the state agencies do their job well.

Today we will hear about the continued challenges that face the state agencies. We will hear also about the progress that is being made. I hope that the next time we meet on this, and that is obviously going to be sometime after the new Congress convenes, we will have valid, credible data to measure the effectiveness of improved enforcement activities at the Federal and state levels.

Now Senator Breaux and then Senator Kohl.

### STATEMENT OF SENATOR JOHN BREAUX

Senator BREAUX. Thank you very much, Mr. Chairman. Once again you have shown your diligence in assuring that Congress and in particular, this committee looks at something that is as important as the conditions of our Nation's nursing homes and what is happening to them.

This is, they tell me, the 19th hearing of the Aging Committee and once again we are working on Iowa farm time by being here at the crack of dawn. When most members of the Senate are not even awake, we are once again having a hearing, showing your dedication and determination in pursuing these matters and it is to be commended. We are a good example that some things happen in Congress before noon, and in this case quite a bit before noon. So I am pleased to be here.

The CHAIRMAN. Now we will hear from another person with a Midwestern work ethic. Senator Kohl.

### STATEMENT OF SENATOR HERB KOHL

Senator KOHL. We all know why Senator Breaux is such a good politician, he gets elected and reelected so often.

We thank you, Mr. Chairman. We are pleased that you convened this hearing to look at the 2-year status of the administration's Nursing Home Initiative. We have worked diligently over the past several years to make sure that this initiative is properly implemented and I believe our Nation's seniors are better protected because of the strong oversight of this committee under your chairmanship.

Let me say that I believe that the vast majority of nursing homes in my own State of Wisconsin are dedicated, professional and compassionate, but even one instance of neglect or abuse, of course, is one too many.

As you will recall, 2 years ago we heard terrible stories of malnutrition, dehydration and inattention to bed sores in too many of our Nation's nursing homes. We said at that time that what this amounted to was state-sanctioned elder abuse. Federal funds were going to nursing homes where older Americans were being harmed, shamed and even starved.

Of course, that is not acceptable. Our parents and our grandparents made this country what it is today and they deserve to live their days as long as they live with dignity and are entitled to the highest quality care.

I was pleased that the administration took this issue very seriously and announced the comprehensive Nursing Home Initiative to improve the quality of nursing home care. It appears we are making some good progress in improving the survey process, the complaint resolution process and the enforcement process, but clearly we still have a great deal of work to do. We need to make sure that states have the tools and the funding they need to do their jobs, that inspections are thorough and effective, and that violations are swiftly punished. And we also need to finally address the issue of inadequate staffing in a comprehensive way. We in Congress have the obligation to make sure that HCFA and the states see these reforms through. Our elderly and disabled patients are depending on us.

So I look forward to learning more today about the successes of the Nursing Home Initiative, as well as what work still needs to be done. Again I thank you, Mr. Chairman, for holding this important hearing.

The CHAIRMAN. Thank you, Senator Kohl.

Now I am going to go to Senator Bond before I introduce three of the four people who are here because Senator Bond is going to introduce the elected official from his state. Senator Bond.

#### STATEMENT OF SENATOR CHRISTOPHER BOND

Senator BOND. Thank you very much, Mr. Chairman and Senator Breaux, Senator Kohl. I would explain to Senator Breaux that back in the heartland, this is time for the mid-morning coffee break. This is not early morning. As a matter of fact, that is one of the good reasons why some of us from the heartland prefer this job, with late mornings, indoor work and no heavy lifting.

Senator BREAUX. In New Orleans it is Blood Mary time.

Senator BOND. That is what they tell me. We even send some folks down there occasionally who have told me that is how it works.

But speaking of heavy lifting, I want to thank the Committee on Aging and you, Mr. Chairman, Senator Breaux and Senator Kohl, for your consistent efforts on behalf of nursing home residents and their families across the country. The Aging Committee, with the valuable assistance of the General Accounting Office, particularly the efforts of Dr. Scanlon and Ms. Allen, have focused considerable attention in recent years on the need to improve care in our nursing homes.

The series of reports requested by Chairman Grassley and issued by the GAO since 1997 have exposed serious quality of care problems in our nursing homes. The problems are widespread and I am very sorry to say no state is excluded.

I began to focus my efforts and attention on these problems last fall when a GAO report made an example of Missouri state surveyors who failed to identify serious deficiencies during their inspections. Today we are going to hear from the GAO that over 25 percent of Missouri nursing homes are cited for deficiencies involving actual harm to their residents. This is extremely troublesome and, sad to say, no longer unanticipated.

Over the past year and a half, my office has received letters and e-mail regularly from Missourians who are concerned about the treatment, or perhaps we should say the lack of adequate treatment and care that their loved ones endure in some nursing homes.

Last November I sat down in St. Louis with several of these folks and let me tell you, the stories they told and the pictures they showed me were truly frightening. When confronted with open bed sores, dehydration, malnutrition, the indignity of lying in urine-soaked clothing, all failures in care on the most basic levels, you just cannot turn a blind eye. These suffering families let us know that somebody had clearly fallen down on the job.

This morning we will hear from a good friend, Missouri state auditor Claire McCaskill, who can provide some valuable insight about Missouri's nursing home inspection system. Claire and I share a common interest in getting a handle on how good or bad

the quality of care is in Missouri nursing homes. And frankly, as Senator Kohl mentioned, we know there are some good homes. We know there are some homes that really need major corrections, if not more drastic action. And the important thing is that we know that we are going to distinguish those so that the family members can be assured that their loved ones are getting the proper care.

I was pleased when Claire McCaskill informed us last spring that she was auditing the Missouri Division of Aging, the agency tasked with inspecting nursing homes in Missouri. Unfortunately, her comprehensive audit did not paint a pretty picture. As I said when Claire released her findings, this audit conjured up the worst nightmares of every family that has entrusted the care of their loved ones to a nursing home.

I thank Ms. McCaskill for traveling to Washington to share her findings with the Aging Committee today and I am very happy to welcome her, to present and introduce her to the committee.

We clearly need more and better oversight from the states and from Washington in order to improve the quality of nursing homes. It is common knowledge that a few bad apples may spoil the bunch but the GAO's report shows that even some apparently good apples may indeed be rotten to the core.

In fact, we will hear about a nursing home in Missouri that had numerous violations wiped clean from its slate after the nursing home protested about the survey results to the Division of Aging. Apparently some whistle-blowers came forth and suggested that something was fishy about this turn of events. They started out with 71 pages of violations. They sent it in to the office and lo and behold, all 71 pages disappeared. No problems. Now that might be a trick that Penn and Teller could pull off but you kind of wonder how a state agency can pull that off.

I am very deeply concerned that we may have a systemic problem in Missouri and we cannot allow it to continue to fester.

Chairman Grassley, I applaud the continued hard work of your committee and thank you very much for inviting me here today to be able to present to you the state auditor of Missouri, Claire McCaskill.

The CHAIRMAN. Thank you, Senator Bond.

I am going to introduce the other three people on the panel and then we will go from Dr. Scanlon to Mr. Hash to Auditor McCaskill and then to Ms. Benner, in that order for your testimony, and then when the whole panel is done, we will have questions.

Remember that your full statements will be included in the record. You will not have to ask for that to be done. We will keep the record open for 2 weeks to accommodate others who wish to contribute to the members or members who have questions to ask in writing.

Our first witness will be Dr. Bill Scanlon, Director of Health Financing and Systems Issues at the General Accounting Office. Dr. Scanlon and his team have been keeping an eye on the implementation of the enforcement of these regulations for a number of years. Today he will focus on evaluating the quality of survey and complaint investigation work done by state survey agencies which have responsibility for enforcing regulations. And we on this com-



mittee, on both sides of the aisle, feel very good about the leadership of Dr. Scanlon in this area.

We also have another person who comes regularly before our committee, Mike Hash, Deputy Administrator of the Health Care Financing Administration. He will be our second speaker, giving us an update on HCFA's implementation of the Nursing Home Initiative. He will provide us with his assessment of its impact on improving the quality of care in the nation's nursing homes and we expect to hear from him about how HCFA intends to address weaknesses in the programs.

We have had the good fortune of working closely with HCFA, our committee and that agency, in the sense that monthly and now quarterly, they have been reporting to us and letting us critique some of their oversight of state agencies and we appreciate that sort of on-going dialog.

And then we will hear from Carol Benner, last. Since 1989 she has served as the Director of the Office of Health Care Quality in the Maryland Department of Health and Mental Hygiene. Today she will represent the Association of Health Facility Survey Agencies, the professional association of the state agencies responsible for surveying nursing homes.

Dr. Scanlon.

**STATEMENT OF WILLIAM SCANLON, PH.D., DIRECTOR,  
HEALTH CARE FINANCING AND PUBLIC HEALTH ISSUES,  
U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC**

Dr. SCANLON. Thank you very much, Mr. Chairman and members of the committee. I am very pleased to be here today as you continue to focus on the critical question of how we can protect and assure quality for the very vulnerable population of senior citizens and disabled persons that reside in nursing homes.

Your request to us almost 3 years ago that we investigate allegations of seriously deficient care that potentially contributed to the deaths of residents turned the spotlight on a very regrettable situation. That is, too many nursing homes are identified each year as having harmed residents and even worse, some of these homes have done so year after year. While these repeat offender homes comprise a minority, the numbers are unacceptably high—more than 2,000 homes with more than 200,000 residents.

Exposing the problem was essential. As I said at the first hearing on nursing home quality that you had in July 1998, as we were beginning our investigation in California, I expected we would not find the allegations to be true. Regrettably, I was wrong. We confirmed that serious problems existed not only with the care homes provided but also with our Federal and state quality assurance efforts. These weaknesses in oversight allowed serious deficiencies to go undetected and too often allowed identified deficiencies to be corrected only temporarily.

At that first hearing and the ones that followed, we have made many recommendations aimed at improving the detection of serious care deficiencies, improving states' efforts to investigate complaints, and putting more teeth in Federal enforcement policies.

In response to these recommendations and to its own review of the problem, the administration launched a series of initiatives

that we are considering today. I expect Mr. Hash will describe these in more detail.

What I would like to do today is talk about a report that is being released that we have prepared at your request to monitor the implementation of these efforts. I would like to give you a few highlights from that report.

A critical first step in our mind was improving the annual survey's ability to detect serious care deficiencies in each state. HCFA has provided new instructions for surveyors to introduce more rigor in reviewing key areas, like dehydration, malnutrition and pressure sores. HCFA has also required states to inspect 10 percent of homes during their off-hours, to reduce homes' ability to predict the timing of surveyors' visits and give surveyors a truer picture of a home's condition on a typical day.

Our analysis of the survey results from the most recent surveys showed that more deficiencies are being detected. Nationally, a slightly higher proportion of homes was cited for serious care deficiencies after the initiatives were put in place. You can see these results on page 7 of our written statement.

In addition, there was a modest decrease in the variation across states in the proportion of homes cited for serious deficiencies. However, wide variation still persists, with 11 percent of homes being cited in Maine and 58 percent of homes being cited in Washington State. A gap of this size suggests that there is not enough consistency in how states cite and classify care deficiencies. Achieving greater consistency would provide us new confidence that the surveys were working more effectively in identifying deficient care. We could then focus with more confidence on our real goal, which is to see the incidence of deficiencies decline.

Initiatives have also made progress in the handling of complaints which, in the past, was an area where there was virtually no Federal oversight. In some cases states were taking many weeks or months to investigate allegations of serious harm to residents or potentially life-threatening situations. Now all complaints alleging actual harm are to be investigated within 10 days. Although states have not been able to meet the 10-day timeframe 100 percent of the time, they have made improvements in the process of expediting complaint investigations. Enhancements made by states we visited include increases in surveyor staff, improvements in classifying complaints, and an upgrade of information systems to ensure that complaints do not fall through the cracks.

Creating incentives to ensure that deficiencies, once found, are permanently corrected is a third key area addressed by the initiatives. A new policy requires that homes found on successive surveys to have harmed residents be sanctioned immediately has been in effect this year. This contrasts with the prior practice of allowing homes a grace period to take corrective actions before a sanction would take effect. For all practical purposes, the old practice resulted in repeat offender homes almost never being sanctioned.

Early indications from some states are that their referrals of homes to HCFA for sanctions are on the rise. Hopefully this will have the deterrent effect we want and the incidence of homes cycling in and out of compliance will decline.

Overall, we find that HCFA and the states are in a period of transition. Many of the new policies and practices have only recently been instituted. Time is needed for them to take hold and their effects to be measured. Further refinements are needed to improve surveyors' effectiveness in identifying deficiencies, to ensure that complaints are dealt with promptly, and to determine that enforcement is effective.

States continue to struggle with staffing constraints, information system inadequacies and tradeoffs in trying to complete all the tasks assigned them. HCFA continues to refine the policies and guidance provided to the states and to improve the management process to better assist and oversee them. It has also taken positive steps to achieve greater consistency in how its regional offices conduct their mandates. It is too early, though, to tell how their success will be; but organizationally, these steps seem to be in the right direction.

Let me end by noting that for the time being, we must be mindful of the fact that the prevalence of poor care has not declined. As that is our goal, we must remain concerned that the implementation of all these initiatives be completed and that they be carefully examined to assess their effectiveness and need for modification.

The committee's steadfast attention is, in this case, essential. Nursing home residents are not effective consumers, able to voice their concerns and complaints. They need assistance, the kind of assistance that you provided in exposing this problem. Keeping it in the spotlight is critical, for we do not want it to become hidden, as it was before you began your work. We will be pleased to continue assisting the committee and the Congress, as needed, to assess progress on these issues.

Mr. Chairman and members of the committee, I would be happy to answer any questions that you may have. Thank you.

[The prepared statement of Dr. Scanlon follows:]

United States General Accounting Office

**GAO**

**Testimony**

Before the Special Committee on Aging,  
United States Senate

For Release on Delivery  
Expected at 8:30 am  
Thursday, Sept. 28, 2000

**NURSING HOMES**

**Success of Quality  
Initiatives Requires  
Sustained Federal and  
State Commitment**

Statement of William J. Scanlon, Director  
Health Financing and Public Health issues  
Health, Education, and Human Services Division



GAO/T-HEHS-00-209

Mr. Chairman and Members of the Committee:

I am pleased to be here today as you discuss quality of care in the nation's 17,000 nursing homes for their 1.6 million residents. The federal government has a major stake in ensuring nursing home care quality and will have paid homes an estimated \$39 billion in fiscal year 2000. Over 2 years ago, this Committee held a hearing to discuss nursing home care in California. Troubled by our findings of poor care in the state's homes and weak oversight by the Health Care Financing Administration (HCFA) and the state oversight agency,<sup>1</sup> the Committee held additional hearings on nursing home care and oversight nationwide. These hearings prompted the Administration to announce a series of nursing home quality initiatives and the states to initiate greater oversight activity. In our reports and testimony since July 1998, we identified the following key weaknesses:

- State surveyors—the professional staff in state agencies who inspect nursing homes—understated the extent of serious care problems, which are those technically classified as causing “actual harm” to residents and those placing residents’ health, safety, or lives in “immediate jeopardy.” The understatement problem reflected procedural weaknesses in the states’ performance of surveys, or inspections, of the homes and the predictable timing of these surveys.
- Complaints by residents, family members, or facility staff alleging harm to residents remained uninvestigated for weeks or months.
- When serious deficiencies were identified, federal and state enforcement policies did not ensure that the deficiencies were addressed and remained corrected.
- Federal mechanisms for overseeing state monitoring of nursing home quality were limited in their scope and effectiveness.

In providing you information today on the status of federal and state efforts to ensure improvements in nursing home quality since the identification of these weaknesses and introduction of the quality initiatives, my remarks will focus on (1) progress in improving the detection of quality problems during annual surveys, (2) how the prevalence of identified problems has changed, (3) the status of efforts to strengthen states’ complaint investigation processes and federal enforcement policies, and (4) additional activities occurring at the federal level to improve oversight of states’ quality assurance activities. These remarks are based on a report we are issuing today that addresses these issues in more detail.<sup>2</sup>

Overall, the series of federal quality initiatives begun 2 years ago has produced a range of nursing home oversight activities that need continued federal and state commitment to

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<sup>1</sup>California Nursing Homes: Care Problems Persist Despite Federal and State Oversight (GAO/HEHS-98-202, July 27, 1998).

<sup>2</sup>Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives (GAO/HEHS-00-197).

reach their full potential. Certain of the federal initiatives seek to strengthen the rigor with which states conduct their required annual surveys of nursing homes. Others focus on the timeliness and reporting of complaint investigations and the use of management information to guide federal and state oversight efforts. The states are in a period of transition with regard to the implementation of these initiatives, partly because HCFA is phasing them in and partly because states did not begin their efforts from a common starting point. HCFA's efforts toward improving the oversight of states' quality assurance activities have begun but are unfinished or need refinement.

The results from states' recent standard surveys provide a picture of federal and state efforts in progress. On average, a slightly higher proportion of homes were cited nationwide for actual harm and immediate jeopardy deficiencies on their most recent survey than were cited during the previous survey cycle. While it was expected that more deficiencies would be identified owing to the increased rigor in nursing home inspections, the survey results could also suggest that nursing homes may not have made sufficient strides to measurably improve residents' quality of care. The results also show a wide variation across states in the proportion of homes with identified serious care deficiencies. While these proportions are expected to vary somewhat from one state to another, the wide range may reflect the extent to which the inspection of homes is inconsistent across states. In our view, the full potential of the nursing home initiatives to improve quality will more likely be realized if greater uniformity in the oversight process can be achieved.

#### BACKGROUND

Oversight of nursing homes is a shared federal and state responsibility. On the basis of statutory requirements, HCFA defines standards that nursing homes must meet to participate in the Medicare and Medicaid programs and contracts with states to certify that homes meet these standards through annual inspections and complaint investigations. The "annual" inspection, called a survey, which must be conducted on average every 12 months and no less than every 15 months at each home, entails a team of state surveyors spending several days in the home to determine whether care and services meet the assessed needs of the residents. HCFA establishes specific protocols, or investigative procedures, for state surveyors to use in conducting these comprehensive surveys. In contrast, complaint investigations, also conducted by state surveyors within certain federal guidelines and time frames, typically target a single area in response to a complaint filed against a home by a resident, the resident's family or friends, or nursing home employees. Quality-of-care problems identified during either standard surveys or complaint investigations are classified in 1 of 12 categories according to their scope (the number of residents potentially or actually affected) and their severity (potential for or occurrence of harm to residents).

Ensuring that documented deficiencies are corrected is likewise a shared responsibility. HCFA is responsible for enforcement actions involving homes with Medicare certification—about 86 percent of all homes. States are responsible for enforcing standards in homes with Medicaid-only certification—about 14 percent of the total. Enforcement actions can involve, among other things, requiring corrective action plans,

monetary fines, denying the home Medicare and Medicaid payments until corrections are in place, and, ultimately, terminating the home from participation in these programs. Sanctions are imposed by HCFA on the basis of state referrals. States may also use their state licensure authority to impose state sanctions.

HCFA is also responsible for overseeing each state survey agency's performance in ensuring quality of care in its nursing homes. One of its primary oversight tools is the federal monitoring survey, which is required annually for at least 5 percent of the nation's Medicare- and Medicaid-certified nursing homes. HCFA also maintains a central database—the On-Line Survey, Certification, and Reporting (OSCAR) System—that compiles, among other information, the results of every state survey conducted on Medicare- and Medicaid-certified facilities nationwide.

#### IMPROVEMENTS MADE IN ANNUAL SURVEY METHODS

Federal initiatives were introduced to strengthen the rigor with which states conduct required annual surveys of nursing homes. The states we visited have begun to use the new methods introduced by the initiatives to spot serious (actual harm and immediate jeopardy) deficiencies when conducting surveys,<sup>3</sup> but HCFA is still developing important additional steps, some of which will not be introduced until 2002 or 2003. HCFA and the states have also attempted to address problems with the predictable timing of the surveys, but improvements made have been modest at best.

#### Improvements Made in Standard Survey Methodology

In our prior work, we found that surveyors often missed significant care problems—such as pressure sores, malnutrition, and dehydration—because the methods they used to select a sample of a home's residents for review lacked sufficient rigor. To select the sample, surveyors rely on information from prior surveys, a facility-prepared census of residents grouped by medical condition, and observations of residents made during an initial tour of the home. Certain HCFA initiatives effective July 1999 were intended to introduce greater objectivity in the sample selection process. Under these initiatives, state survey agencies are instructed to use "quality indicators" to guide their decisions on where to focus their investigative efforts. Quality indicators are essentially numeric warning signs that flag the prevalence of care problems, such as greater-than-expected instances of weight loss, dehydration, or pressure sores. These outcome measures enable surveyors to rank the facility against other nursing homes in the state and the nation on 24 care dimensions. In selecting a sample of residents for review, surveyors use information developed from the quality indicators, which they later supplement with personal observations.

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<sup>3</sup>In addition to visiting California, Missouri, Washington, and Tennessee, we contacted officials in Maryland and Michigan, two states in which we had conducted reviews previously.

In conjunction with the use of quality indicators, HCFA also instructed surveyors to begin using a new set of investigative protocols, or procedural instructions, intended to make the facility inspections more thorough and more uniform, thus reducing the variation in the conduct of surveys within and across states. However, HCFA's new guidance on the use of quality indicators and protocols does not address all of the identified weaknesses in the survey methodology. HCFA needs to ensure the reliability of the data on which the quality indicators are based, because the data are self-reported by the nursing homes and are not independently verified. Also, in our view, the size of the sample of resident cases reviewed may not be sufficient to establish the prevalence of certain identified problems. HCFA plans to introduce additional survey methodology guidance in 2002 or 2003.

Efforts to Reduce Predictability  
in the Timing of Standard  
Surveys Have Been Modest

Surveyors can also miss care problems during the standard surveys when the timing of these visits is predictable, allowing facilities time to present themselves at inspection in ways that do not represent the home's normal routines or care practices. To address the predictability problem, HCFA required states to start at least 10 percent of standard surveys outside normal workday hours—either early morning, evening, or on weekends—beginning January 1, 1999. HCFA also instructed the states to avoid, if possible, scheduling a home's survey for the same month as the one in which the home's previous standard survey was conducted.

HCFA's tracking of states' progress in implementing the off-hour survey requirement has not been timely. Although the agency instructed states to begin the off-hour initiative in January 1999, it did not modify its national OSCAR database to enable identifying such surveys until 8 months later, in August 1999, and did not instruct the states to enter the data on such surveys until February 2000. It was another 6 months, in August 2000, before HCFA began contacting those states that fell short of meeting the 10-percent requirement to elicit improved performance.

Our analysis of successive standard surveys shows that many homes in the six states we reviewed continued to have their annual inspection within a short time from the anniversary of their previous inspection or at the end of the maximum allowed 15-month period between consecutive surveys. Both circumstances allow a home to anticipate when their survey will occur. (See table 1.)



Table 1: Predictability of Surveys

State	Number of homes	Percentage surveyed within 15 days of anniversary of previous survey	Percentage surveyed 14-15 months after previous survey	Percentage surveyed 15-16 months after previous survey	Total percentage of surveys considered predictable
California	1,301	8.0	31.4	15.0	54.4
Maryland	243	4.9	14.8	9.0	28.7
Michigan	434	14.0	14.3	9.9	38.2
Missouri	476	11.1	13.9	8.8	33.8
Tennessee	351	56.1	0	0	56.1
Washington	278	15.1	17.6	1.0	33.7

Note: Data were extracted from OSCAR in August 2000. Homes not showing a prior survey date were not included in this analysis.

Over half the surveys in Tennessee were conducted within 15 days of the anniversary of the previous standard survey.<sup>4</sup> In California and Maryland, where a large share of the surveys occurred late in the 15-month cycle, officials explained that an increased emphasis on conducting complaint investigations more promptly drew on the same surveyor staff who perform the annual surveys, which resulted in postponing many of the surveys until as late as possible.

In our view, the off-hour scheduling of surveys is too limited a step to effectively restrict homes' opportunities to prepare for their annual inspection. As we recommended in our July 1998 report, the predictability problem could be mitigated by segmenting the surveys into more than one visit. Currently, surveys are comprehensive reviews that can last several days and entail examining not only a home's compliance with resident care standards but also with administrative and housekeeping standards. Dividing the survey into segments performed over several visits, particularly for those homes with a history of serious deficiencies, would increase the presence of surveyors in these homes and provide an opportunity for surveyors to initiate broader reviews when warranted. With a segmented set of inspections, homes would not be able to relax their efforts to provide quality care because they could no longer rely on the likelihood of the next surveyor's visit being 12 to 15 months away.

<sup>4</sup>Until recently, Tennessee law limited the annual inspection time frame to 12 months. In May 2000, Tennessee modified this law to permit nursing homes to be surveyed at a maximum interval of 15 months.

**INCREASE IN IDENTIFIED DEFICIENCIES**  
**DIFFICULT TO INTERPRET**

In reviewing the identification of actual harm and immediate jeopardy deficiencies, we conducted an analysis of homes cited for these deficiencies in the periods before and after the introduction of the quality initiatives. We found the following:

- Overall, the proportion of homes with documented actual harm and immediate jeopardy deficiencies increased marginally, although some states experienced a decrease in the number of homes with these deficiencies.
- The variation across states in the share of homes cited for actual harm and immediate jeopardy deficiencies after the introduction of the initiatives remained wide—ranging from under 11 percent of homes in Maine to 58 percent of homes in Washington—but narrowed slightly from the period before the initiatives.

These results suggest that states may have become more rigorous in their identification and classification of serious deficiencies. The results could also indicate that, nationwide, the volume of such deficiencies may have increased slightly, which may be attributable in part to reported facility staff shortages during this time period. With regard to the variation in the shares of homes cited for serious deficiencies, the expectation is that, as the performance of standard surveys becomes more consistent across states, differences in results will shrink. (See table 2.)

**Table 2: Percentage of Homes With Actual Harm and Immediate Jeopardy Deficiencies Before and After Implementation of the Quality Initiatives**

State <sup>a</sup>	Number of homes surveyed <sup>a</sup> (1/99 to 7/00)	Percentage of home with actual harm and immediate jeopardy deficiencies		Percentage point difference
		Before initiatives (1/97 to 7/98)	After initiatives (1/99 to 7/00)	
<i>Increase of 5 percentage points or greater</i>				
Arizona	125 <sup>b</sup>	17.2	36.8	19.6
Arkansas	253 <sup>b</sup>	14.7	30.8	16.1
New York	606	13.3	27.6	14.3
Tennessee	353	11.1	24.1	13.0
North Carolina	409	31.0	42.1	11.1
New Jersey	936 <sup>b</sup>	13.0	23.8	10.8
Oregon	157	43.9	53.5	9.6
Massachusetts	541	24.0	32.9	8.9
West Virginia	144	12.3	20.1	7.8
Indiana	581	40.5	48.2	7.7
Louisiana	365 <sup>b</sup>	12.7	20.3	7.6
Georgia	384	17.8	25.0	7.2
Mississippi	196 <sup>b</sup>	24.8	31.6	6.8
Oklahoma	894 <sup>b</sup>	8.4	15.0	6.6
Colorado	229	11.1	16.6	5.5
Maryland	188 <sup>b</sup>	19.0	24.5	5.5
Missouri <sup>c</sup>	565	21.0	25.7	4.7
<i>Change of less than 5 percentage points</i>				
Maine	124	7.4	10.5	3.1
Minnesota	497	29.6	32.5	2.9
Texas	1313	22.2	24.9	2.7
Michigan	442	43.7	45.9	2.2
Nation	16,854	27.7	29.5	1.8
Pennsylvania	774	29.3	30.7	1.4
Illinois	891	29.8	31.1	1.3
South Carolina	176	28.6	29.5	0.9
Connecticut	260	62.9	63.5	0.6
Montana	105	38.7	39.0	0.3
California	1,301 <sup>b</sup>	28.2	28.2	0.0
Wisconsin	424	17.1	14.6	-2.5
Ohio	895	31.2	28.6	-2.6
Kentucky	306	28.6	25.2	-3.4
<i>Decrease of 5 percentage points or greater</i>				
Virginia	282	24.7	19.5	-5.2
Washington	281	63.2	57.7	-5.5
Nebraska	241	32.3	26.6	-5.7
Alabama	225	51.1	41.3	-9.8
Kansas	404 <sup>b</sup>	47.0	36.9	-10.1
South Dakota	112 <sup>b</sup>	40.3	29.5	-10.8
Florida	746	36.3	21.7	-14.6
Iowa	428 <sup>b</sup>	39.2	22.7	-16.5

<sup>a</sup>Twelve states and the District of Columbia were excluded from this analysis because they had fewer than 100 homes surveyed since January 1999.

<sup>b</sup>The number of homes cited in this state for the 1999-2000 period differed by 10 percent or more from the number documented for the prior period. In part, these differences are explained by the fact that some states have still not recorded the results of a home's most recent survey in OSCAR.

\*Although our work in Missouri focused on the agency that is responsible for surveying nonhospital-based nursing homes, the state's number of homes shown in this table also includes hospital-based facilities.

In July 2000, HCFA released a report indicating a direct relationship between low nursing home staffing levels and poor quality of care.<sup>6</sup> While recruiting and retaining staff have been long-standing concerns, state officials and nursing home surveyors we interviewed recently believe the problem has become acute and has directly affected the quality of care provided to nursing home residents. Reasons cited for the growing staffing problems include a highly competitive job market resulting from a robust economy combined with lower wages and benefits for nurse's aides compared with other health and non-health sector opportunities, and increased demand for staff from alternatives to nursing homes, such as assisted living facilities.<sup>7</sup> We identified 16 states that have increased their Medicaid payments to supplement nursing home staff wages and benefits by a specific amount.<sup>7</sup>

**COMPLAINT AND ENFORCEMENT  
PROCESSES ARE IMPROVING, BUT MORE  
TIME AND REFINEMENT NEEDED TO REACH GOALS**

The states we contacted have also made strides in addressing complaint investigations, but not enough time has elapsed to fully implement or evaluate the success of these efforts. For example, the states in our review were not yet investigating within 10 days all complaints that allege actual harm to a resident, as HCFA's complaint investigation initiative now requires, but they have efforts under way to reach that goal. Similarly, HCFA has begun applying stronger enforcement policies to ensure that homes comply with federal standards, but it is too early in their implementation to determine whether these policies have been effective.

The states we contacted generally attributed their inability to meet the 10-day investigative time frame for serious allegations to an increase in the number of complaints received, limited staffing levels, and competing priorities, particularly the need to complete standard surveys within the required cycle. Nevertheless, the increased attention HCFA and the states have placed on conducting complaint

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<sup>6</sup>See Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Vol. I-III (Baltimore, Md.: HCFA, Summer 2000).

<sup>7</sup>A 1996 Institute of Medicine study documented similar reasons for turnover and retention problems among nurses aides. Institute of Medicine, Nursing Staff in Hospitals and Nursing Homes: Is it Adequate? (Washington, D.C.: National Academy Press, 1996).

<sup>8</sup>"Wage pass-throughs" provide a specific amount or percentage increase in reimbursement, earmarked typically for the salaries, benefits, or both of direct care staff—such as nurses and nurse's aides. States that have enacted wage pass-throughs include Arkansas, California, Connecticut, Florida, Kansas, Maine, Michigan, Minnesota, Montana, Oklahoma, South Carolina, Texas, Utah, Vermont, Virginia, and Wisconsin. Four other states—Louisiana, Maryland, Massachusetts, and Missouri—only recently passed legislation and have not yet implemented their wage pass-through programs.

investigations in the past 18 months has resulted in some improvements. For example, among the states in our review, we noted the following:

- Increased survey resources. Several states have increased, or plan to increase, the number of surveyors, some of whom will be assigned specifically to conduct complaints investigations. Michigan created a complaints investigation team of 11 surveyors, representing about 10 percent of the state's total surveyor staff. Washington plans to increase its number of complaints investigators from 8 to 13.
- Improvements in classifying complaints: All the states in our study require the seriousness of complaints to be determined by an experienced surveyor; Tennessee and Washington further require that the surveyor be a licensed nurse. In Missouri, individuals without survey experience had been responsible for classifying complaints, but now an experienced district office surveyor, normally a nurse, does so. Nevertheless, the proper classification of complaints remains an important issue. For example, Michigan's small number of complaints alleging actual harm—17 of 902 complaints (2 percent) in the last half of 1999—raises questions about whether the complaints were appropriately classified. For the same time period, Maryland put 62 percent of its complaints in the actual harm category.
- Organizational changes. To improve control and oversight of complaints, both Maryland and Michigan have consolidated their nursing home complaint and survey activities into one office under a single manager. Michigan also added a manager responsible for direct oversight of the complaint investigation team. Missouri created a state complaint coordinator to ensure that complaints are handled in a timely manner.
- Upgrade of information systems. Several states are automating their information systems to track complaints more effectively. The use of these data systems enables oversight officials to ensure that states are complying with HCFA guidance on setting complaint investigation priorities and meeting prescribed investigation time frames. For example, Missouri plans to implement a new automated system in 2001 that should significantly improve management's ability to track the status and results of complaint investigations. Tennessee also is implementing a new system that will replace the manual tracking of complaints. Washington has modified its complaint tracking system to facilitate its use by the state agency's district offices.

HCFA intends to issue more detailed guidance to the states in 2001 as part of its complaint process improvement project. Among other things, the project will identify "best practices" for complaint investigations.

The Congress and the Administration recognized that additional resources were needed to address expanded workloads associated with implementing the nursing home quality

initiatives.<sup>4</sup> As a result, the Medicare survey and certification budget was increased in fiscal years 1999 and 2000, of which \$8 million and \$23.5 million, respectively, reflected funding for the nursing home initiatives. According to states' expenditure reports on the fiscal year 1999 allocation, much of the \$8 million appears to have gone unspent. However, a precise accounting of these funds is not available. On the one hand, discrepancies between the initiatives expenditure reports and the separate reports that capture all survey and certification expenditures (including the initiatives) raise the possibility that some states may have spent their initiatives funding but failed to account separately for initiatives expenditures as required by HCFA. On the other hand, the two sets of reports indicate that 28 states did not use their full fiscal year 1999 initiatives or survey and certification funding allocations, suggesting that a substantial portion of the \$8 million was not used for the nursing home initiatives in fiscal year 1999. States have not yet submitted final expenditure reports regarding the fiscal year 2000 initiative allocations.

HCFA has also strengthened the enforcement options available to impose sanctions on nursing homes that are cited for actual harm and immediate jeopardy violations. In September 1998, HCFA modified its policy to require that states refer for immediate sanctions any nursing home with a pattern of harming a significant number of residents on successive surveys. Effective December 15, 1999, HCFA expanded this policy to include deficiencies that harmed only one or a small number of residents on successive surveys. In an earlier report, we estimated that this change could increase the percentage of homes referred immediately for sanctions from approximately 1 percent to as many as 15 percent of homes nationally.<sup>5</sup> Early indications from some states are that their referrals of homes to HCFA for sanctions are on the rise.

Additional funds were also provided in fiscal years 1999 and 2000 to hire more federal staff to reduce the large number of pending appeals by nursing homes and collect assessed fines faster. The expectation is that the more expeditious resolution of appeals will heighten the deterrent effect of civil fines. It is too early to assess the effect of the additional funding on the number of pending appeals because the new staff were only hired within the past year and other changes in enforcement policy are expected to increase the volume of nursing home appeals.

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<sup>4</sup>HCFA determined that additional state resources would be consumed by initiatives requiring states to better target and monitor poorly performing homes and to investigate any complaint alleging actual harm within 10 days of complaint receipt. HCFA also anticipated that the use of quality indicators would increase surveyor preparation time before visiting a nursing home and that this could lead to a net increase in total survey time.

<sup>5</sup>Nursing Homes: HCFA Initiatives to Improve Care Are Under Way But Will Require Continued Commitment (GAO/T-HEHS-99-155, June 30, 1999), p. 12.

and state funding allocations are based on states' historical activity levels and costs. Such a process rewards states that spent substantial amounts in the past and holds down funding for those that historically spent little on these activities. HCFA's fiscal year 2001 annual performance plan, as required under the Government Performance and Results Act of 1993, establishes a performance goal of moving from the current budget process to a need-based process. HCFA proposes developing national standard survey measures and costs that would be used to price the workload for each state survey agency.

### CONCLUSIONS

Over the past 2 years, the considerable attention focused on nursing home quality of care has resulted in heightened awareness and responses at many levels—the federal government, the states, and the nursing home industry. Many of the resulting new policies and practices have only recently been instituted and will need time to take hold. For example, better detection and classification of serious deficiencies through the standard survey process will require further methodological developments aimed at improving the selection of resident cases for review. New efforts will be required to reduce the opportunities for homes to predict the timing of and prepare for these inspections. States' efforts to expedite complaint investigations and systematize the reporting of investigation results are at various stages of completion. More time must elapse to know whether strengthened federal enforcement policies in fact create the incentives and environment that discourage poor care and ensure permanent corrections. Similarly, with respect to improved federal oversight, the effectiveness of recent internal HCFA reorganizations and management information reporting enhancements can only be judged in the months to come.

Vigilance by both state and federal officials must be unrelenting to ensure the safety and well-being of the nation's nursing home residents. The performance of oversight can neither be taken for granted nor relaxed, which means that neither HCFA nor the states can afford to lose their current momentum. The Congress, too, can play an important role in keeping the spotlight on oversight agencies and the nursing home industry to achieve quality improvements. We will continue to assist this Committee and the Congress as needed to assess progress on these issues.

\* \* \* \*

Mr. Chairman and Members of the Committee, this concludes my prepared statement. I will be happy to answer any questions you may have.

### GAO CONTACTS AND ACKNOWLEDGMENTS

For future contacts regarding this testimony, please call Kathryn G. Allen at (202) 512-7118 or Walter Ochinko at (202) 512-7157. Connie Peebles Barrow, Jack Brennan, Hannah Fein, Robert Lappi, Peter Oswald, Peter Schmidt, Don Walthall, and Opal Winebrenner also made contributions to this statement.

RELATED GAO PRODUCTS

Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives (GAO/HEHS-00-197, Sept. 28, 2000).

Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality (GAO/HEHS-00-6, Nov. 4, 1999).

Nursing Homes: HCFA Should Strengthen Its Oversight of State Agencies to Better Ensure Quality Care (GAO/T-HEHS-00-27, Nov. 4, 1999).

Nursing Home Oversight: Industry Examples Do Not Demonstrate That Regulatory Actions Were Unreasonable (GAO/HEHS-99-154R, Aug. 13, 1999).

Nursing Homes: HCFA Initiatives to Improve Care Are Under Way but Will Require Continued Commitment (GAO/T-HEHS-99-155, June 30, 1999).

Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit (GAO/HEHS-99-157, June 30, 1999).

Nursing Homes: Complaint Investigation Processes in Maryland (GAO/T-HEHS-99-146, June 15, 1999).

Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents (GAO/HEHS-99-80, Mar. 22, 1999).

Nursing Homes: Stronger Complaint and Enforcement Practices Needed to Better Ensure Adequate Care (GAO/T-HEHS-99-89, Mar. 22, 1999).

Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards (GAO/HEHS-99-46, Mar. 18, 1999).

California Nursing Homes: Care Problems Persist Despite Federal and State Oversight (GAO/HEHS-98-202, July 27, 1998).

California Nursing Homes: Federal and State Oversight Inadequate to Protect Residents in Homes With Serious Care Violations (GAO/T-HEHS-98-219, July 28, 1998).

(201108)



September 2000

# NURSING HOMES

## Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives



GAO

Accountability \* Integrity \* Reliability



G A O

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United States General Accounting Office  
Washington, DC 20548Health, Education, and  
Human Services Division

B-284751

September 28, 2000

The Honorable Charles E. Grassley  
Chairman  
The Honorable John B. Breaux  
Ranking Minority Member  
Special Committee on Aging  
United States Senate

The Honorable Christopher S. Bond  
United States Senate

Since 1997, the Senate Special Committee on Aging has focused considerable attention on the need to improve the quality of care for the nation's 1.6 million nursing home residents, a highly vulnerable population of elderly and disabled individuals. In a series of reports and testimonies prepared at the Committee's request, we found significant weaknesses in federal and state survey and oversight activities designed to detect and correct quality problems.<sup>1</sup> For example, we reported that about 15 percent of the nation's 17,000 nursing homes—an unacceptably high number—repeatedly had serious care problems that caused actual harm to residents or placed them at risk of death or serious injury (immediate jeopardy). Our key findings on the nursing home survey process included the following:

- The results of state surveys understated the extent of serious care problems, reflecting procedural weaknesses in the surveys and their predictability.
- Serious complaints by residents, family members, or staff alleging harm to residents remained uninvestigated for weeks or months.
- When serious deficiencies were identified, federal and state enforcement policies did not ensure that the deficiencies were addressed and remained corrected.
- Federal mechanisms for overseeing state monitoring of nursing home quality were limited in their scope and effectiveness.

Concurrent with the Committee's July 1998 hearing, the President announced a series of initiatives intended to address many of the weaknesses we identified. Since that time, the Administration has expanded the number of initiatives to about 30 and the

<sup>1</sup>See related GAO products listed at end of this report.

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Congress has appropriated additional funds to support the increased workload associated with implementing the initiatives. To determine the effect of the initiatives, you asked us to assess (1) progress in improving the detection of quality problems and changes in measured nursing home quality, (2) the status of efforts to strengthen states' complaint investigation processes and federal enforcement policies, and (3) additional steps taken at the federal level to improve oversight of states' quality assurance activities.

In conducting our review, we analyzed data from the federal On-Line Survey, Certification, and Reporting (OSCAR) System, which compiles the results of state nursing home surveys. We visited California, Missouri, Tennessee, and Washington, interviewing officials in state survey agencies and their district offices.<sup>2</sup> California and Missouri represented states that were about average in terms of the number of actual harm and immediate jeopardy deficiencies cited in state surveys prior to the initiatives. Tennessee represented the low end of the range and Washington the high end. We also contacted officials in Maryland and Michigan, states that were included in our prior work. In addition, we interviewed Health Care Financing Administration (HCFA) officials at both headquarters and regional offices. HCFA, an agency within the Department of Health and Human Services (HHS), is responsible for ensuring that each state establishes and maintains the capability to periodically survey nursing homes that receive federal payments in order to ensure that the homes provide quality care to residents. Finally, we reviewed relevant documents from both state agencies and HCFA. We conducted our review from January to August 2000 in accordance with generally accepted government auditing standards.

#### RESULTS IN BRIEF

Overall, the introduction of the recent federal quality initiatives has generated a range of nursing home oversight activities that need continued federal and state attention to reach their full potential. The states are in a period of transition with regard to the implementation of the quality initiatives, in part because HCFA is phasing them in and in part because states did not begin their efforts from a common starting point. Efforts at the federal level toward improving the oversight of states' quality assurance activities have commenced but are unfinished or need refinement.

Federal initiatives were introduced to strengthen the rigor with which states conduct required annual nursing home surveys. The states we visited have begun to use the new methods introduced by the initiatives to spot serious deficiencies when conducting surveys, but HCFA is still developing important additional steps that may not be introduced until 2002 or 2003. Likewise, efforts to reduce the predictable timing of the surveys—that is, to minimize the opportunity for homes so inclined to cover up problems—have been modest to date. To measure the effect of the survey

<sup>2</sup>State surveyors are typically assigned to local district offices (sometimes referred to as regional offices) that are responsible for conducting nursing home surveys and complaint investigations. In Missouri, separate state offices are responsible for overseeing hospital-based and all other nursing homes. We focused our work on the Missouri office that oversees the approximately 85 percent of all nursing homes that are not hospital-based.

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process improvements, we analyzed the change in the number of nursing homes cited for serious deficiencies in the periods before and after the introduction of the quality initiatives. Our results showed a marginal increase nationwide in the proportion of homes with documented actual harm and immediate jeopardy deficiencies, although there was considerable variation across states, with some states experiencing a decrease in homes with these deficiencies. These results suggest that states may have become more rigorous in their identification and classification of serious deficiencies. The results could also indicate that the volume of such deficiencies has actually increased slightly nationwide, a situation consistent with states' heightened concerns about potential facility staff shortages during this same time period.

The states we contacted also have made strides in improving their investigations of and follow-up to complaints, but not enough time has elapsed to consider these efforts complete. For example, the states in our review were not yet investigating all complaints that allege actual harm to a resident within 10 days, as HCFA now requires, but were working toward that goal by hiring additional surveyors to staff the investigations, establishing procedures that make it easier to file complaints, or developing new tracking systems to improve their oversight of complaint investigations by local district offices. For some states, the provision of federal funding to support the nursing home initiatives came too late in the state budget cycle for agencies to capitalize on the additional funds for fiscal year 1999. HCFA also has strengthened the enforcement tools available to sanction nursing homes that are cited for actual harm and immediate jeopardy violations, but too little time has elapsed to assess the application of these tools. Early indications from some states are that their referrals of homes to HCFA for sanctions are on the rise. Finally, additional funds were provided in fiscal years 1999 and 2000 to hire new HHS staff in order to reduce the large number of pending appeals by nursing homes and to collect assessed fines faster. The expectation is that the more expeditious resolution of appeals will heighten the deterrent effect of civil fines. It is too early to assess the effect of the additional funding on the number of pending appeals because the new staff were only hired within the past year and other changes in enforcement policy are expected to increase the volume of nursing home appeals.

To improve nursing home oversight at the federal level, HCFA has made recent organizational changes to address past consistency and coordination problems between its central office and 10 regional offices. It also intends to intensify its use of management information data systems and reports to verify and assess states' oversight activities and view more closely the performance of the homes themselves. Our review showed that an examination of previously available information could have identified shortcomings in a state's survey activities even before they came to light as the result of a criminal investigation.

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**BACKGROUND**

Oversight of nursing homes is a shared federal and state responsibility. On the basis of statutory requirements, HCFA defines standards that nursing homes must meet to participate in the Medicare and Medicaid programs and contracts with states to assess whether homes meet these standards through annual surveys and complaint investigations. The "annual" standard survey, which must be conducted on average every 12 months and no less than once every 15 months at each home, entails a team of state surveyors spending several days in the home to determine whether care and services meet the assessed needs of the residents and whether the home is in compliance with long-term-care facility requirements. HCFA establishes specific protocols, or investigative procedures, for state surveyors to use in conducting these comprehensive surveys. In contrast, complaint investigations, also conducted by state surveyors but following the individual state's procedures, within certain federal guidelines and time frames, target a single area, typically in response to a complaint filed against a home by a resident, the resident's family or friends, or nursing home employees. Quality-of-care problems identified during either standard surveys or complaint investigations are classified in one of 12 categories according to their scope (the number of residents potentially or actually affected) and their severity. An A-level deficiency is the least serious and is isolated in scope, while an L-level deficiency is the most serious and is considered to be widespread in the nursing home (see table 1). At some homes, state surveyors identify no deficiencies.

**Table 1: Scope and Severity of Deficiencies**

Severity	Scope		
	Isolated	Pattern	Widespread
Immediate jeopardy*	J	K	L
Actual harm	G	H	I
Potential for more than minimal harm	D	E	F
Potential for minimal harm <sup>†</sup>	A	B	C

\*Actual or potential for death/serious injury.

<sup>†</sup>Nursing home is considered to be in "substantial compliance."

Ensuring that documented deficiencies are corrected is likewise a shared responsibility. HCFA is responsible for enforcement actions involving homes with Medicare certification—about 86 percent of all homes.<sup>3</sup> The scope and severity of a deficiency determines the applicable enforcement action and whether it is optional or mandatory. Enforcement actions can involve, among other things, requiring corrective action plans; monetary fines; denying the home Medicare and Medicaid payments; and, ultimately, terminating the home from participation in these programs. Sanctions are imposed by HCFA on the basis of state referrals. HCFA normally accepts a state's recommendations for sanctions or other corrective actions but can modify them. Before a sanction is imposed, federal policy generally gives

<sup>3</sup>Included in this percentage are homes certified for both Medicaid and Medicare.

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nursing homes a grace period of 30 to 60 days to correct a deficiency. With HCFA approval, states may impose their own sanctions, and some prefer to do so because they may impose them immediately, without giving the home a grace period to correct the deficiency.<sup>4</sup> States may also use their state licensure authority to impose state sanctions. States are responsible for enforcing standards in homes with Medicaid-only certification—about 14 percent of the total. They may use the federal sanctions or rely upon their own state licensure authority and nursing home sanctions.

HCFA also is responsible for overseeing each state survey agency's performance in ensuring quality of care in its nursing homes. Its primary oversight tools are the federal comparative and observational surveys conducted annually in at least 5 percent of the nation's certified Medicare and Medicaid nursing homes. A comparative survey involves a federal survey team conducting a complete, independent survey of a home within 2 months of the completion of a state's survey in order to compare and contrast the findings.<sup>5</sup> In an observational survey, one or two federal surveyors accompany a state survey team to a nursing home to watch the team conduct survey tasks, give immediate feedback, and later rate the team's performance. The vast majority of federal surveys are observational. Additionally, in 1996 HCFA initiated the State Agency Quality Improvement Program (SAQIP), which requires states to self-report their compliance with seven performance standards and to implement quality improvement plans to address any deficiencies identified in their survey processes.

In its federal monitoring role, HCFA directs the states' implementation of the Administration's nursing home initiatives, which are intended to improve nursing home oversight and quality of care. Many of the initiatives address previous problems identified by us, HCFA, and others. This report focuses on selected initiatives from the following three areas:

- **Improving nursing home reviews.** These initiatives are intended to strengthen states' periodic surveys and complaint investigations, enabling surveyors to better detect quality-of-care deficiencies.
- **Ensuring compliance.** These initiatives are intended to ensure that homes with serious deficiencies or homes that repeatedly cause harm to residents promptly correct deficiencies and sustain compliance with federal requirements thereafter.

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<sup>4</sup>If a state has a unique enforcement sanction, it may obtain HCFA approval to use it in lieu of a federal remedy. The state must satisfy HCFA that its sanction is as effective as a federal remedy in deterring noncompliance and correcting deficiencies. In addition, state sanctions must meet several general requirements, including timing and notice requirements in federal regulations and, according to HCFA, consistency with statutory intent.

<sup>5</sup>The Omnibus Budget Reconciliation Act of 1987 requires HCFA to conduct comparative surveys within 2 months of states' surveys. In August 1999, HCFA urged its regional offices to commence comparative surveys within 14 to 28 days after a state's survey.

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- Improving federal monitoring. These initiatives are intended to ensure that HCFA and its regional offices use appropriate oversight mechanisms and data systems to assess the effectiveness of states' survey activities.

Appendix I provides a chronology of and summarizes the key quality initiatives discussed in this report. Though many initiatives were announced in July 1998, some important changes were not implemented until the second half of 1999 and others are still in the planning phase.

PROGRESS MADE IN IMPROVING ANNUAL SURVEYS  
BUT MEASURING THE EFFECT IS PROBLEMATIC

HCFA and the six states we contacted have taken important steps toward improving the rigor of nursing home surveys. HCFA has begun a major redesign of its nursing home survey methodology, but only phase one of the overall plan has been implemented by state survey agencies. When phase two is completed, HCFA should have significantly improved the tools for effectively identifying the scope and severity of care problems. However, the second phase is not expected to be implemented until 2002 or 2003. Despite the progress to date in improving surveyors' ability to detect deficiencies, the timing of nursing home surveys in some states continues to be predictable, allowing facilities to mask certain deficiencies if they choose to do so. Recognizing the need for self-improvement in the type and extent of oversight, the states we visited are beginning to identify and address other weaknesses in the survey process not covered by the Administration's initiatives. Consistent with the expectation that improvements in the survey process would lead to the identification of more problems, the proportion of homes with serious deficiencies increased in many states after the introduction of survey methodology improvements. Although the identification of more deficiencies could be the result of better detection, growing reports of problems with nursing home staffing raise concerns that the actual proportion of homes with deficiencies may have increased. This possibility underscores the importance of adequate federal and state oversight of nursing homes.

Survey Methodology Strengthened and Further  
Improvements Are in the Planning Phase

Annual standard surveys provide states the opportunity to systematically and comprehensively assess nursing home quality. In our prior work, we found that surveyors often missed significant care problems—such as pressure sores, malnutrition, and dehydration—because the methods they used lacked sufficient rigor.<sup>4</sup> In addition, problems went undetected because nursing homes were able to predict the timing of their next survey and, if so inclined, conceal problems such as routinely having too few staff to care for residents.

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<sup>4</sup>California Nursing Homes: Care Problems Persist Despite Federal and State Oversight (GAO/HEHS-98-202, July 27, 1998).

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Sampling Methodology

In response to survey methodology weaknesses, HCFA planned a two-phase revision of the survey process. Phase one introduced a new tool to help surveyors do a better job of selecting a resident sample, instructed states to increase the sample size in areas of particular concern, and required the use of investigative protocols intended to make the survey process more systematic. Still in the planning stages, phase two improvements will tackle problems that remain, such as ensuring rigor in the augmentation of the initial sample selected off-site and improving the thoroughness of the on-site investigations.

Surveyors' assessment of the quality of care provided to a sample of residents serves as the basis for evaluating nursing homes. Effective July 1999, HCFA instructed state survey agencies to begin using "quality indicators" to review information on the care provided to a home's residents before actually visiting the home. Quality indicators are essentially numeric warning signs of the prevalence of care problems, such as greater-than-expected instances of weight loss, dehydration, or pressure sores. They are derived from nursing homes' assessments of residents and rank a facility in 24 areas compared with other nursing homes in the state.<sup>7</sup> By using the quality indicators to select a preliminary sample of residents before the on-site review, surveyors are better prepared to identify potential care problems.<sup>8</sup> Surveyors augment this preliminary sample with additional resident cases once they arrive at the nursing home. In conjunction with the introduction of quality indicators, HCFA also instructed surveyors to (1) increase the sample size in areas such as maintaining proper body weight (nutrition), fluid intake (dehydration), and pressure sores and (2) begin using a series of investigative protocols in these and other areas. The protocols are procedural instructions intended to provide greater standardization and make the on-site surveys thorough. Our prior work noted that the sample typically included an insufficient number of different types of resident cases to adequately identify serious quality problems.

The need to provide training in the use of quality indicators to the approximately 3,500 state nursing home surveyors delayed implementation. HCFA held four training sessions for about 800 supervisory-level staff—state survey directors, state trainers, and lead surveyors—during April through June 1999. In turn, these individuals trained surveyors in their local offices.

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<sup>7</sup>Quality indicators were the result of a HCFA-funded project at the University of Wisconsin. The developers based their work on nursing home resident assessment information known as the minimum data set—data that all homes are required to report to HCFA. See Center for Health Systems Research and Analysis, Facility Guide for the Nursing Home Quality Indicators (University of Wisconsin-Madison: Sept. 1999).

<sup>8</sup>Prior to the introduction of quality indicators, selection of the sample was less systematic, relying on a listing of residents and their conditions maintained at the nursing home and on observation of residents made during a walk-through of the facility.



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Though the use of quality indicators and protocols introduced more rigor into the survey process, they are not a panacea for all survey methodology problems. Because the basis for quality indicators is self-reported data by nursing homes, there needs to be confidence that the data are accurate. In addition, some portion of the residents selected using the quality indicators may no longer be in the nursing home—a problem frequently identified by the surveyors we interviewed. These problems highlight the importance of on-site augmentation of the sample. Finally, the current protocols are a starting point, but additional steps need to be taken to ensure that surveyors thoroughly and systematically assess the care areas targeted using the quality indicators.

To address these remaining problems with sampling and the investigative protocols, HCFA is planning a second revision of its survey methodology to be implemented in 2002 or 2003. The focus of phase two is (1) improving the on-site augmentation of the preliminary sample selected off-site using the quality indicators and (2) strengthening the protocols used by surveyors to ensure more rigor in their on-site investigations. We continue to believe that implementation of this phase is necessary for HCFA to fully respond to our recommendation to significantly improve the ability of surveys to effectively identify the existence and extent of deficiencies.

#### Survey Predictability

To address the predictability problem, HCFA required states to start at least 10 percent of standard surveys outside the normal workday—either on weekends, in the early morning, or in the evening—beginning January 1, 1999. HCFA also instructed the states to avoid, if possible, scheduling a home's survey for the same month as the one in which the home's previous standard survey was conducted.

Tracking states' progress in implementing surveys that begin outside the normal workday has been problematic for HCFA. The agency did not modify its data system to allow states to identify such surveys in OSCAR until August 1999—8 months after the requirement to conduct such surveys was implemented. In February 2000, HCFA instructed states to begin identifying off-hours surveys in OSCAR for those conducted on or after October 1, 1999. HCFA data for the period October 1, 1999, through June 30, 2000, indicate that nationally about 10 percent of surveys were started outside normal working hours. However, in August 2000, HCFA sent letters to states performing well below the 10-percent target, reminding them of the requirement, asking them to confirm the accuracy of OSCAR data, and asking how they intend to increase their percentage of off-hour surveys.<sup>9</sup>

Though varying the starting time of surveys may be beneficial, this initiative is too limited in reducing survey predictability. Our analysis of the most current survey data shows that between 29 percent and 56 percent of the surveys conducted in six states were predictable (see table 2). Many surveys could be viewed as being predictable because they were conducted within a month of the 15-month limit

<sup>9</sup>States still have the opportunity to meet the 10-percent requirement by performing more than 10 percent of surveys off-hours during the remainder of the fiscal year.

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between annual surveys. As the 15-month limit approaches, homes are aware that the survey will soon occur. Both California and Maryland officials attributed delays in conducting annual surveys to the increased emphasis on investigating complaints more promptly, which required delaying many annual surveys. In fact, a third of the surveys in Maryland as well as 10 percent of California and 7 percent of Michigan surveys were late—that is, conducted after the 16<sup>th</sup> month.

Surveys that occur at nearly the same time each year may also be considered predictable. As table 2 shows, over half the surveys in Tennessee were conducted within 15 days of the anniversary of the previous standard survey. Tennessee officials told us that their predictability problem resulted in large part from a state law requiring homes to be surveyed at least every 12 months instead of the maximum 15 months permitted by federal law.<sup>10</sup> We continue to believe that our July 1998 recommendation to make annual surveys less predictable by segmenting them into more than one review throughout the year has merit. Such an approach would give surveyors more opportunities to observe problematic homes and initiate broader reviews when warranted.

**Table 2: Predictable Surveys for Nursing Homes in Six States**

State	Number of homes	Surveyed within 15 days of 1-year anniversary of last survey (percent) <sup>a</sup>	Surveyed between 14 and 15 months after last survey (percent)	Surveyed between 15 and 16 months after last survey (percent)	Percentage of total predictable Surveys
California	1,301	8.0	31.4	15.0	54.4
Maryland	243	4.9	14.8	9.0	28.7
Michigan	434	14.0	14.3	9.9	38.2
Missouri	476	11.1	13.9	8.8	33.8
Tennessee	351	56.1	0	0	56.1
Washington	278	15.1	17.6	1.0	33.7

<sup>a</sup>For the "15-day" analysis, we included homes whose current survey was conducted between 15 days preceding and 15 days following the 1-year anniversary of the prior survey.

Note: Data were extracted from OSCAR in August 2000. Homes not showing a prior survey date were not included in this analysis.

<sup>10</sup>In May 2000, Tennessee modified this law to permit homes to be surveyed at a maximum interval of 15 months.

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State Initiatives

States are also undertaking their own initiatives to improve the survey process. In some cases, these changes are under way but not complete. Some states plan to hire new surveyors (see table 3) and have made efforts to improve the monitoring of their local survey offices. California plans to hire 200 new surveyors in 2000 in order to increase the frequency and unpredictability of surveys and to expand its oversight of poorly performing homes. In Maryland, the number of surveyors is projected to reach 59 by January 2001—a 100-percent increase since July 1999. Prior to the initiatives, local district offices in California had generally operated with considerable autonomy and with little centralized control. When we visited in April 2000, California was in the process of increasing the number of district offices and realigning existing districts to obtain a more appropriate balance between workload and staffing. To facilitate oversight, each office will report to one of four field coordinators (north, central, south, and Los Angeles) who report directly to the assistant deputy director of the state survey agency. California is also expanding its quality assurance reviews of survey findings after identifying significant problems in survey documentation, including the scope and severity of deficiencies classified lower than the evidence in the survey documentation warranted and errors in survey procedure. Missouri officials told us that by the end of 2000, they plan to establish a new quality assurance unit that will be responsible for reviewing a largely random sample of completed surveys and complaint investigations from each of its seven district offices. Tennessee increased oversight and control of district office operations by hiring a full-time quality inspector to conduct targeted reviews in each of the state's three district offices. These reviews have resulted in the identification of serious weaknesses in the survey process and the scheduling of remedial training sessions for surveyors.

**Table 3: Examples of Planned State Funding Increases to Hire Additional Surveyors and Enhance Oversight of Nursing Homes**

State	Objective of state funding increase
California	California's 2000-2001 budget contained an "Aging With Dignity Initiative." It provided over \$15 million to hire more than 200 new surveyors to (1) increase the frequency and unpredictability of nursing home surveys, (2) expand reviews of poorly performing nursing homes, and (3) guarantee a rapid response to nonemergency complaints. This initiative also included substantial funding for nursing home quality-of-care enhancements such as providing \$10 million for cash awards to exemplary nursing homes. California officials estimate that about one-third of these increases respond to Medicare requirements.
Maryland	Maryland plans to provide \$1.1 million for increased state oversight in a supplemental budget for fiscal 2001. Of that, about \$600,000 would hire 20 additional inspectors, allowing the state to visit nursing homes twice a year instead of once.
Missouri	Missouri's state legislature provided \$318,000 in appropriation authority to help fund 27 positions to meet new or enhanced state and federal mandates related to survey, licensure, and complaint activities at long-term-care facilities.

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Considerable Inter-State Variation Still Exists in  
Citation of Serious Deficiencies,  
but Range Is Beginning to Narrow

Consistent with the expectation that improvements in the survey process would lead to the identification of more problems, the proportion of homes identified with serious deficiencies increased in a majority of states after the introduction of survey methodology improvements. The variation in actual harm and immediate jeopardy deficiencies is still great—ranging from 10.5 percent of homes in Maine to 58 percent in Washington—but appears to be narrowing.

Table 4 shows the change in actual harm and immediate jeopardy deficiencies in states where a minimum of 100 nursing homes was surveyed since January 1999.<sup>11</sup> In some states, these shifts were significant:

- Seventeen states had a 5 percentage point or greater increase in the proportion of homes identified with actual harm and immediate jeopardy deficiencies. Most were states with the lowest proportion of homes with such serious deficiencies before the initiatives.
- Eight states experienced a 5 percentage point or greater decrease in the identification of serious deficiencies. These states generally cited a high proportion of homes with serious deficiencies before the initiatives (well above the national average), and some were still near or above the national average after the initiatives.
- The remaining 13 states were relatively stable—experiencing approximately a 3-percentage-point change or less.

Our analysis suggests that the extent of the variation across states in actual harm and immediate jeopardy citations has begun to narrow. This outcome is consistent with the initiatives' intent to reduce the considerable inter-state variation through a strengthened and more consistent survey process.

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<sup>11</sup>We excluded Alaska, Delaware, the District of Columbia, Hawaii, Idaho, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, and Wyoming from this analysis because fewer than 100 homes were surveyed and even a small increase or decrease in the number of homes with serious deficiencies in such states produces a relatively large percentage point change.

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**Table 4: Homes With Actual Harm and Immediate Jeopardy Deficiencies Before and After Implementation of the Quality Initiatives**

State (Includes only those in which 100 or more homes were surveyed since 1/99)	Number of homes surveyed (1/99 to 7/00)	Percentage of homes with actual harm and immediate jeopardy deficiencies		Percentage point difference
		Before initiatives (1/97 to 7/98)	After initiatives (1/99 to 7/00)	
<i>Increase of 5 percentage points or greater</i>				
Arizona	125 <sup>a</sup>	17.2	36.8	19.6
Arkansas	253 <sup>a</sup>	14.7	30.8	16.1
New York	606	13.3	27.6	14.3
Tennessee	353	11.1	24.1	13.0
North Carolina	409	31.0	42.1	11.1
New Jersey	386 <sup>a</sup>	13.0	23.8	10.8
Oregon	157	43.9	53.5	9.6
Massachusetts	641	24.0	32.9	8.9
West Virginia	144	12.3	20.1	7.8
Indiana	681	40.5	48.2	7.7
Louisiana	365 <sup>a</sup>	12.7	20.3	7.6
Georgia	364	17.8	25.0	7.2
Mississippi	196 <sup>a</sup>	24.8	31.6	6.8
Oklahoma	394 <sup>a</sup>	8.4	15.0	6.6
Colorado	220	11.1	16.6	5.5
Maryland	188 <sup>a</sup>	19.0	24.5	5.5
Missouri <sup>b</sup>	565	21.0	25.7	4.7
<i>Change of less than 5 percentage points</i>				
Maine	124	7.4	10.5	3.1
Minnesota	437	29.6	32.5	2.9
Texas	1,313	22.2	24.9	2.7
Michigan	442	43.7	45.9	2.2
Nation	16,854	27.7	29.5	1.8
Pennsylvania	774	23.3	30.7	1.4
Illinois	891	23.8	31.1	1.3
South Carolina	176	28.6	29.5	0.9
Connecticut	260	52.9	53.5	0.6
Montana	105	38.7	39.0	0.3
California	1,501 <sup>a</sup>	28.2	28.2	0.0
Wisconsin	424	17.1	14.6	-2.5
Ohio	525	31.2	28.6	-2.6
Kentucky	306	28.6	26.2	-2.4
<i>Decrease of 5 percentage points or greater</i>				
Virginia	282	24.7	19.5	-5.2
Washington	281	63.2	57.7	-5.5
Nebraska	241	32.3	26.6	-5.7
Alabama	225	51.1	41.3	-9.8
Kansas	404 <sup>a</sup>	47.0	36.9	-10.1
South Dakota	112 <sup>a</sup>	40.3	29.5	-10.8
Florida	746	36.3	21.7	-14.6
Iowa	428 <sup>a</sup>	39.2	22.7	-16.5

<sup>a</sup>Compared with the period before the initiatives, there was more than a 10-percent difference in the number of homes analyzed for these states. In part, these differences are explained by the fact that some states have still not recorded the results of a home's most recent survey in OSCAR.

<sup>b</sup>Although our work in Missouri focused on the agency responsible for oversight of non-hospital-based nursing homes, hospital-based facilities in the state were included in developing this table.

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Concerns Exist That Quality Has Been Affected by Problems in Maintaining Adequate Facility Staffing

Although increased deficiencies could be the result of better detection, reports from states of problems with nursing home staffing raise concerns that actual deficiencies may have increased. In July 2000, HCFA released a report that found a direct relationship between low nursing home staffing levels and poor quality of care.<sup>12</sup> Recruiting and retaining staff for nursing homes has been a long-term concern. According to state officials and nursing home surveyors we interviewed in the spring of 2000, however, recruiting and retaining nursing home aides has become more difficult, a situation that they also believe has affected the quality of care provided to nursing home residents. We were told that nursing homes often have difficulty filling vacancies, resulting in an inadequate number of qualified and trained staff. Reasons cited for the growing staffing problems include a highly competitive job market resulting from the robust economy; increased demand for staff from alternatives to nursing homes, such as assisted living facilities; and lower wages and benefits for nursing aides compared with other health- and non-health-sector opportunities.<sup>13</sup>

A significant number of states have taken steps that attempt to improve the recruitment and retention of direct care staff. We identified 16 states that have increased and 4 others that plan to increase Medicaid payments to supplement nursing home staff wages and/or benefits by a specific amount, commonly referred to as a "wage pass-through."<sup>14</sup> For example, Michigan's current wage pass-through provides for a maximum increase of 75 cents per hour for staff. Maine has implemented a one-time supplement to its payments, which gives nursing homes the flexibility to either establish new positions or to increase the wages of direct care staff. Some states are requiring that facilities maintain minimum staffing levels in order to receive the additional funding through their wage pass-through programs. In Arkansas, facilities are required to maintain state established minimum staffing levels based on the number of facility residents if they choose to receive the \$4.93 increase in Medicaid reimbursement per patient day. (See app. III for a brief description of each state's program.)

<sup>12</sup>See Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes (Baltimore, Md.: HCFA, Summer 2000), vols. I-III.

<sup>13</sup>A 1996 Institute of Medicine study documented similar reasons for turnover and retention problems among nurse's aides: Institute of Medicine, Nursing Staff in Hospitals and Nursing Homes: Is It Adequate? (Washington, D.C.: National Academy Press, 1996).

<sup>14</sup>Wage pass-throughs provide a specific amount or percentage increase in reimbursement, earmarked typically for direct care staffs—such as nurses and nurse's aides—salaries and/or benefits. States that have enacted wage pass-throughs include Arkansas, California, Connecticut, Florida, Kansas, Maine, Michigan, Minnesota, Montana, Oklahoma, South Carolina, Texas, Utah, Vermont, Virginia, and Wisconsin. Four other states—Louisiana, Maryland, Massachusetts, and Missouri—recently passed legislation and have not yet implemented their wage pass-through programs.

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**COMPLAINT AND ENFORCEMENT PROCESSES ARE IMPROVING, BUT STATES REPORT FISCAL YEAR 1999 FEDERAL INITIATIVES FUNDING WAS LARGELY UNSPENT**

In addition to taking steps to improve the detection of serious deficiencies during annual surveys, the Administration's nursing home initiatives instructed states to investigate complaints that allege actual harm more promptly. Recognizing that this change and others required by the initiatives, such as the introduction of quality indicators and investigative protocols, would increase the workload of state survey agencies, the Congress appropriated additional funds for their implementation. States reported that their fiscal year 1999 initiatives funds were not fully used, in part due to their late distribution. This situation, in turn, slowed down the hiring of additional staff needed to be fully responsive to the initiatives, including investigating complaints more promptly. Finally, it is too early to determine whether the changes in federal enforcement policy intended to make it harder for nursing homes to avoid sanctions will achieve their goal of encouraging facilities to sustain compliance with federal requirements.

**States Have Increased Priority Attached to Complaints but Generally Have Been Unable to Meet New Investigative Time Frames**

Complaint investigations provide an opportunity for state surveyors to intervene promptly if quality-of-care problems arise between surveys. However, in our prior work we found numerous problems in states' complaint investigation processes. For instance, some states were making it unnecessarily complicated for individuals to file complaints; some were inappropriately classifying complaints of actual harm as low priority for investigation; and some frequently did not investigate complaints within required time frames, potentially prolonging harm to residents.<sup>15</sup> HCFA had historically played a minimal role in providing states with guidance and oversight of complaint investigations.<sup>16</sup>

In March 1999, HCFA took a major step to strengthen state complaint procedures by instructing the states to investigate complaints alleging actual harm to a resident within 10 working days of receiving the complaint. Previously, states could set their own investigative time frames, except that they were required to investigate within 2 working days all complaints alleging immediate jeopardy conditions. Two of the six states we contacted previously had requirements for investigating complaints alleging actual harm that exceeded 10 days, but have since formally modified their complaint

<sup>15</sup>Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents (GAO/HEHS-99-80, Mar. 22, 1999).

<sup>16</sup>Nursing Homes: Stronger Complaint and Enforcement Practices Needed to Better Ensure Adequate Care (GAO/T-HEHS-99-89, Mar. 22, 1999).

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criteria in response to HCFA's instruction.<sup>17</sup> Despite modifying their complaint investigation time frames to include a 10-day requirement, states generally have not been able to investigate all such complaints on time. For instance, Tennessee was able to investigate about one-fourth of its actual harm complaints within 10 days, while Washington was able to investigate more than three-fourths on time. (See table 5.) State officials we interviewed generally attributed their inability to investigate all actual harm complaints in 10 days to an increase in the number of complaints received, limited staff, and competing priorities, particularly the need to complete standard surveys on time.

**Table 5: State Investigative Time Frames for Complaints Prior to the Initiatives and Extent to Which States Meet the 10-Day Requirement for Actual Harm**

State	Had a 10-day requirement prior to HCFA's March 1999 instruction?	Number of 10-day complaints received in 1999	Percentage of 10-day complaints investigated timely in 1999
California	Yes	6,484	56 <sup>a</sup>
Maryland	Yes	547	33 <sup>c</sup>
Michigan	No—30 days	17	100 <sup>d</sup>
Missouri		2,577 <sup>e</sup>	74
Tennessee	No—60 days	563 <sup>f</sup>	About 25 <sup>g</sup>
Washington	Yes	2,614	76

<sup>a</sup>Data for Maryland, Michigan, and Tennessee represent the last 6 months of 1999 and thus do not portray all complaints received in 1999. Data for Missouri are for the 12-month period ending June 30, 2000.

<sup>b</sup>California's low percentage is due in part to state regulations that permit only two categories of complaints: (1) complaints alleging immediate jeopardy requiring investigation within 2 days and (2) all other complaints that must be investigated within 10 days. To ensure that actual harm complaints are investigated within 10 days, California officials told us that they first attempt to identify such complaints and then triage those to ensure that the most serious are promptly investigated.

<sup>c</sup>This represents a substantial improvement from early 1998, when it investigated only 1 of 18 complaints—about 6 percent—within 10 days.

<sup>d</sup>Although Michigan investigated all actual harm complaints timely, it categorized only 17 of 902 complaints received in the last half of 1999 as actual harm. It categorized 67 complaints as immediate jeopardy, requiring investigation in 24 hours, and 818 as nonpriority, requiring a visit to the home within 15 days.

<sup>e</sup>Prior to Missouri's adoption of the 10-day requirement, complaint investigations were initiated within 24 hours if there was "imminent danger" to a resident or a "direct or immediate relationship to the health, safety or welfare of any resident, but which did not create any imminent danger." Missouri officials told us that some actual harm complaints fell into this latter category but that not all could be initiated within 24 hours. Those not investigated within 24 hours would have slipped into the next category, which at the time was 90 days. In addition to creating a 10-day category, Missouri no longer

<sup>f</sup>Because of the requirement for annual surveys and other priorities, HCFA recognized that not all states would be able to meet the 10-day standard and, in October 1999, issued guidance including techniques to help states identify complaints having a higher level of actual harm.



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allows complaint investigations of less serious complaints to be delayed as long as 180 days. The maximum time for investigating complaints is now 60 days.

Officials told us that this is an estimate because the state's ongoing transition to a new complaint tracking system makes it difficult to determine the exact percentage.

Source: State survey agency officials.

The increased attention HCFA and the states have placed on conducting complaint investigations in the past 18 months has had some positive results. For example, among the states we visited, as well as Maryland and Michigan, we noted the following improvements:

- **Increased survey resources.** Several states have increased, or plan to increase, the number of surveyors, some of whom will be assigned to complaint investigations. The increased staff will enable states to devote more attention to complaint investigations. Some states also have dedicated staff to conducting complaint investigations. For instance, Michigan has created a complaint investigation team of 11 surveyors representing about 10 percent of the state's total surveyors. Washington also plans to increase its number of complaint investigators from 8 to 13.
- **Improvements in classifying complaints and setting investigation priorities.** All the states in our study require that the seriousness of complaints be determined by an experienced surveyor, and Tennessee and Washington further require that the surveyor be a licensed nurse. In Missouri, individuals without survey experience had been responsible for classifying complaints, but now an experienced district office surveyor, normally a nurse, does so. While positive, these changes do not obviate the need for centralized oversight by state survey agency management. Thus, the low number of actual harm complaints in Michigan compared with other states raises a question about whether complaints are being appropriately classified. We noted a similar issue in one of Tennessee's three district offices.
- **Organizational changes.** To improve control and oversight of complaint investigations, both Maryland and Michigan have consolidated their nursing home complaint and survey activities into one office under a single manager. In addition, Michigan added a manager responsible for direct oversight of the complaint investigation team. Missouri created a state complaint coordinator to ensure that complaints are handled in a timely manner.
- **Upgraded information systems.** Several states now are automating their information systems to help track complaints more effectively. Such data systems are necessary to ensuring compliance with HCFA guidance on complaint investigation prioritization and timeliness. For example, Missouri plans to implement a new automated system in 2001 that is expected to significantly improve management's ability to track the status and results of complaint investigations. Tennessee is implementing a new system that will replace the

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manual tracking of complaints. Also, in early 1999, Washington modified its complaint tracking system to permit its district offices to better track complaints during the investigation process.

HCFA intends to issue more detailed guidance to the states in 2001 as part of its complaint investigation improvement project. Among other things, the project will (1) identify complaint investigation processes that all states could implement, (2) establish elements of a national reporting system, (3) identify methods for HCFA to monitor state complaint investigation processes, and (4) identify model programs or practices that make complaint investigations more effective and prevent abuse and neglect. Our comparison of six states' complaint processes also identified variations in practices and results that HCFA could address in any additional guidance it issues. For instance, although there is no federal requirement that states operate a toll-free complaints line, Tennessee was the only state among those we visited that has chosen not to provide this service. Tennessee received only about half as many complaints per nursing home in 1999 as Missouri and Washington, both of which have a consumer-friendly toll-free service that is an integral part of the complaint intake process. Maryland partially attributes a recent 250-percent increase in the number of complaints received to its new toll-free number. In addition, some significant differences appear to exist in how states classify complaints. For instance, during the last 6 months of 1999, Maryland categorized 62 percent of the complaints it received as potential actual harm, while Michigan put only 2 percent of its complaints in this category during the same period.

States Report That Additional Federal Funds  
Provided for Nursing Home Initiatives  
Were Largely Unspent During Fiscal Year 1999

The Administration and the Congress recognized that additional resources were needed to address expanded workloads associated with implementing the nursing home quality initiatives.<sup>18</sup> However, the distribution of initiatives funding late in the fiscal year contributed to implementation delays. The Medicare survey and certification budget was increased significantly in fiscal years 1999 and 2000 (see table 6). About \$8 million of a \$21 million fiscal year 1999 increase and \$23.5 million of a \$34.7 million fiscal year 2000 funding infusion were for workload growth attributable to the nursing home initiatives. However, the initial federal allocation of fiscal year 1999 money to the states occurred in March 1999 and the final federal allocation in June 1999.<sup>19</sup> Although several reporting discrepancies are evident, a

<sup>18</sup>HCFA determined that additional state resources would be consumed by initiatives that required states to better target and monitor poorly performing homes and to investigate any complaint alleging actual harm within 10 days of complaint receipt. HCFA also anticipated that the use of quality indicators would increase surveyor preparation time prior to visiting a nursing home and that this could lead to a net increase in total survey time.

<sup>19</sup>Appropriated funds are neither automatically nor immediately available for use. First, the funds must be apportioned by the Office of Management and Budget to HHS and allotted (a delegation of authority to incur obligations) by HHS to HCFA. HCFA then determines, on the basis of state workload and expenditure data, what amount should be allocated to each state and advises its regional offices of

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majority of states reported not using (that is, expending or obligating) their full fiscal year 1999 initiatives allocation. However, interviews with state officials sometimes contradicted information provided in these reports, raising questions about the actual disposition of these funds. According to state officials we interviewed, other factors that contributed to some or all of the initiatives funds not being used in fiscal year 1999 included (1) the need for state legislative authorizations to raise staffing ceilings and to use the new federal funds and (2) problems in meeting HCFA's requirement to account for initiative funds separately from other survey and certification funding.<sup>20</sup> States have not yet submitted final expenditure reports for their fiscal year 2000 initiative allocations.

**Table 6: Federal Medicare and Medicaid Funding for State Survey and Certification Activities**

Dollars in millions

Fiscal year	Medicare funding	Medicare funding associated with initiatives	Medicaid funding <sup>a</sup>	Total federal Funding
1994	\$145.8		\$130.4	\$276.2
1995	145.8		133.0	278.8
1996	147.6		136.2	283.8
1997	158.0		127.4	285.4
1998	154.0		136.2	290.2
1999	175.0	\$8.0 <sup>b</sup>	135.1	310.1
2000	209.7 <sup>c</sup>	23.5	149.0	358.7
2001 <sup>d</sup>	234.1	29.7	Not available	Not available

Note: The state survey and certification budget is used to ensure that institutions providing health care services to Medicare and Medicaid beneficiaries meet federal health, safety, and quality standards. Institutions covered include hospitals, home health agencies, and end-stage renal disease facilities, as well as nursing homes. The federal government funds 100 percent of costs associated with certifying that nursing homes meet Medicare requirements and 75 percent of the costs associated with Medicaid standards. States usually pay additional costs associated with ensuring that nursing homes meet state-established licensing standards.

<sup>a</sup>Medicaid funding is reported retrospectively on state expenditure reports. The 2000 level is projected on the basis of the expenditure reports that have been received to date (the first 2-3 quarters of fiscal 2000).

<sup>b</sup>In fiscal year 1999, the Congress appropriated \$4 million for initiative-related costs (P.L. 105-277, Oct. 21, 1998). Subsequently, HCFA reprogrammed another \$4 million to help the states cover four key initiatives.

these suggested amounts. In fiscal year 1999, regional offices could reallocate among the states up to 15 percent of the suggested amounts. The regional office then notifies states of award determinations and the ability to incur obligations for these amounts.

<sup>c</sup>This requirement applies to nursing home initiatives funding for fiscal years 1999 and 2000.

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\*For fiscal year 2000, Medicare funding to states included about \$5 million that was reprogrammed from the Medicare contractor termination budget. The \$5 million reprogramming was primarily intended to support additional complaint investigations required by one of the initiatives.

\*President's budget request.

Source: Center for Medicaid and State Operations, HCFA.

According to fiscal year 1999 initiatives expenditure reports, only six states used their full fiscal year 1999 initiatives allocation, and less than \$4 million of the \$8 million available for the initiatives was spent.<sup>21</sup> Discrepancies between the initiatives expenditure reports and the separate reports that capture all survey and certification expenditures (including the initiatives) raise the possibility that some states may have spent their initiatives funding but failed to account separately for initiatives expenditures as required by HCFA.<sup>22</sup> Overall, however, the two reports indicated that 28 states did not use their full fiscal year 1999 initiatives or survey and certification funding allocations, suggesting that a substantial portion of the \$8 million was not used for the nursing home initiatives during fiscal year 1999.

We attempted to clarify these issues by contacting nine states, including seven that HCFA officials indicated had not filed a nursing home initiatives expenditure report. Officials in three states told us that, essentially, these funds were used even though their initiative expenditure reports showed otherwise. Officials in the other six states said that they did not expend their full fiscal year 1999 initiatives allocation. (See table 7.) In some cases, however, what state officials told us appears inconsistent with their other survey and certification expenditure reports. Neither HCFA nor state officials were able to explain these discrepancies. For example, two Missouri budget officials told us that none of the state's \$262,000 fiscal year 1999 initiatives funding was used, while an official at the state survey agency was certain that an undetermined amount had been expended on initiatives related training. This latter interpretation is supported by the state's survey and certification expenditure report that suggests that \$161,000 of these funds may have been spent during fiscal year 1999.

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<sup>21</sup> According to HCFA officials, nursing home initiatives funds appropriated in fiscal year 1999 may only be used for this purpose. These officials advised us that after HCFA makes the funds available to the states, the states must expend or obligate the funds during the same federal fiscal year. They explained that HCFA may reallocate funds not spent by one state during a particular fiscal year to a state that expended more than it was initially provided for that fiscal year.

<sup>22</sup> One possible explanation of these discrepancies is the fact that HCFA did not require states to specifically account for nursing home initiative expenditures until December 1999.

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**Table 7: Summary of Information Provided by Nine States on Their Fiscal Year 1999 Nursing Home Initiatives Allocation**

State	Allocation amount	Amount reported as not expended	Summary of remarks by state officials
California	\$1,002,400	\$277,508	State officials told us that the full nursing home initiatives allocation was used and indicated a supplemental expenditure report would be submitted to HCFA.
Delaware	24,540	24,540	None of the state's allocation was used because of reorganization issues, existing surveyor vacancies, and late availability of funds.
Illinois	432,316	325,544*	The full allocation was not used because of the late availability of funds and the provision of more funds than were needed for new mandates.
Kansas	125,245	67,700*	The full allocation was not used because start-up of several initiatives was delayed past originally expected dates.
Missouri	261,958	Some*	Only part of the allocation was used because of the late availability of funds and the difficulty meeting accounting requirements.
Nebraska	70,179	1,604	HCFA did not have the state's initiative expenditure report and believed the state had not used any of these funds. The state was able to provide a copy of its report showing that all but a small amount of its allocation had been used.
Pennsylvania	286,030	154,200*	The full allocation was not used because of delays in the start-up of initiatives (July 1999). Labor relations issues related to surveys initiated outside normal work hours were also a problem.
Tennessee	100,974	94,530*	Although the late availability of initiatives funding was a problem, most of the money was used. The state would have preferred using the money to hire additional surveyors but, because of late availability, used most of the funds for a surveyor pay increase.
Utah	49,351	24,675	The full allocation was not used because of late availability of funds.

\*Though state officials said some of their initiatives allocation was not used, the state's survey and certification expenditure report showed that the entire budget was used during fiscal year 1999, including the allocation targeted for the initiatives.

\*Missouri's survey and certification expenditure report showed only \$101,000 unspent, suggesting that it may have spent \$161,000 of its initiatives allocation in fiscal year 1999.

In Missouri, state officials said that the initiatives placed new requirements on the state agency but did not provide resources quickly enough to support these initiatives in fiscal year 1999. The state survey agency's budget authority is set legislatively and cannot be used for new requirements, such as the initiatives, without legislative approval (unless the agency's appropriations bill allows for spending unanticipated

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federal funds up to a preestablished spending level).<sup>23</sup> Missouri officials also stated that there was insufficient time to implement system adjustments to separately account for the fiscal year 1999 initiatives dollars, as HCFA required. The timing of the fiscal year 1999 increase was considered problematic by several other states, though they were able to use some of these funds. States were not aware of the initiatives when their legislatures met in early to mid-1998 as the initiatives were not announced until July 1998. In addition, officials told us that the availability of funds late in the fiscal year limited their efforts to respond to the new initiatives.

A primary objective of the initiatives funding was to enable states to hire additional nursing home surveyors, particularly to perform complaint investigations. Generally, state officials told us that hiring in the current competitive economy is difficult, that state hiring processes are lengthy and may require legislative authorizations, and that new surveyors are not fully trained for up to a year after they are hired. For example, a Missouri official told us that the time needed to hire surveyors made it hard for the state to use initiatives funds during fiscal year 1999 for this purpose. A Tennessee official said that because of the need for legislative approval to increase staffing the state was unable to use initiatives funds during fiscal 1999 for this purpose. Even with such approval, we were told, it takes 6 months to hire—assuming suitable candidates are available. Instead, Tennessee used the bulk of its initiatives funding for pay increases for long-term-care facility surveyors.

#### Initiatives Intended to Put More Teeth Into Enforcement Options

Overall, it is too early to tell whether the improvements in federal enforcement policies will have their intended effect of encouraging nursing homes to sustain compliance with federal requirements. The weaknesses in federal enforcement policies we identified in previous reports were essentially attributable to the ability of nursing homes to evade sanctions. For example, our prior work found that the threat of federal sanctions did not prevent homes from cycling in and out of compliance. In virtually every case of noncompliance, homes were granted a grace period to correct deficiencies before sanctions were recommended or imposed, even when homes had been cited repeatedly for actual harm violations. HCFA guidance also allowed states to accept, in some cases, a home's assertion that it had returned to compliance rather than confirming the correction of serious deficiencies through an on-site visit ("revisit"). Under these circumstances, most deficient homes, even those with repeated deficiencies that harmed residents, did not have sanctions that actually took effect.

HCFA and HHS have attempted to put more teeth into enforcement options by (1) requiring immediate imposition of sanctions without a grace period for homes that repeatedly cause harm to residents, (2) issuing new guidance on revisits, (3) increasing funding for the board that handles nursing home appeals to reduce the

<sup>23</sup>Thirty states provide gubernatorial budget authority to spend unanticipated federal funds without approval of the legislature.

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backlog of cases, (4) introducing a new type of civil monetary penalty, (5) taking measures intended to reduce delays in imposing a denial of payment for new admissions, (6) closing loopholes associated with its most severe sanction—termination from Medicare and Medicaid, and (7) increasing oversight of certain facilities with histories of providing poor care. In addition, HCFA's Long Term Care Enforcement Tracking System—the first comprehensive national database on federal enforcement actions against nursing homes—became operational in all regions in January 2000 and includes data beginning with fiscal year 2000.<sup>24</sup>

#### Denial of a Grace Period

The denial of a grace period for serious repeated deficiencies was implemented in two stages. In September 1998, HCFA modified its policy to require that states refer for immediate imposition of a sanction any nursing home with a pattern of harming a significant number of residents on successive surveys (levels H and above in HCFA's scope and severity grid). Effective December 15, 1999, HCFA expanded this policy to include deficiencies that harmed only one or a small number of residents (level G deficiencies) on successive standard surveys.<sup>25</sup> In an earlier report, we estimated that this change could increase the percentage of homes referred immediately for sanctions from approximately 1 percent to as many as 15 percent of homes nationally.<sup>26</sup> The regional offices we visited in 2000 reported an increase in enforcement referrals over a similar period during the previous year. For example, HCFA's Kansas City office reported that between January and June 2000, almost one-half of the 127 referrals were due to HCFA's elimination of a grace period for certain homes. Washington, where about 50 percent of nursing homes have been cited for isolated actual harm, began implementing this policy in March 2000. For the period March 1 through August 17, 2000, the state recommended 63 enforcement actions that it would not have a year earlier—23 percent of surveyed homes, compared with our national estimate of 15 percent. Because Washington has historically cited actual harm deficiencies at a greater percentage of nursing homes than any other state, referrals under HCFA's new policy were expected to be high. According to state officials, this large number of referrals created a significant additional workload for the state survey agency.

<sup>24</sup>OSCAR does not contain complete or reliable data on enforcement actions. As a result, each region maintained its own enforcement action data, which varied in sophistication from comprehensive computer databases to illegible hand-kept logs with inconsistent formats.

<sup>25</sup>Previously, states referred for sanction any homes with deficiencies at the immediate jeopardy level (J-L) without granting a grace period. However, because of the very serious nature of immediate jeopardy deficiencies, the state, nursing home, and regional office often work in concert to resolve the situation as soon as possible. States are now required to deny a grace period to homes that are assessed one or more deficiencies at the actual harm level or above (G-L in HCFA's scope and severity grid) in each of two successive surveys within a survey cycle. A survey cycle is two successive standard surveys and any intervening survey, such as a complaint investigation.

<sup>26</sup>Nursing Homes: HCFA Initiatives to Improve Care Are Under Way but Will Require Continued Commitment (GAO/T-HEHS-99-155, June 30, 1999), p. 12.

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### Revisits

In August 1998, HCFA began requiring states to perform revisits to ensure that homes with serious deficiencies had in fact returned to compliance. In some cases, states were previously allowed to accept a nursing home's "credible allegation"—a declaration that it was back in compliance—without on-site verification. HCFA's new guidance requires state survey agencies to conduct one or more revisits at a nursing home for any deficiency originally classified as having caused actual harm or placed residents in immediate jeopardy (G-level or higher), until the agency has verified that the home is in full compliance for each deficiency cited. The policy applies even if the severity of the original deficiency was reduced during a prior revisit.

### Departmental Appeals Board

HCFA has taken actions intended to reduce delays in collecting fines—called civil monetary penalties—from nursing homes. A fine is the only federal sanction that can be imposed retroactively against a nursing home, making it impossible for a home to avoid having the sanction become effective. However, if a nursing home appeals its fine, payment is automatically suspended until the appeal is resolved. Before the initiatives, insufficient staffing at the HHS Departmental Appeals Board and HHS Office of General Counsel resulted in delayed resolution of pending cases and corresponding delays in collection of fines, enabling nursing homes to indefinitely postpone payment of fines by filing an appeal. To provide for the more timely processing of nursing home appeals, the Congress, at HHS' request, increased funding for the Appeals Board by a total of \$2.8 million in fiscal years 1999 and 2000.<sup>27</sup> Many of the 15 new positions created with this increased funding were only filled within the past year. In addition, the HHS Office of General Counsel received \$4.4 million in fiscal year 2000 to hire 33 additional regional office attorneys to handle appeal cases. After increasing rapidly between September 1996 and September 1998, the number of pending nursing home appeals decreased in 1999 and then rose again in 2000 (see table 8). It is unlikely, however, that many enforcement actions resulting from the new policy of denying a grace period to homes that repeatedly harm residents have yet reached the point of appeal; when they do, this may result in a significant increase in the volume of nursing home appeals.<sup>28</sup>

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<sup>27</sup>The Departmental Appeals Board provides the administrative law judge review and the final administrative appellate level review for nursing home appeals of any federal enforcement sanction. The HHS Office of General Counsel includes the regional office attorneys who represent HHS and HCFA in such appeals.

<sup>28</sup>In commenting on our draft report, California officials indicated that an additional effect of appeals is that HHS' attorneys are requiring state surveyor and consultant staff to provide testimony to support HCFA's action. The state said that preparation time and hearings can last 8 to 10 days and that during this time the involved surveyors are not available to accomplish survey and certification work.



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**Table 8: Comparison of Pending Appeals and Increased Staffing at the Departmental Appeals Board**

Date	Pending nursing home appeals	Appeals Board staffing			Total
		Administrative law judges	Attorneys	Paralegals and clerical staff	
Sept. 30, 1996	234				
Sept. 30, 1997	472				
Sept. 30, 1998	605				
Sept. 30, 1999	555	4	9	4	17
Sept. 25, 2000	698	8	13	11	32

Note: Staffing data for fiscal years 1996-98 are not available. Staffing levels are for the component of the Board that hears nursing home cases. The 1999 staffing levels do not include individuals who were temporarily assigned to the Board.

#### Per-Instance Fines

In May 1999, HCFA issued regulations giving states an additional enforcement option—a per-instance fine—that is imposed immediately. In the past, fines could only be levied for each day of noncompliance. The per-instance authority allows states to recommend a fine for a specific instance of non-compliance. Such fines may be more easily applied, particularly in circumstances in which states find it difficult to determine the number of days the home was noncompliant.<sup>29</sup> HCFA reported that the number of per-instance fines is increasing, from 33 between May and September 30, 1999, to 354 for the period October 1, 1999, through August 31, 2000.<sup>30</sup> In comparison, per-day fines for the first 10 months of fiscal year 2000 totaled 1,359 (see table 9). Per-instance fines are capped at \$10,000 and therefore may not be as effective a deterrent to noncompliance as per-day fines, which can rise to higher dollar amounts.<sup>31</sup> For example, the average per-instance fine was about \$2,000, while the average per-day fine totaled almost \$8,000.

<sup>29</sup>For example, HCFA's San Francisco regional office suggested that it was appropriate to use per-instance fines for isolated instances of noncompliance at a nursing home with a generally good compliance record.

<sup>30</sup>A HCFA official noted that although states had the authority to use the per-instance fine in May 1999, they may have been reluctant to do so before the issuance of HCFA's implementing guidance in March 2000.

<sup>31</sup>In contrast to the per-instance maximum of \$10,000 per survey, the per-day monetary fine has a \$10,000 per-day limit, which accrues until the home achieves substantial compliance. HCFA regulations preclude use of a per-instance and a per-day monetary fine on the same survey.

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**Table 9: Comparison of Per-Instance and Per-Day Fines for Fiscal Year 2000, as of August 8, 2000**

Type of civil monetary penalty	Number imposed	Amount due <sup>a</sup>	Amount collected
Per-instance	354	\$749,436	\$312,548
Per-day	1,369	\$10,722,899	\$4,023,795

<sup>a</sup>Amount due excludes cases where (1) the nursing home's 60-day period to appeal the fine had not yet expired or (2) the fine had been appealed.

Source: HCFA.

#### Denial of Payment for New Admissions

HCFA has also made efforts to ensure that the sanction of denial of payments for new admissions is imposed in a timely manner, as required by law. Modified regulations now permit states to provide the notice to the nursing home within 2 days of submitting a recommendation to HCFA (if not disapproved). HCFA also encourages states to meet referral deadlines so that the denial of payment can be imposed within three months as required by statute. However, the four regional offices we visited had not implemented the expedited notice provision (except as a one-state pilot), and some still had states with problems meeting the deadline for imposing the sanction.

#### Termination

HCFA took two actions to increase the deterrent effect of its most severe sanction—termination from the Medicare and Medicaid programs. First, it altered its policy to require pretermination performance to be considered in determining any future enforcement actions against terminated homes subsequently readmitted to Medicare. Second, it gave additional guidance to HCFA regional offices about the length of the so-called "reasonable assurance period" during which terminated homes must demonstrate that they have corrected the deficient practices that led to their terminations.<sup>22</sup>

#### Special-Focus Facilities

In January 1999, HCFA instructed each state to begin enhanced monitoring of 2 nursing homes that historically had records of providing poor care (some states selected an additional one or two homes). Surveys were to be conducted at 6-month intervals rather than annually. Known as focused enforcement, the initiative was modeled after a similar California program. In September 2000, HCFA reported that semiannual surveys had only been conducted at a little more than half of the original 110 facilities. HCFA indicated that both state survey agencies and HCFA regional

<sup>22</sup>Before readmitting a terminated facility to Medicare, HCFA requires nursing homes to address the situation that led to termination and provide reasonable assurance that it will not recur. To give this assurance, a home is required to have two surveys not more than 180 days apart, each of which shows the problem to be corrected. The reasonable assurance period is the time between these two surveys.

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offices have been reminded, in writing, of the semiannual survey requirements for special-focus facilities and that its regional offices are now working closely with states to achieve better compliance. Of the 60 homes that received semiannual surveys

- 12 have been terminated or have voluntarily withdrawn from the Medicare and Medicaid programs,
- 31 have had civil monetary fines imposed and 18 have received a denial of payment for new admissions sanction, and
- 28 are now in substantial compliance.

In addition, the most recent surveys show that the percentage of homes with deficiencies that harmed residents (G or higher) decreased from 66 percent to 50 percent.

Although this initiative is worthwhile, we believe that its narrow scope excludes many homes that provide poor care. In contrast, California's state focused enforcement program, which began in June 1998, was significantly larger, initially covering 36 of the state's facilities with the worst compliance histories.<sup>23</sup> Based on the program's success to date, California plans to expand the number of closely monitored homes to 100 by June 2001. Rather than selecting two homes per district office, the expansion will identify facilities throughout the state with the worst compliance history. Of the original 36 facilities, 14 continue to be closely monitored. The remainder have left the program because they returned to compliance (11), changed ownership (10), or closed (1).

#### Nursing Home Chains With Performance Problems

HCFA has not yet implemented an initiative that would deny a grace period to homes belonging to nursing home chains with performance problems, but it recently circulated draft guidance to states for implementing this initiative. Problems with defining a chain and determining which homes belong to each chain contributed to the delay and remain a problem. As a result, HCFA's draft guidance is applicable only to chains with over 100 homes nationally. The policy will be phased in for all remaining chains when data on chains' ownership of homes become available on a broader basis.

#### IMPROVEMENTS CONTINUE IN FEDERAL OVERSIGHT OF STATE SURVEY ACTIVITIES

In our prior work, we found that HCFA's oversight of state efforts had serious limitations that prevented it from developing accurate and reliable assessments of state survey agency performance. HCFA regional offices' policies, practices, and oversight were inconsistent, a reflection of coordination problems between HCFA's

<sup>23</sup>Initially, California targeted 34 facilities—2 for each of the state's 17 district offices. Two additional homes were added to the list to replace homes that left the focused enforcement program.

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central office and its regional staffs. Moreover, in important areas such as the adequacy of complaint investigations or surveyors' findings, HCFA relied on self-evaluation under the SAQIP program that essentially allowed states to write their own report cards. Though OSCAR data were available to monitor state performance, they were infrequently used, and neither states nor HCFA regional offices were held accountable for failing to meet or enforce established performance standards. Finally, HCFA rarely conducted federal comparative surveys that allowed a comprehensive look behind the state survey process but instead relied primarily on limited, direct observation of state surveyors—called an observational survey.

HCFA's initial efforts to improve federal oversight were limited.<sup>34</sup> However, the agency recently embarked on a major overhaul of its oversight strategy. In the late spring of 2000, it introduced several organizational changes intended to improve consistency, coordination, and accountability. In addition, effective October 2000, direct federal oversight using a new series of periodic reports based largely on OSCAR data will replace states' self-evaluation of their survey activities. According to HCFA, many implementation details are still being worked out. In addition, HCFA is exploring the feasibility of conducting more comparative surveys and contemplating changes in the way it allocates funds for state survey and certification activities. Because these changes are either recent or have not yet been introduced, it is too soon to tell how effective they will prove in resolving past problems.

#### HCFA Has Created Coordinating Mechanisms to Ensure More Consistent Federal Oversight

HCFA has established several coordinating mechanisms to improve the consistency of federal oversight of state survey activities and to provide greater accountability. In earlier work, we raised concerns about the lack of a direct link between HCFA's central and regional office components regarding nursing home oversight. HCFA's Medicaid and State Operations Director was responsible for establishing national oversight policy, and the 10 regional offices were charged with day-to-day monitoring of state survey agency activities.<sup>35</sup> Both the director and the regional office administrators answered separately to the HCFA Administrator without any formal reporting links. These organizational reporting lines complicated coordination and communication, weakened oversight, and blurred accountability when problems arose. For example, we reported significant differences in the nature and extent of the oversight provided by regions. Recent or planned changes to improve consistency, coordination, and accountability include the following:

<sup>34</sup>Effective October 1998, the number of comparative surveys was increased to about 10 percent of the approximately 900 federal surveys conducted annually—either one, two, or three per state, depending on the number of nursing homes. Though the majority of federal surveys continued to be observational, HCFA issued new protocols to ensure they were conducted more consistently and set up a centralized tracking system to analyze the results.

<sup>35</sup>HCFA relies on 129 federal surveyors in 10 regional offices to carry out its responsibility for evaluating the adequacy and effectiveness of each state's nursing home survey process.

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- **National Oversight Policy.** In May 2000, HCFA established a Nursing Home Survey and Certification Oversight Board. The Oversight Board, which meets monthly, will make recommendations on oversight policy to the HCFA administrator. Recent meetings involved the survey and certification budget. Chaired by the Director of the Center for Medicaid and State Operations, the Oversight Board includes two regional office administrators as well as other central office representatives.<sup>36</sup> Its composition is intended to improve communication and coordination among senior HCFA managers responsible for nursing home oversight.
- **Managing Day-to-Day Oversight.** HCFA designated two co-leaders—the director of the Survey and Certification Group (who reports to the Medicaid and State Operations Director) and the Philadelphia Regional Office Administrator—to manage and coordinate day-to-day survey and certification activities. The former is responsible for providing a national perspective on oversight activities, while the latter works directly with associate regional administrators—individuals with day-to-day responsibility for nursing home oversight—to help ensure greater consistency across regions.<sup>37</sup>
- **Regional Office Focal Points.** By October 2000, each HCFA region will assume the lead for ensuring consistency in 1 of 10 policy areas, such as data collection and analysis, training, and survey and certification budgets.<sup>38</sup> HCFA is still working out details as to the specific duties in each area and establishing coordination procedures. In the past, there was inconsistency across regions, but the new focal points are expected to overcome this problem. For example, concerning data collection and analysis, some regions had the capability to use OSCAR data in their monitoring efforts and others did not. The data tracking coordinator will be responsible for ensuring that regions have the necessary trained personnel and that regional administrators and the central office are apprised of the results of tracking efforts.
- **Policy Clearinghouse.** Effective in June 2000, HCFA established a seven-member policy clearinghouse, with representatives from the HCFA central office, the four HCFA regional office consortia, and the states, to ensure that regional office

<sup>36</sup>Board members include representatives from HCFA's Center for Medicaid and State Operations, Center for Beneficiary Services, Center for Health Plans and Providers, Office of Financial Management, Office of Clinical Standards and Quality, and two HCFA regional administrators. The HCFA Administrator and Deputy Administrator are ex officio members, and the Offices of General Counsel and Legislation have permanent, nonvoting members.

<sup>37</sup>In each regional office, the associate regional administrator responsible for nursing homes reports to a regional administrator. The Philadelphia Regional Office Administrator will not evaluate an associate administrator's performance but will provide feedback to the appropriate regional administrator.

<sup>38</sup>The other lead areas are state survey performance, cross-regional surveys, quality, federal monitoring surveys, certification of new providers, surveyor staffing, and non-long-term-care surveys.

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directives to states are consistent with national policy.<sup>28</sup> For example, the clearinghouse ordered the withdrawal of guidance issued by the Dallas and Chicago regional offices to state surveyors on how to determine the oral and dental health of nursing home residents because of concern about the resource implications. HCFA is now considering whether it should develop national guidance on this issue. Achieving an appropriate balance between the need to apply consistent national policy and fostering an environment that encourages regional offices to develop improved practices will be an ongoing effort.

Increasing Federal Oversight and Requiring Greater Use of Management Information Systems Should Improve State and Regional Office Accountability

HCFA will require regional offices to begin producing periodic reports on state survey activities and, effective October 2000, these reports will be used to assess state performance in key areas. HCFA officials recognized that neither the central office nor the regional offices had made the most effective use of existing data to monitor state activities and to take appropriate action when serious state survey agency problems were identified. For example, while the Atlanta regional office used OSCAR data to actively monitor state performance and required state survey agencies to correct problems, the other regions we visited did not. Recent state experiences illustrate the opportunity to use OSCAR and other available data to monitor state activities, including variations among local district offices. HCFA is also examining ways to increase its use of comparative federal surveys.

Standardized Reports to Assess State and Regional Office Performance

To provide both the central and regional offices with the basic data needed to improve federal oversight, HCFA has directed its 10 regional offices to periodically prepare 18 "tracking" reports on areas that measure both state and regional office performance. Examples of reports that will track state activities include pending nursing home terminations (weekly), oversight at problem facilities selected for more frequent surveys (monthly), meeting OSCAR data entry timeliness (quarterly), tallies of state surveys that find homes deficiency-free (semiannually), and analyses of the most frequently cited deficiencies by states (annually). Examples of reports that will track regional office performance include those on the results of comparative surveys (semiannually) and on the processing of enforcement cases (monthly). These reports, in standard format, will enable comparisons within and across states and regions and should help to surface problems and identify the need for intervention—either by HCFA's central office or regional offices.

Tables 10 and 11 provide examples of how available data could have been used to identify potential performance problems in state survey agencies and district offices.

<sup>28</sup>States are represented by the Association of Health Facility Survey Agencies.

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**Table 10: HCFA Analysis of OSCAR Data and Comparative Surveys Could Have Raised Questions About the Performance of Oklahoma's State Survey Agency**

<b>Background</b>	In May 2000, the state official responsible for nursing home survey activities was indicted for bribery. Allegedly, in exchange for payments, the director gave some nursing homes preferential treatment, such as notifying homes in advance about the date of their annual surveys so the homes had time to prepare for them.
<b>Issue</b>	Although existing data from OSCAR or federal comparative survey results would not have uncovered bribery, HCFA officials acknowledged that this information could have alerted them to shortcomings in Oklahoma's survey activities.
<b>Deficiency citations</b>	Compared with the national average, Oklahoma had a higher percentage of deficiency-free homes (22 percent versus 16 percent) and a lower percentage of homes with actual harm or immediate jeopardy deficiencies (15 percent versus 30 percent).
<b>OSCAR data entry</b>	About 20 percent of the state's annual nursing home surveys reported in OSCAR were from 1998 and some were up to 2 years old, an apparent violation of the federal requirement to inspect each nursing home at least once every 15 months.*
<b>Revisits</b>	Since early 1999, the state had not entered any data on nursing home revisits into OSCAR, raising a question as to whether the state had conducted the required on-site review to determine that cited deficiencies had been corrected.
<b>Comparative surveys</b>	Four 1999 federal comparative surveys in Oklahoma cited a total of 45 deficiencies, compared with the state's total of 3. Eight of the 45 federal citations involved quality of care, some at the actual harm level. In contrast, none of the state surveys found any quality-of-care deficiencies. In fact, state surveyors found two of the homes to be deficiency-free.

Note: The HHS Office of Inspector General, the Federal Bureau of Investigation, the Internal Revenue Service, and the Oklahoma Attorney General's Medicaid Fraud and Control Unit participated in an investigation leading to the May 2000 legal charges brought against the Oklahoma State Department of Health's Deputy Commissioner, who was responsible for state nursing home survey activities. It has been alleged this individual received payments from nursing homes in exchange for preferential state survey treatment.

\*At our request, HCFA's Dallas regional office determined that surveys had been conducted for some of these homes in 1999 but that the results had not been entered into OSCAR—a violation of HCFA's guidance that states promptly enter survey results into OSCAR.

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**Table 11: HCFA Analysis of Available Data Could Have Raised Questions About the Performance of Missouri's State Survey Agency**

<b>Issue</b>	Of the four states we visited, Missouri had the highest percentage of deficiency-free homes—both before and after the introduction of the nursing home initiatives. For example, 3 percent of California nursing homes were found deficiency-free on their most recent survey, compared with about 16 percent in Missouri. To gain a better understanding of the adequacy of state surveys in Missouri, we reviewed the results of 368 complaints registered against 34 of 84 homes found to be deficiency-free during the period January 1999 through January 2000. <sup>1</sup> Our hypothesis was that deficiency-free homes should have few complaints. Missouri's 84 deficiency-free homes received 605 complaints, an average of 7 complaints per home (compared with an average of 2 per deficiency-free home in California). The number of complaints against Missouri's deficiency-free homes ranged from 1 to 39, and 19 homes had 10 or more complaints.
<b>Complaints against deficiency-free homes</b>	Twenty-two of the 34 deficiency-free homes had substantiated complaints. For example, one home with a total of 39 complaints had 17 actual harm deficiencies substantiated, including 3 substantiated at the immediate jeopardy level, during complaint investigations.
<b>Adequacy of complaint investigations</b>	<p>The rate of substantiation of complaints was generally much lower in one of the state's seven district offices—one of the two districts that had a significantly higher percentage of deficiency-free homes (34 percent, compared with a statewide average of slightly less than 16 percent). In reviewing complaints investigated by this district over the past 3 years, we noted several anomalies and problematic investigations:</p> <ul style="list-style-type: none"> <li>• Regarding one complaint, the district office wrote the complainant a letter indicating that the investigation had substantiated the allegations and action was being taken. In fact, however, the district found the allegation to be invalid and took no action against the nursing home.</li> <li>• In another case, the district investigated a complaint about a resident who died without being provided CPR (cardiopulmonary resuscitation), even though her husband had signed a form asking that CPR and all other necessary measures be taken in the event of a medical crisis. The investigation concluded that there was no evidence to suggest that the home's staff did not act appropriately during the crisis, but it failed to address the issue of whether the nursing home had a system in place to alert staff to a resident's desire for resuscitation. Instead, the investigation focused on whether performing CPR would have made a difference in the resident's outcome. The file also indicated that, during the course of the investigation, the home advised the surveyors that it would have its lawyer present a seminar to the home's staff about complying with residents' wishes for resuscitative measures. However, there is no indication in the file that the surveyors verified that the home actually took such action.</li> </ul>
<b>Federal comparative surveys</b>	<p>In February 2000, a federal comparative survey was conducted at a nursing home that was found to have had no care-related deficiencies in its prior two annual surveys. The state surveys had been conducted by surveyors assigned to the same district office discussed above.</p> <ul style="list-style-type: none"> <li>• The comparative survey found 11 deficiencies, including actual harm to residents because of failure to ensure that residents maintain their ability to perform normal daily functions and failure to provide adequate nutrition.</li> <li>• Federal surveyors told us that these care problems should have been detected by the state's survey 1 month earlier, which found this home to be in substantial compliance with federal quality standards.</li> <li>• Missouri's state auditor had questioned the circumstances surrounding the deletion of all 11 deficiencies from this same home's 1998 survey, including deficiencies similar to those found in the federal comparative survey.</li> </ul>



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\*We examined the results of all complaints against deficiency-free homes that received 10 or more complaints and a random sample of all complaints against 25 percent of deficiency-free homes that received fewer than 10 complaints.

HCFA's 18 new standardized status reports should help to track the states' compliance with an initial set of seven state performance standards, including survey timing, deficiency documentation, complaints investigation, conduct of surveys in accordance with guidance, and OSCAR data entry (see app. IV, table 17). In areas such as deficiency documentation and complaints, the regional offices will go beyond examining computerized data and review actual records. For example, the appropriate documentation of survey findings will involve regional office reviews of samples of survey reports from each state. As noted earlier, a state that conducted similar reviews of a sample of its own surveys found both an understatement of deficiencies and investigative weaknesses. Regional offices will also conduct an on-site review of each state's complaints system and procedures. The seven standards are drawn largely from those used under the SAQIP program, which will be discontinued as of October 2000. HCFA is developing protocols to ensure that the regions consistently enforce the seven standards.

HCFA is in the process of redesigning its on-line management information system, OSCAR. OSCAR's new nursing home module is projected to be available in the summer of 2001. While OSCAR currently provides extensive information about state surveys, including when surveys are conducted, the deficiencies cited, and the length of time between a home's annual survey, generating analytical reports from OSCAR is difficult, and most regions lack the expertise to do so. The new nursing home module in OSCAR will be more user-friendly because it will require less computer-programming experience to conduct data analysis.

#### Reevaluation of Comparative and Observational Surveys

In October 1998, HCFA acknowledged the need to do more comparative surveys than the 21 conducted in the previous 2 years. As a result, it required regional offices to perform between one and three comparative surveys per state annually, depending on the number of nursing homes. Comparative surveys now account for about 10 percent of federal surveys. The remaining 90 percent are observational.

HCFA currently is exploring the adequacy of the number of comparative surveys and is considering either (1) increasing the number of federal surveyors available to conduct them or (2) narrowing their scope to allow more surveys to be done. Increasing the proportion of federal surveys that are comparative would respond to our 1999 recommendation.<sup>60</sup> We believe that the results offer a more accurate picture of the adequacy of state survey activities than do observational surveys, which primarily are used to help identify training needs. Seventy percent of the 157

<sup>60</sup>California Nursing Homes: Care Problems Persist Despite Federal and State Oversight (GAO/HEHS-98-202, July 27, 1998) and Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality (GAO/HEHS-00-6, Nov. 4, 1999).

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comparative surveys conducted between October 1998 and May 2000 found more serious care problems than did the corresponding state survey. On average, state surveyors identified 3 deficiencies per home, while federal surveyors found almost 10. Currently, however, too few comparative surveys are completed in each state to assess whether the state appropriately identifies serious deficiencies. Although most do not meet the timing requirement to be classified as comparative surveys, the results of 16 federal surveys recently conducted in Oklahoma underscore the value of increasing the number of comparative surveys per state (see table 12).<sup>11</sup> More comparative surveys in Oklahoma could have provided HCFA with broader evidence about the adequacy of state survey activities.

**Table 12: Results of Federal Surveys of 16 Nursing Homes in Oklahoma**

<b>Issue</b>	Between April and June 2000, HCFA conducted federal surveys at the 16 nursing homes suspected of bribing the state survey agency director. This number is significant because most states have only one or two federal surveys each year.
<b>Number of deficiencies</b>	In 8 of the 16 surveys, federal surveyors found a minimum of 20 more deficiencies than were cited on the most recent state survey for the same homes. In one of the more glaring examples, the federal survey cited 37 deficiencies and the most recent state survey cited only 1.
<b>Scope and severity</b>	In 15 of 16 surveys, federal surveyors also cited deficiencies at higher scope and severity levels than did state surveyors.
<b>Quality-of-care problems</b>	Overall, federal surveyors found significantly more quality-of-care problems than did state surveyors—averaging 5.3 versus 1.5 quality-of-care deficiencies (see app. IV, fig. 1).

HCFA is also examining how its regional offices conduct observational surveys and how the current scoring system may be improved to assess a state's performance on such surveys. First, HCFA is completing 10 cross-regional surveys to identify differences in how regions conduct observational surveys. Each HCFA cross-regional team consists of surveyors from two regional offices who join the federal surveyors in a third region to watch how they conduct an observational survey. Differences are already emerging among regions, such as how a particular nursing home is selected for a federal survey and the extent to which federal surveyors identify nursing home deficiencies. During the fall of 2000, a report together with recommendations will be sent to the HCFA Oversight Board concerning changes to ensure consistency in the federal monitoring survey process. Second, the current methodology for scoring the results of observational surveys only indicates whether a state team performed a required survey task—not the quality of the survey or of the judgment exercised by the state surveyors. HCFA has contracted for the design of a scoring mechanism that would allow federal surveyors to better and more consistently assess the quality of a state survey. Due in part to concerns about the scoring system, HCFA has not issued a planned report on the results of observational surveys conducted in fiscal year 1999.

<sup>11</sup>Comparative surveys are generally conducted within 2 months of the state's survey to ensure that conditions in the home are similar for both the federal and state survey team. Four of these 16 federal surveys would qualify as comparatives because 2 months or less had elapsed since the most recent state survey. As with typical comparative surveys, the federal surveyors conducted a complete review of the care provided by each nursing home.

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Changes to Allocation of Survey Funding  
Could Enhance State Survey Oversight

HCFA is exploring options for better distributing future survey and certification funding. The current survey and certification budget process bases funding requests and state funding allocations on past state practices and costs, rewarding states that spent substantial amounts in the past by establishing those expenditures as a budget baseline. Conversely, states that spent less for survey and certification activities may have baseline costs that are too low. Differences in state survey and certification budgets may be a significant factor in the variations in time devoted to performing surveys. A 1998 study by the Center for Health Systems Research and Analysis identified significant imbalances in survey time and resource utilization among the survey teams—imbalances that still exist. Our recent analysis of OSCAR data showed that Tennessee surveyors spent an average of 94 hours to perform a nursing home survey, whereas Washington surveyors spent an average of about 162 hours. Differences such as these may significantly affect the quality of oversight, because the Center's study showed a correlation between the average survey time and the number of deficiencies identified.

HCFA officials reported that efforts are ongoing to identify better options for distributing future survey and certification funding. The agency's Fiscal Year 2001 Annual Performance Plan establishes a performance goal of moving from the current budget process to a price-based process. HCFA proposes developing national standard survey measures and costs that would be used to price the workload for each state survey agency.

CONCLUSIONS

Sustained efforts by HCFA and the states are essential to realizing the potential of the nursing home quality initiatives. For example, better detection and classification of serious deficiencies through the standard survey process will require further refinement of survey methods and a reduction in survey predictability to limit the opportunities for homes to prepare for these reviews. In the states we reviewed, efforts to expedite complaint investigations and systematize the reporting of investigation results are at various stages of implementation and remain incomplete. As for the application of strengthened federal enforcement policies, more time must elapse before progress in this area can be assessed. Similarly, with respect to improved federal oversight, the effectiveness of recent internal HCFA reorganizations and management information reporting enhancements can only be judged in the months to come. In short, the current momentum should neither be taken for granted nor relaxed. The extent of the progress in improving quality of care is uncertain, but fully and effectively implementing the initiatives is an essential component in securing the necessary improvements.

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AGENCY COMMENTS  
AND OUR EVALUATION

We provided a copy of our draft report to HCFA and the states included in the scope of our work. We received written comments from HCFA; the California Department of Health Services; the Division of Aging, Missouri Department of Social Services; the Michigan Department of Consumer and Industry Services; and Residential Care Services, State of Washington Aging and Adult Services Administration, Department of Social and Health Services. Maryland and Tennessee had no comments other than that they believed the report was fair.

HCFA generally agreed with our findings and conclusions. Recognizing that progress had been made in improving the quality of care in nursing homes, HCFA stated that it agreed with us that it is still too early to draw definitive conclusions about the impact of various nursing home initiatives from the preliminary data available. HCFA likewise agreed that sustained federal and state actions are necessary to realize the full potential of the initiatives. HCFA said that it was committed to taking additional steps on a number of issues raised in our report such as (1) survey predictability, (2) the continued variability across states in citing serious deficiencies, (3) discrepancies in state reports regarding the expenditure of nursing home initiatives funding, (4) the timeliness requirements for completing complaint investigations, (5) regional office consistency in implementing enforcement initiatives, (6) consistency in the monitoring of state performance, and (7) refining data systems to provide more timely, useful, and customer-friendly information. HCFA also indicated that it is committed to specific actions that would help strengthen and build upon the nursing home initiatives, including, exploring ways to make optimal use of available remedies as well as exploring the need for additional authorities; working with states to meet the 10 percent goal for off-hour surveys, and developing more streamlined methods for investigating serious complaints. (HCFA's comments are in app. V.)

California, Missouri, Michigan, and Washington also generally agreed with our findings and conclusions. Washington reflected that the full implementation of the nursing home initiatives is on-going. California, Michigan, and Missouri elaborated on the improvements made in their oversight of nursing homes but also noted that implementation is not yet complete. For example, California is in the process of implementing recently enacted state legislation that will significantly increase survey staff and Missouri has not yet completed implementing its overhaul of complaint investigations.

Missouri identified several areas where it believed continued dialogue between HCFA and states would be fruitful, such as modifying the survey process to focus on non-compliant homes, the use of the OSCAR system as the primary data source on survey results, improvements needed in resource planning, potential expansion of the special focus facilities initiative, and consistency in surveyor training. It also believed that refinements were required in federal comparative surveys because they are conducted with criteria different from that set forth by HCFA for use by state agencies and are not required to be legally defensible. While our report acknowledges steps recently taken by HCFA to ensure consistency in federal

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oversight, Missouri's assertion that federal comparative surveys are not required to be legally defensible is erroneous. Federal comparative surveys must meet the same documentation standards as state surveys, and the federal survey may be subject to administrative appeals if HCFA takes enforcement action on the basis of the survey's findings. Missouri also said that the periods of time surveyed are not the same. Consistent with our November 1999 recommendation, HCFA has directed its regional offices to initiate comparative surveys within 14 to 28 days after the completion of the state's survey rather than within two months as specified in statute. This step should further ensure that conditions in a home are as similar as possible for both the state and federal survey. We had also recommended that federal surveyors should include as many of the same residents as possible in their comparative survey sample as the state included in its sample.<sup>4</sup> The similarities between the initial results of Missouri's November 1998 survey of a nursing home and the findings of a February 2000 federal comparative survey of that same home also suggest that identified deficiencies can continue to exist over an extended period of time. (Comments from the four states are included in appendixes VI through IX.)

Technical comments provided by HCFA and the states were also incorporated as appropriate.

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As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Honorable Nancy-Ann Min DeParle, Administrator of HCFA, and others upon request.

Please contact me or Kathryn G. Allen, Associate Director, at (202) 512-7114 if you or your staffs have any questions. GAO staff acknowledgments are listed in appendix X.



William J. Scanlon  
Director, Health Financing  
and Public Health Issues

<sup>4</sup>GAO/HEHS-00-6, Nov. 4, 1999, pg. 28.

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ABBREVIATIONS

CPR	cardiopulmonary resuscitation
HCFA	Health Care Financing Administration
HHS	Department of Health and Human Services
OSCAR	On-Line Survey, Certification, and Reporting System
SAQIP	State Agency Quality Improvement Program

**IMPLEMENTATION CHRONOLOGY FOR  
KEY NURSING HOME QUALITY INITIATIVES**

The implementation dates in this chronology generally reflect HCFA's issuance of final guidance to states. Actual implementation of many of the Administration's nursing home initiatives is dependent upon state action. During our work, we encountered examples where state implementation did not coincide with the HCFA "implementation" dates shown below in table 13. Other activities to promote the consistency and effectiveness of HCFA oversight of state survey activities are not being formally tracked as initiatives.

**Table 13: Implementation Chronology for Key Nursing Home Initiatives**

<b>Initiative and date</b>	<b>Implementation status</b>
<b>Survey procedures</b>	
January 1999	Staggered surveys: State survey agencies required to initiate 10 percent of annual surveys outside normal work hours.
July 1999	Survey methodology, phase one: HCFA instructed states to incorporate quality indicators into the survey process. Quality indicators are derived from nursing homes' assessments of residents and rank a facility in 24 areas with other nursing homes in the state. By using the quality indicators to select a preliminary sample of residents before the on-site review begins, surveyors are better prepared to identify potential care problems. Concurrently, HCFA published new investigative protocols for use by surveyors on key issues such as abuse prevention, pressure sores, hydration, and unexplained weight loss.
Projected completion date 2002 or 2003	Survey methodology, phase two: As a follow-up to the quality indicator and protocol initiative mentioned above, HCFA plans to (1) improve the on-site augmentation of the preliminary sample selected off-site using the quality indicators and (2) strengthen the protocols used by surveyors to ensure more rigor in their on-site investigations.
<b>Complaints</b>	
March 1999	Actual harm complaints: Within 10 workdays, state survey agencies are to begin investigating complaints that allege actual harm by conducting an on-site visit (when necessary).
<b>Enforcement</b>	
August 1998	Revisits: Revised revisit policy by requiring states to actually visit nursing homes to ensure that serious deficiencies have in fact been corrected and that facilities have returned to compliance.
September 1998	Grace period for H- and I-level deficiencies: HCFA eliminated the grace period for homes with repeated serious violations (H- and I-level deficiencies). Now states are required to refer such homes to HCFA for immediate sanctions.
January 1999	Special-focus facilities: State survey agencies instructed to begin enhanced monitoring of two nursing homes per state—facilities with histories of providing poor care.
May 1999	Per-instance civil monetary penalties: States allowed to impose per-instance civil monetary penalties when period of noncompliance is unclear or in other appropriate circumstances. States may not impose both a per-instance and per-day fine for the same survey.

## APPENDIX I

## APPENDIX I

May 1999	<p>Appeals backlog:</p> <ul style="list-style-type: none"> <li>For fiscal years 1999 and 2000, the HHS Departmental Appeals Board received a \$2.8 million funding increase to hire more personnel to help reduce the backlog of nursing home appeals. The fiscal year 1999 increase was in the form of a supplemental appropriation.</li> <li>The HHS Office of General Counsel also received a funding increase of \$4.4 million in fiscal year 2000 to hire 33 regional office attorneys to represent the government in cases appealed to the Board.</li> </ul>
December 1999	<p>Reasonable assurance: States instructed to ensure adequate "reasonable assurance" period for terminated homes seeking readmission to Medicare. Typically, two surveys are required within this period to verify that the reason for termination no longer exists and that the provider has maintained substantial compliance with all applicable participation requirements.</p>
December 1999	<p>Considering pretermination history: States instructed to consider a nursing home's pretermination history when taking enforcement actions after a home has been readmitted.</p>
December 1999	<p>Grace period for G-level deficiencies: HCFA eliminated the grace period for homes with repeated violations at the G level, and states are required to recommend such homes to HCFA for immediate sanctions.</p>
Projected completion date of late 2000	<p>Poorly performing nursing home chains: HCFA has developed and released for comment draft manual instructions that provide criteria for defining a nursing home chain with performance problems.</p> <ul style="list-style-type: none"> <li>The instructions would require states to deny an opportunity to correct (grace period) before sanctions are imposed on facilities that are part of a chain with performance problems.</li> <li>The instructions would only be applicable to chains having over 100 homes nationally. The policy would be phased in for all remaining chains when data on chains become available on a broader basis.</li> </ul>
<b>Oversight</b>	
October 1998	<p>Federal oversight surveys: Standardized protocols were issued for observational surveys, and the number of comparative surveys was increased. HCFA now requires a minimum of one comparative survey in states having fewer than 200 nursing homes, two in states with 200 to 599 nursing homes, and three in states with 600 or more homes. Ninety percent of federal monitoring surveys will continue to be observational.</p>
Projected completion date of summer 2001	<p>OSCAR redesign: HCFA is in the process of redesigning its on-line management information system, OSCAR. While OSCAR currently provides extensive information about state surveys, including when surveys are conducted, the deficiencies cited, and the length of time between a home's annual surveys, generating analytical reports from OSCAR is difficult, and most regions lack the expertise to do so. The new nursing home module in OSCAR will be more user-friendly because it will require less computer programming experience to conduct data analysis.</p>

**STATE SURVEY FINDINGS FOR PERIODS  
BEFORE AND AFTER THE ADMINISTRATION'S  
NURSING HOME INITIATIVES**

In order to compare trends in nursing home deficiency citations, we analyzed data from HCFA's OSCAR System. We compared results for two time periods—one before and one after implementation of the nursing home initiatives: (1) January 1, 1997 through June 30, 1998 (base) and (2) January 1, 1999 through July 10, 2000 (current). Because surveys are conducted at least every 15 months (with a required 12-month state average), it is possible that a facility was surveyed twice in either time period. To avoid double counting of facilities, we included only the most recent survey from each of the two time periods. Because some states do not enter survey results promptly, the current period did not include all surveyed facilities. The results of our analysis are presented in table 14.

**Table 14: Percentage of Homes at Each Deficiency Level Before and After the Nursing Home Initiatives, by State**

State	Number of homes		Actual harm/ immediate jeopardy (percent)		Potential for more than minimal harm (percent)		Potential for minimal harm (percent)		Deficiency-free (percent)	
	Before	After	Before	After	Before	After	Before	After	Before	After
Alabama	227	225	51.1	41.3	32.2	52.9	6.6	0.9	10.1	4.9
Alaska	16	15	37.5	33.3	43.8	46.7	0.0	6.7	18.8	13.3
Arizona	163	125	17.2	36.8	71.8	56.8	4.9	2.4	6.1	4.0
Arkansas	285	253	14.7	30.8	56.8	57.7	22.8	5.9	5.6	5.5
California	1,435	1,301	28.2	28.2	65.0	65.7	4.0	3.0	2.7	3.1
Colorado	234	229	11.1	16.6	38.5	49.8	5.1	3.9	45.3	29.7
Connecticut	263	260	52.9	53.5	19.4	30.8	0.4	0.4	27.4	15.4
Delaware	44	41	45.5	53.7	36.4	34.1	6.8	2.4	11.4	9.8
District of Columbia	24	18	12.5	5.6	37.5	61.1	41.7	33.3	8.3	0.0
Florida	730	746	36.3	21.7	51.1	62.5	1.6	1.7	11.0	14.1
Georgia	371	364	17.8	25.0	41.8	46.4	10.2	7.7	30.2	20.9
Hawaii	45	46	24.4	23.9	33.3	67.4	33.3	4.3	8.9	4.3
Idaho	86	83	55.8	54.2	36.0	37.3	1.2	0.0	7.0	8.4
Illinois	899	891	29.8	31.1	55.2	51.9	6.8	7.0	8.2	10.1
Indiana	602	581	40.5	48.2	46.2	40.1	4.8	2.4	8.5	9.3
Iowa	525	428	39.2	22.7	42.9	55.6	1.0	3.0	17.0	18.7
Kansas	445	404	47.0	36.9	32.6	45.8	1.8	0.0	18.7	17.3
Kentucky	318	306	28.6	25.2	37.1	61.4	7.9	3.9	26.4	9.5
Louisiana	433	365	12.7	20.3	31.6	50.4	27.5	6.3	28.2	23.0
Maine	135	124	7.4	10.5	62.2	64.5	7.4	5.6	23.0	19.4
Maryland	258	188	19.0	24.5	34.1	37.2	8.9	8.5	38.0	29.8
Massachusetts	576	541	24.0	32.9	24.0	34.2	3.3	4.4	48.8	28.5
Michigan	451	442	43.7	45.9	51.7	49.5	1.8	1.4	2.9	3.2
Minnesota	446	437	29.6	32.5	40.4	45.1	6.7	5.5	23.3	16.9
Mississippi	218	196	24.8	31.6	44.0	50.5	8.3	8.2	22.9	9.7

## APPENDIX II

## APPENDIX II

State	Number of homes		Actual harm/ immediate jeopardy (percent)		Potential for more than minimal harm (percent)		Potential for minimal harm (percent)		Deficiency-free (percent)	
	Before	After	Before	After	Before	After	Before	After	Before	After
Missouri	595	565	21.0	25.7	43.7	55.8	6.2	3.0	29.1	15.6
Montana	106	105	38.7	39.0	39.6	50.5	5.7	1.9	16.0	8.6
Nebraska	263	241	32.3	26.6	24.7	48.5	3.0	3.7	39.9	21.2
Nevada	49	50	40.8	24.0	55.1	64.0	2.0	4.0	2.0	8.0
New Hampshire	86	82	30.2	35.4	25.6	32.9	14.0	4.9	30.2	26.8
New Jersey	377	336	13.0	23.8	24.4	38.1	15.4	11.0	47.2	27.1
New Mexico	88	82	11.4	30.5	44.3	45.1	11.4	1.2	33.0	23.2
New York	662	606	13.3	27.6	38.4	41.3	7.9	5.4	40.5	25.7
North Carolina	407	409	31.0	42.1	33.2	37.9	4.7	2.9	31.2	17.1
North Dakota	88	89	55.7	24.7	35.2	52.8	2.3	5.6	6.8	16.9
Ohio	1,043	995	31.2	28.6	41.3	50.3	4.9	3.3	22.6	17.8
Oklahoma	463	394	8.4	15.0	55.7	58.6	6.7	4.6	29.2	21.8
Oregon	171	157	43.9	53.5	26.3	27.4	2.9	0.0	26.9	19.1
Pennsylvania	811	774	29.3	30.7	44.4	47.7	3.6	3.2	22.7	18.3
Rhode Island	102	96	11.8	13.5	54.9	45.8	3.9	5.2	29.4	35.4
South Carolina	175	176	28.6	29.5	65.7	64.8	0.6	0.6	5.1	5.1
South Dakota	124	112	40.3	29.5	37.1	55.4	3.2	4.5	19.4	10.7
Tennessee	361	353	11.1	24.1	58.4	65.4	3.6	2.5	26.9	7.9
Texas	1,381	1,313	22.2	24.9	36.4	42.7	19.7	14.1	21.7	18.4
Utah	98	93	15.3	17.2	61.2	65.6	0.0	1.1	23.5	16.1
Vermont	45	45	20.0	13.3	35.6	48.9	11.1	2.2	33.3	35.6
Virginia	279	282	24.7	19.5	34.8	39.4	4.7	6.4	35.8	34.8
Washington	288	281	63.2	57.7	32.3	37.7	1.0	1.4	3.5	3.2
West Virginia	130	144	12.3	20.1	63.8	65.3	16.2	11.8	7.7	2.8
Wisconsin	438	424	17.1	14.6	53.7	50.5	5.3	3.3	24.0	31.6
Wyoming	38	41	28.9	34.1	55.3	46.3	2.6	2.4	13.2	17.1
<b>Nation</b>	<b>17,897</b>	<b>16,854</b>	<b>27.7</b>	<b>29.5</b>	<b>43.8</b>	<b>49.8</b>	<b>7.1</b>	<b>4.7</b>	<b>21.3</b>	<b>16.0</b>

STATE EFFORTS TO ADDRESS NURSING  
HOME STAFFING SHORTAGES

We identified 20 states that have enacted legislation that establish wage pass-throughs, wage supplements, or related programs to provide supplemental wages, fringe benefits, or funds for additional nursing home staff. Fourteen of these state programs were implemented since January 1998—3 in 1998; 9 in 1999; and 2 in 2000. Two other states—Michigan and Utah—enacted wage pass-throughs prior to 1998. The remaining four states only recently enacted legislation and have not yet implemented their programs. To identify these 20 states, we began with a September 1999 study based on a 50-state survey that identified seven state programs.<sup>1</sup> To update this study, we contacted the National Conference of State Legislatures, the Paraprofessional Healthcare Institute, and the Service Employees International Union and conducted an Internet search on “wage pass-through programs” during the summer of 2000. Because we did not survey all 50 states, there may be additional state programs. Table 15 provides a general description of each state’s program.

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<sup>1</sup>North Carolina Division of Facility Services, Comparing State Efforts to Address the Recruitment and Retention of Nurse Aide and Other Paraprofessional Aide Workers (Sept. 1999).

**Table 15: States With Programs to Address Nursing Home Staff Shortages**

State	Time period	Amount appropriated	Program description
Arkansas	Program began July 1, 1999.	The wage pass-through appropriation was \$25 million (\$7 million state and \$18 million federal dollars) for the nursing home staff wage enhancement.	The wage pass-through provided an increase of \$4.93 on the facility's daily rate; requires participating facilities to maintain minimum staffing levels. Facilities will be required to submit quarterly staffing reports to the Arkansas Department of Human Services for review to determine compliance with the minimum staffing requirements. The Department may also perform periodic on-site reviews—which may be unannounced—to determine the correctness and completeness of the quarterly reports. Failure to meet minimum staffing requirements will result in the repayment by the facility of 100 percent of the enhancement payments received for services occurring in that quarter.
California	First wage pass-through implemented on August 1, 1999. A second wage pass-through was implemented August 1, 2000.	For the 1999 pass-through, the estimated annual total cost was \$51.2 million (\$25.6 million state and \$25.6 million federal dollars); for the 2000 pass-through, the estimated annual total cost was \$148.4 million (\$74.2 million state and \$74.2 million federal).	The 1999 wage pass-through provided funds for salary, wage and benefit increases for nursing facility direct care staff—registered nurses, licensed vocational nurses, and nurse assistants. The second wage pass-through in 2000 was expanded to include other staff such as housekeeping and dietary staff. The pass-through is calculated on a per-patient-day basis and added to the per diem rate paid to each facility. Compliance of facilities will be on a retrospective basis, with a sample of facilities being audited. Facilities that did not comply with the wage pass-through provisions will be subject to recoupment of the undistributed wage pass-through funds plus a 10 percent penalty.
Connecticut	State fiscal year 2000	The state legislature appropriated a wage enhancement for nursing homes of \$76 million (\$37.5 million state and \$37.5 million federal) for state FY 2000. The state has appropriated \$77 million (\$38.5 million state and \$38.5 million federal) for the state FY 2001 wage enhancement.	The facility's share of the enhancement program funds is based upon its percentage of total direct and indirect costs in relation to all facilities, adjusted for Medicaid days. Enhancement payments can be used for wage, benefit, and staffing increases for a nursing home. The Commissioner of the Connecticut Department of Social Services may require facilities to file cost reporting forms, in addition to the annual cost report, to verify the appropriate application of wage, benefit, and staffing enhancement rate adjustment payments.
Florida	Program began April 1, 2000.	Appropriated approximately \$32 million (\$13.9 million state and \$18.1 million federal) annually for a "direct care staff adjustment."	The funds are to be used to reimburse nursing facilities for the costs of hiring additional certified nursing assistants and licensed nurses or for the cost of salary or benefit enhancements to retain such staff. All providers receiving the additional funds must provide documentation of direct care expenditures over that time period. The documentation is to be submitted to the Florida Agency for Health Care Administration in a format similar to the base data period documentation. Any amount deemed not to have been appropriately expended is to be reimbursed to the Agency. Cost report audits will be conducted.

State	Time period	Amount appropriated	Program description
Kansas	Program began in September 1999.	\$4.3 million (approximately \$1.7 million state and approximately \$2.6 million federal) was awarded in total funds for state FY 2000 to establish a wage pass-through program for nursing facilities. Another \$4.2 million (approximately \$1.7 million state and approximately \$2.5 million federal) was appropriated for FY 2001, but it is contingent upon HCFA's approval of a state plan amendment.	Funds are targeted for nursing facility front line staff. Providers apply for a per diem add-on to the Medicaid rate and are responsible for documenting legitimate use of funds through quarterly reports. Statistics are being collected on turnover.
Louisiana	Legislature passed a bill during the first special session of 2000; program has not yet been implemented.	Louisiana's wage pass-through is contingent upon HCFA's approval of a state plan amendment.	A portion of the earnings on the investment from the state's Medicaid Trust Fund for the Elderly are to be used for providing for a wage enhancement for direct care personnel working in Medicaid-certified nursing homes in accordance with a plan established by the Department of Health and Hospitals and representatives of the nursing facility industry. The plan will provide for a direct pass-through of the costs of such wage enhancements in a manner to ensure that the nursing home rate is adjusted to reflect the full costs of such wage enhancement.
Maine	Program began July 1, 1999.	\$3.68 million (\$1.25 million state and \$2.43 million federal) was provided for a one-time nursing home supplement for the direct care rate.	The supplement is intended to address the problem of recruitment and retention of nonadministrative staff. Facilities had flexibility to use it for either new positions or increasing wages of direct care staff. State will audit through cost reports.
Maryland	Program not yet implemented.	Intention is to provide \$10 million in general funds for FY 2002 and \$10 million in general funds for FY 2003.	Intent of the General Assembly is that the Governor provide in the state budget for FY 2002 and FY 2003 additional funds to increase payments in the Nursing Service Cost Center of the Medicaid nursing home reimbursement. The funds are to be used to enable nursing homes to address recommendations of the state's Task Force on Quality of Care in Nursing Homes in order to (1) increase hours of direct care to residents; (2) increase nursing staff; and (3) increase wages, fringe benefits, and other forms of compensation provided to direct care personnel. Expenditures by nursing homes shall be subject to audit and cost settlement by the Maryland Department of Health and Mental Hygiene.
Massachusetts	Program began January 2000.	According to the state's fiscal year 2001 budget, appropriated \$36 million (\$17.5 million state and \$17.5 million federal) for the exclusive purpose of funding increases in wages and related employee costs for certified nurse's aides at nursing facilities.	The Massachusetts Division of Medical Assistance and the Massachusetts Division of Health Care Finance and Policy were to establish criteria for the disbursement of the funds appropriated and report to the Senate and House Committees on Ways and Means on the criteria to be used by September 1, 2000. Criteria will mandate the



## APPENDIX III

## APPENDIX III

State	Time period	Amount appropriated	Program description
			degree to which such nursing facilities provide enhanced wages for certified nurse's aides and report to the two committees on the wage increases given at each facility by January 4, 2001.
Michigan	The state established its first nursing home staff wage pass-through in state FY 1990 with limited participation. The state's most current wage pass-through is for state FY 2000.	In state FY 2000, approximately \$33.6 million (approximately \$16.08 million state and approximately \$18.52 million federal) has been appropriated for a wage pass-through. For state FY 2001, the amount for the wage pass-through is not specifically identified. The FY 2001 appropriated inflationary allowance may be used to cover any allowable variable cost increases and is sufficient to provide a 50-cent-per-hour wage increase for nurse's aides at all facilities.	The current state FY 2000 wage pass-through provides a maximum increase of an additional 75 cents per hour and the reimbursement limit is to be applied on a per-employee basis. The provider must report actual wage pass-through cost data in the annual cost report for the wage pass-through year. In addition to a copy of the facility's written policy for internal administration of the wage pass-through, the provider must maintain, at the facility, information on individual employee wage increases and new benefits costs. The support schedule and associated payroll records must be available for Medicaid program audit verification. Failure to provide all supporting data for audit will result in disallowance of the wage pass-through reimbursement.
Minnesota	First wage adjustment bill passed in 1998 for state FY 1999. There have been two other separate wage adjustment bills for state FY 2000 and state FY 2001.	In state FY 2001, approximately \$92.7 million (approximately \$45.4 million state and approximately \$47.3 million federal) was appropriated for a wage adjustment.	For the first two wage adjustment bills, the legislation left it to the nursing facility to decide which employees to give the money to. For the latest wage adjustment, they passed a bill that provides for everyone in the nursing facility (except the administrator, central office employees, and anyone paid through a management fee) to get an equal per-hour increase in wages. Each facility's per diem rate was increased \$1.00 plus a portion of \$3.13 depending on facilities' average operating rate. Facilities must file a distribution plan showing how they plan to give the money to their employees. The plans must then be approved by the Minnesota Department of Human Services before the rate adjustment is implemented. The plans are also subject to a look-behind audit.
Missouri	Program not yet implemented.	Appropriation formally approved for \$22.7 million (approximately \$8.9 million state and approximately \$13.8 million federal) for quality-of-care wage enhancement for direct care staff of nursing facilities.	Proposed regulation currently drafted and receiving comments.
Montana	Program began July 1, 1999.	In state FY 2000, approximately \$2.9 million (approximately \$800,000 state and approximately \$2.1 million federal) was appropriated for a nursing facility wage add-on for enhancing the wages of direct care staff in nursing homes. For state FY 2001, approximately \$5.9 million (approximately \$1.6 million state and \$4.3 million federal) was appropriated for the nursing facility wage add-on.	For the state FY 2000 program, the nursing homes could receive up to a \$2.14 per Medicaid day add-on to the rate for direct care staff wages. The nursing facility was given flexibility in deciding which full-time-equivalent classification would receive add-on (staff with patient contact and food service were possible groups). Providers were required to submit supporting documentation for approval that detailed how the funds would be used to provide for direct care staff wage increases.

State	Time period	Amount appropriated	Program description
Oklahoma	First wage enhancement program was implemented May 1998. The state had a wage enhancement in state FY 1999 and FY 2000 and currently has one for state FY 2001.	The estimated cost for the state FY 2001 wage enhancement is approximately \$19 million (approximately \$5.6 million state and approximately \$13.7 million federal).	The wage enhancement is an adjustment to the nursing facility's per diem rate equal to \$3.15 per patient day. The amount of the rate increase for nursing facilities was calculated assuming that all nursing facilities would meet the state's minimum staffing requirements. Staffing ratios will be reviewed on a monthly basis for all nursing facilities. Those that demonstrate "willful" noncompliance with staffing ratios will be subject to a sizeable penalty.
South Carolina	First wage add-on began December 1, 1998. Second wage add-on was implemented October 1, 1999.	The appropriation for the state FY 2000 wage add-on was approximately \$4.5 million (approximately \$1.35 million state and approximately \$3.15 million federal).	Effective December 1, 1998, a 75-cents per patient day add-on was included in each nursing facility's reimbursement rate. The add-on was provided to assist nursing facilities in retaining currently employed nurse's aide staff. If a nursing facility is cited during a survey for inadequate nurse aide staff during the time period in which the 75-cent add-on is provided, it will be required to submit financial and statistical information relating to the expenditure. If, as a result of the review, a payback is warranted, it may not exceed the total amount reimbursed through the add-on. Effective October 1, 1999, a certified nurse's aide vacancy add-on was included in each qualifying facility's reimbursement rate. The add-on will be provided in order that nursing facilities can address the industrywide nurse's aide staffing turnover problem that was enhanced by a change in the minimum staffing requirements.
Texas	Program began May 1, 2000.	The Texas Enhanced Direct Care Staff Rate program provided \$41 million (\$15.8 million in general revenue funds and \$25.2 million in federal funds) during state FY 2000 for reimbursement increases for nursing homes and hospice room and board (in nursing homes) and is providing \$40.9 million (\$15.8 million state and \$25.1 million federal) during state FY 2001.	There is no specified portion of the funds that are to be used for nursing homes versus hospice room and board. The funds provide additional funds for direct care staff of nursing homes—registered nurses, licensed vocational nurses, and certified nurse's aides. Participation in the program requires the facility to maintain certain direct care staffing levels. All contracted facilities will provide the Texas Department of Human Services an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services over the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts. Also, the Department requires a 6-month staffing report that will be used as the basis for determining compliance with the staffing requirements and recoupment amounts.
Utah	State had previously implemented a pass-through program in 1990 and 1992 for nursing facilities. The most recent nursing facility pass-through program began July 1, 1998.	For the 1998 program, the state implemented a wage pass-through, which added \$3.06 per day for nurse's aides—approximately \$3.5 million (approximately \$945,000 state and \$2.56 million federal) was appropriated for the wage pass-through.	Hourly wages for nurse's aides were monitored to ensure funding was directed to the wage problem. In addition, the nursing facility Medicaid payment rate has a "nursing component" that is "provider specific." Payments are based on nursing costs reported for the prior year. Therefore, if nursing expenditures are reduced, future payment rates reflect that decrease.

## APPeNDIX III

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State	Time period	Amount appropriated	Program description
Vermont	Program began July 1, 1999.	\$4 million (\$1.52 million state and \$2.48 million federal) was appropriated for the wage pass-through.	The supplement is to be calculated as the prorated share of the net revenues based on the ratio of its nursing wages, salaries, and fringe benefits to the total of all nursing wages, salaries, and fringe benefits paid by Vermont nursing homes participating in the Medicaid program as reported on their 1997 Medicaid cost reports. The supplement is then added to the facility's total per diem rate. Within 60 days after the end of each state fiscal year during which wage supplement payments are made, each facility is to file on forms prescribed by the Vermont Division of Rate Setting a report of the wages, salaries, fringe benefits, and bonuses paid to employees during the state fiscal year.
Virginia	Program began July 1, 1999	\$21.7 million (approximately \$10.5 million state and approximately \$11.2 million federal) was appropriated for the wage supplement.	The nursing home wage supplement was to compensate nursing facilities for increased costs of certified nurse's aides and other increases in direct care costs. The nursing homes are to report what was actually spent, and if the facility did not spend the money for the wage supplement, then it must be returned to the state.
Wisconsin	Program began October 1, 1999.	The statewide amount of the nursing home wage pass-through is not to exceed \$8.3 million (approximately \$3.42 million state and \$4.88 million federal) in state FY 1999-2000 and \$11.1 million (approximately \$4.53 million state and \$6.57 million federal) in state FY 2000-2001.	A nursing home wage pass-through is provided to facilities to increase wages and fringe benefits, or to increase staff hours equal to 5% of the total amount of wages reported in a facility's 1998 cost report.

**ADDITIONAL INFORMATION ON  
FEDERAL OVERSIGHT ACTIVITIES**

**FEDERAL COMPARATIVE SURVEYS**

Because HCFA does not expect to implement a centralized database on comparative surveys until 2001, we manually compiled a summary of the 157 comparative surveys conducted between October 1998 and May 2000 by obtaining copies of the state and corresponding federal survey from each regional office. Table 16 presents the results of our analysis.

- Compared with the results of state surveys, 70 percent of federal comparative surveys found more serious care problems. On average, state surveyors identified 3 deficiencies per home, while federal surveyors found almost 10.
- Significant differences emerged among the 10 regions responsible for conducting comparative surveys. In August 1999, HCFA instructed regions to start their federal comparative surveys within 14 to 28 days after the state's survey was completed. Our analysis found that HCFA's New York and Philadelphia regions both had an average 39-day time period between the conclusion of the state survey and the beginning of the federal comparative survey. In contrast, the average interval for the Denver region was 23 days. Our analysis also found that of the 10 regions, only Chicago cited fewer deficiencies, on average, than state surveyors. Similarly, Boston was the only region to cite deficiencies at a lower scope and severity level than state surveyors.

**Table 16: GAO Analysis of the Results of Federal Comparative Surveys Conducted Between October 1998 and May 2000**

HCFA region	Number of surveys	Number of surveys where scope and severity of state deficiency was higher than that of federal deficiency	Number of surveys where scope and severity of federal deficiency was higher than that of state deficiency	Average number of days between surveys	Average number of state deficiencies	Average number of federal deficiencies
Boston	13	4	3	28.6	3.7	5.6
New York	7	0	6	38.9	4.1	12.0
Philadelphia	16	2	11	39.1	2.8	6.3
Atlanta	28	5	19	28.6	3.7	8.1
Chicago	22	4	13	33.1	2.9	2.1
Dallas	23	5	23	25.1	2.0	14.5
Kansas City	13	1	9	32.8	3.2	14.2
Denver	16	1	11	22.6	2.3	11.7
San Francisco	10	0	10	24.5	7.3	23.6
Seattle	9	4	5	27.2	5.8	9.3
<b>Total</b>	<b>157</b>	<b>21</b>	<b>110</b>	<b>29.6</b>	<b>3.4</b>	<b>9.9</b>

**NEW FEDERAL NURSING HOME  
PERFORMANCE STANDARDS FOR STATES**

Beginning October 2000, HCFA plans to track the states' compliance with an initial set of seven state performance standards. Based largely on standards established for the

SAQIP program, the seven standards are scheduled to replace states' self-evaluation of compliance. HCFA is in the process of developing protocols to ensure that the regions consistently enforce the seven standards. Table 17 summarizes the standards, indicates whether the state or HCFA was previously responsible for assessing compliance, and lists the data HCFA expects the regions to use in evaluating performance.

**Table 17: New State Performance Standards, Relationship to SAQIP, and Federal Evaluation Data Sources**

State performance area	New state performance standard (effective October 1, 2000)	Source of new performance standard	Data source
Conduct of the survey	Surveys are planned, scheduled, and conducted in a timely manner.	SAQIP (State)	OSCAR
Deficiency documentation	Survey findings are supportable.	SAQIP (State)	State survey statement of deficiencies
Consistency in survey performance	Certifications of homes' compliance with federal standards are fully documented and consistent with applicable law, regulations, and general instructions.	SAQIP (State)	Federal Monitoring Surveys
Enforcement actions	When certifying noncompliance, adverse action procedures set forth in regulations and general instructions are to be adhered to.	SAQIP (State)	Long-Term Care Enforcement Tracking System
Federal expenditure monitoring	All program expenditures and charges to be substantiated to HHS Secretary.	SAQIP (HCFA)	State Survey Agency Budget/Expenditure Report and Nursing Home Initiative Expenditure Report
Complaints investigation	Conducting and reporting of complaint investigations is timely and accurate and complies with general instructions for complaint handling.	SAQIP (State)	OSCAR
OSCAR data entry	Accurate and timely data entry into OSCAR.	SAQIP (HCFA)	OSCAR

The current SAQIP Nursing Home Performance Standards for State Agencies are divided into two sets of performance standards—one for states and one for HCFA regional offices. The states are responsible for self-assessing their ability to meet the seven state standards and reporting those results to their regional offices. The regional offices have an additional four performance standards they are responsible for ensuring their state survey agencies meet. The "source of new standard" column indicates whether it is a state or HCFA SAQIP standard.

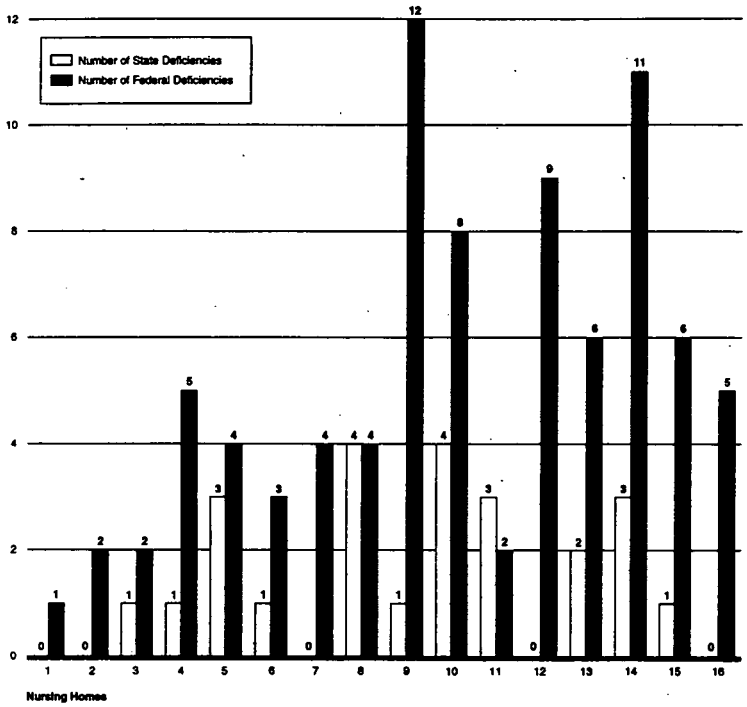
RESULTS OF RECENT FEDERAL  
SURVEYS IN OKLAHOMA

Between April and June 2000, HCFA conducted full federal surveys at the 16 nursing homes suspected of bribing the state survey agency director.<sup>2</sup> This number is significant because most states have only two full federal surveys each year. Figure 1 demonstrates that compared with the most recent state survey, federal surveyors found significantly more quality-of-care problems at these homes.

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<sup>2</sup>Four of these 16 federal surveys would qualify as comparatives because 2 months or less had elapsed since the most recent state survey.

**Figure 1: Comparison of State and Federal Quality-of-Care Deficiencies for 16 Nursing Homes in Oklahoma**



**COMMENTS FROM THE HEALTH  
CARE FINANCING ADMINISTRATION**



DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Health Care Financing Administration

The Administrator  
Washington, D.C. 20201

**DATE:** SEP 22 2000

**TO:** Kathryn G. Allen  
Associate Director  
Health Financing and Public Health Issues  
General Accounting Office (GAO)

**FROM:** Nancy Ann Min DeParle *Nancy Ann DeParle*  
Administrator

**SUBJECT:** GAO Draft Report: "Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives" (GAO/HEHS-00-197)

Thank you for giving us the opportunity to review and comment on the draft report entitled Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives, (GAO/HEHS-00-197). We generally agree with the GAO's findings and conclusions.

Protecting the 1.6 million people who live in nursing homes is a priority for this Administration and for the Health Care Financing Agency (HCFA), and we remain committed to bringing consistency and accountability to the oversight of the nation's 17,000 nursing homes. In 1995, HCFA began enforcing the nation's toughest-ever nursing home regulations. These regulations brought about measurable improvement, as documented in our 1998 Report to Congress. However, both our report and the work done by the General Accounting Office (GAO) made clear that more needed to be done. Therefore, President Clinton, announced a major new initiative in July 1998 to increase protections for vulnerable nursing home residents and to crack down on problem providers.

Implementation of the President's Nursing Home Initiative (NHI) began in 1999 and is continuing at both Federal and State levels. Some NHI provisions have already been implemented successfully in most States, and current data indicate that:

- On a national level, we have reached the goal of conducting 10 percent of such surveys on nights and weekends.
- State surveyors are identifying more substandard quality of care, with the average number of deficiencies found per survey up from 6.3 in 1996 to 7.0 in 1999, and the number of facilities cited for failure to prevent or care for bed sores up from 16.4 percent in 1996 to 17.7 percent in 1999.
- They also are citing more nursing homes for abuse, with the total up from 6.7 percent in early 1996 to 14.1 percent in 1999.
- Over 90 percent of facilities with severe deficiencies were referred for immediate sanctions.



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- Only 10 of 33 nursing homes involuntarily terminated from the Medicare program in 1999 had been readmitted. Those that were readmitted had remained out of the program an average of 5 months while they made corrections to come back into compliance.

GAO raises a few concerns related to the predictability of surveys, the inter-State variability in citing serious deficiencies, staffing shortages in nursing homes, and the fact that some Regional Offices are not implementing the expedited notice provisions for denial of payment for new admissions. We agree with GAO about the importance of these issues and are taking steps to address them. Preliminary data show that we have reached the national 10% goal for staggered surveys as of July 2000. We have followed up with those States that have not met the 10% threshold on an individual basis to determine the reasons for the delay and their plans to achieve the goal. Nevertheless, we are concerned about GAO's findings that surveys are still too predictable in some states and want to discuss additional measures with GAO.

Regarding variability among the States in citing serious deficiencies, we expect that with greater emphasis on training and more consistent HCFA Central and Regional Office oversight, we will continue to see reduction in the variability. GAO notes HCFA's recent Report to Congress describing the relationship between low nursing home staffing levels and quality of care, and mentions the steps which some states are already taking to address this problem. In addition, the President recently announced a proposal to establish incentive grants to States that commit to raising staffing levels in nursing homes. These grants could be used for a number of purposes including enhancing facility staff recruitment and retention efforts. Having made a number of efforts to ensure that denial of payment sanctions are imposed timely, we are concerned that GAO found problems remaining and will follow up with the Regional Offices on this matter.

We recognize GAO's concern about apparent discrepancies between expenditure reports and statements by State officials regarding expenditures, and we will follow up with the States on this.

We also recognize GAO's concern about the need to monitor State performance and to ensure consistency in the survey process and in interactions between our Regional Offices and State survey agencies. HCFA is taking steps to develop and require continuing education for all surveyors and requiring periodic recertification of all surveyors. On October 1, 2000, new Standards of Performance for State survey agencies will go into effect, and the Regional Offices will begin using a uniform set of protocols to monitor State performance and identify variations and changes on an ongoing basis. The new standards include requirements to ensure: that surveys are planned, scheduled and conducted timely; that survey findings are supportable; that certifications are fully documented, and consistent with applicable regulations and instructions; that applicable procedures are adhered to in certifying non-compliance; and that the conduct of complaint investigations is timely and accurate, and complies with general instructions.

HCFA agrees with GAO that it is still too early to draw definitive conclusions about the impact of various NHI provisions from the preliminary data available to date. We also agree that sustained Federal and State attention will be needed to realize the full potential of the nursing home quality initiatives. In that context, we think it is important to

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emphasize that we are only now about to complete the first fiscal year, FY 2000, in which full funding for the initiative was available. Throughout this fiscal year, we have been phasing in activities as States have been able to get legislative budget approval and complete recruitment, hiring, and training of new surveyors. This lag in funding explains, in part, why there is variation across States in implementing and achieving goals on the same timeline. We will continue to monitor our own progress and that of the States in implementing these provisions, and will modify our processes as needed.

While a good deal of progress has been made, we recognize that more work and a sustained commitment are needed to ensure the success of NHI in improving quality of care. We agree with the GAO that this process will take time. In addition to implementing the remaining provisions, HCFA is committed to a number of specific actions that will help strengthen and build upon the NHI. These include: examining how to make optimal use of available remedies and the possible need for additional authorities; continuing to work with States not making progress in meeting the 10 percent goal for off-hour surveys and the timeliness requirements for complaint investigations; working with States to develop more streamlined methods for investigating serious complaints; and refining data systems to provide more timely, useful and customer-friendly information. We have developed and implemented protocols for monitoring quality of care in nursing homes owned and operated by chains that have filed for Chapter 11. We also will continue our efforts to address the link between staffing levels and quality of care.

We appreciate GAO's willingness to work with HCFA over the past year and to provide early feedback to us as we began implementation of these quality of care initiatives. We are committed to continuing to work with GAO in this collaborative and constructive manner for the good of the 1.6 million Americans who live in nursing homes.

COMMENTS FROM CALIFORNIA'S  
DEPARTMENT OF HEALTH SERVICES

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY  
DEPARTMENT OF HEALTH SERVICES  
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DAVE DAVIS, Governor



Ms. Kathryn G. Allen  
Associate Director  
Health Financing and Public Health Issues  
United States General Accounting Office  
Health, Education and Human Services Division  
Washington, D.C. 20548

Dear Ms. Allen:

We appreciate the opportunity to submit California's written response to the General Accounting Office's (GAO) draft report "Nursing Homes: Sustained Efforts are Essential to Realize Potential of the Quality Initiatives". I want to thank the GAO for recognizing California's long-standing and continued efforts to improve the quality of care and quality of life for residents in its over 1400 nursing homes.

Continued efforts to improve the quality of care and quality of life for residents

As stated in the draft report, California has, through its annual budget, supplemented nursing home staff wages ("wage-pass through") as well as added staff to the state agency to increase the nursing home focused enforcement program to 100 facilities. As noted in your report, this program was used as a model for HCFA's focused enforcement program. The annual budget also gave funding to the state agency for the following:

- Quality awards to nursing homes providing exemplary care and monetary awards to those nursing homes providing exemplary care to the highest number of Medicaid residents
- Financial grants for innovative programs leading to improved quality of care and quality of life in nursing homes
- Requirements for nursing homes to report certain indicators of financial problems that could lead to financial insolvency
- Established the Financial Solvency Advisory Board to make recommendations on additional state licensing requirements to improve financial stability in nursing homes
- Added additional staff for guaranteed rapid response to consumer complaints
- Increased staff to vary the cycle of nursing home surveys to decrease the predictability of surveys

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Governor Gray Davis also has signed legislation (Chapter 451, Statutes of 2000) which will implement the following to address continued efforts to improve elder care in California:

- Statewide training by the state agency on effective nursing home practices to improve quality of care and quality of life for residents
- Technical assistance by the state agency to nursing homes to help in the improvement of nursing home practices
- Improved consumer information systems
- Improved abuse reporting by nursing homes
- Management companies must provide application to the state agency and be approved by the state agency in order to enter into management agreements with nursing homes
- Management companies and their subsidiaries will be added to the state agency information systems
- Nursing home licenses can be rescinded and a provisional license issued for certain federal nursing home enforcement actions
- Nursing home licenses can also be revoked for any federal deficiency
- State agency can impose a temporary manager in lieu of recommending imposition of a temporary manager under federal requirements
- Any complaint involving serious threat of imminent death or serious bodily harm will have an onsite inspection within 24 hours of receipt of the complaint
- Centralizing complaint intake and upgrading complaint tracking systems
- Nursing homes must post a notice on all doors providing egress and ingress to the nursing home when certain federal remedies are imposed

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Page 3

- Nursing homes must provide written notification to each resident, each resident's known family member and legal representative and all applicants for admission to the nursing homes when certain federal remedies are imposed
- The state agency will develop and perform standardized quality assurance reviews on all nursing home survey deficiencies that could lead to imposition of higher level federal remedies
- State civil monetary penalties have been increased for nursing home violations of the most serious nature
- The state agency will annually evaluate the nursing home enforcement process and provide the evaluation to the legislature and recommend additional legislation if needed to improve the process
- The state agency will determine need and make recommendations to the legislature regarding the minimum number of nursing hours per day needed to provide quality care in nursing homes
- The state agency will review and make recommendations to the legislature for changes to the state nursing home reimbursement methodology
- Improves the transfer and discharge appeal rights for nursing home residents

**Points of clarification**  
(changes in bold and italicized)

**Page 11:** Addition to end of paragraph #1...and entering the proper data into OSCAR, *including California which has completed 17% of its surveys as off-hour surveys, thus exceeding the HCFA standard of 10%.*

**Page 13:** Top of page "... each office will report to one of four field coordinators (north, central, south *and Los Angeles*)..."

APPENDIX VI

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**Page 23:** Middle of page "...but failed to account separately for initiatives expenditures as required by HCFA. HCFA initially stated the states would not be required to separately report the initiative expenditures and then later did require the states to do so and many of the states had not tracked the specific items requested by HCFA in the separate report.


**Page 28:** End of page "...increase in the volume of nursing home appeals. An additional impact of appeals is that federal attorneys are requiring state surveyor and consultant staff to provide testimony to support HCFA's action. Preparation time and hearings can last 8-10 days and during this time survey and certification work that would be done by surveyor and consultant staff is not accomplished.

California would like to once again acknowledge the courtesy and professionalism of the General Accounting Office staff and their ability to understand the very complex and intricate survey and enforcement processes.

We would also like to acknowledge the Health Care Financing Administration and its continued efforts to improve elder care.

California welcomes the continued review of the nursing home survey and enforcement process, and would recommend HCFA and Congress work with the states to determine the best method to coordinate these reviews.

Sincerely,

  
Diana M. Boyd, R.N., Dr. P.H.  
Director

**COMMENTS FROM MICHIGAN'S DEPARTMENT OF  
CONSUMER AND INDUSTRY SERVICES**



State of Michigan  
John Engler, Governor  
Department of Consumer & Industry Services  
Kathleen M. Wilbur, Director

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September 20, 2000

Kathryn G. Allen, Associate Director  
Health Financing and Public Health Issues  
United States General Accounting Office  
Washington, DC 20548

Dear Ms. Allen:

Thank you for the opportunity to respond to the draft report entitled Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives, (GAO/HEHS-00-197). Michigan supports the efforts of HCFA, the General Accounting Office and the Senate Special Committee on Aging to improve the oversight of nursing home services. In response to the 1999 GAO report, we took significant steps to assure compliance with federal standards for state activities. I am pleased to see that these actions have been acknowledged in the draft report. We have additional information in two areas which may assist in bringing the draft up to date with the current activities in our state.

1. **Page 11 and Table 2:** "... 7 percent of Michigan surveys were late-- that is, conducted after the 16<sup>th</sup> month."

Michigan shares your concern for reducing the predictability of surveys and has taken steps to accomplish that goal.

First, while the percentage of late surveys may be accurate for the period used for this assessment, we can assure you that since January 2000, no standard survey in our state has exceeded the federal requirement of no more than 16 months since the last survey. To accomplish this, we implemented a computer report this January that indicates facilities due for surveys in the coming months. The report aids in appropriate scheduling of standard surveys and will assure that we maintain compliance with federal requirements in the future.

Second, Michigan also incorporated the federal standard of conducting surveys between 9 and 15 months, with an average of 12 months, into the new computer program and into our program performance measures. HCFA Region Office V has stated that an average of 12.9 or less meets the federal requirements. Michigan's average survey interval for fiscal year 2000 to date is 12.7 months and is steadily decreasing to 12 months.

Third, to further reduce predictability, Michigan exceeds federal standards for off-hour standard surveys and conducts complaint visits in off hours where appropriate (although this is not a federal requirement).

Kathryn Allen  
September 20, 2000  
Page Two

2. Page 17— Increasing the Priority Attached to Complaints

In April 1999, the Department initiated an internal review of Michigan's long-term care and non-long term care complaint investigation processes. During this review, particular attention was paid to the following issues raised by the 1999 GAO report entitled Nursing Homes: Complaint Investigation Processes Inadequate to Protect Residents: 1) procedures that discourage the filing of complaints, 2) understatement of the seriousness of complaints, and 3) failure to investigate serious complaints quickly enough.

The internal review identified opportunities for improvement of complaint processes. A plan was developed to eliminate all 480 backlogged complaints that were then past the 30-day state required time frame by June 30, 1999.

To accomplish this, a project manager and a panel made up of Survey Team managers and Complaint Intake Unit staff developed a new procedure to govern the collection, screening, prioritization, assignment and investigation, entry of data into the database system, and the reporting of findings to complainants. Complaints assigned to surveyors prior to this project were investigated during regularly scheduled hours. Some surveyors also volunteered to investigate complaints on an overtime basis and a contractual retiree was hired to help investigate Southeast Michigan cases during regular hours. During the project, staff continued to meet HCFA's two-day time frame for investigating "immediate jeopardy" (IJ) complaints and the 30-day time frame for completing all other complaints that came in after May 25, 1999.

This action eliminated Michigan's complaint backlog. Four hundred seventy-five (475) of the 480 complaints in open status were investigated and completely processed by June 30, 1999. The other five were completed in early July 1999.

Since July 1999, Michigan has implemented a number of additional measures to improve the complaint process and to ensure timely investigation of complaints:

1. New complaint forms created to aid citizens of the State of Michigan in providing necessary information— facilitating the processing of complaints. The new complaint forms are now being added to the Department's web page.
2. An upgrade of the 1-800 Complaint Hotline telephone system was completed to facilitate the processing of complaints and to better accommodate after hours calls.



Kathryn Allen  
 September 20, 2000  
 Page Three

3. A distinct Complaint Intake Unit was created with added staff dedicated to receive and prioritizing complaints and facility reported incidents to make complaint processes more accessible to the public and to better focus investigations.
4. The state Complaint Investigation Manual was revised and disseminated July 1, 1999 to all appropriate staff to ensure consistency of investigative procedures.
5. A Complaint Investigation Team was created as a separate unit to develop expertise in complaint investigation and to provide rapid response to serious injury and serious harm complaints.
6. Off-hours investigations were increased for complaint surveys and are conducted as needed.
7. Performance measures were established for the Complaint Investigation Team that require investigations within two days for serious injury complaints, ten days for actual harm as required by federal law, and a self-imposed 30 day deadline for non-priority complaints. Findings for each investigation must be reported within 30 days.
8. Caseload status reports have also been developed for use by management and leadership to evaluate the effectiveness and timeliness of the complaint investigation process.

The improvements made showed, and continue to show, success in Michigan. Data recently supplied to GAO for July to December 1999 show 100% (63) of serious injury cases completed within the 48 hour time frame, 100% (16) complaints completed within the ten day time frame for actual harm cases, and 95% of the 717 non-priority cases investigated within 30 days. Michigan's record in calendar year 2000 shows similar results.

3. Table 5, Footnote d

In the Michigan program, the term "investigate" means that both the on-site survey is performed and the report of results is delivered to the complainant within 30 days. Our program procedures now require that the actual onsite survey for the 818 "non-priority" complaints be conducted within 15 days of receipt, not 30 days as stated in the footnote. In other words, Michigan procedures require that all complaints which require an onsite are visited within 15 days. We think that this is a more stringent time frame than you will find in most states. While we do not meet this goal in every case, we are making steady progress toward this goal. Our average onsite visit interval for all complaints during October 1999 and February 2000 was 16.2 days.

APPENDIX VII

APPENDIX VII

I hope this information is of assistance to you.

Sincerely,



Kathleen M. Wilbur  
Director

COMMENTS FROM MISSOURI'S  
DEPARTMENT OF SOCIAL SERVICES



MEL CARNAHAN  
GOVERNOR

MISSOURI  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF AGING  
P.O. BOX 1327  
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RELAY MISSOURI  
*for hearing and speech impaired*  
TEXT TELEPHONE  
1-800-735-2266  
VOICE  
1-800-735-2466

September 21, 2000

Ms. Kathryn G. Allen, Associate Director  
U.S. General Accounting Office  
Health, Education, and Human Services Division  
Health Financing and Public Health Issues  
Washington, DC 20548

Dear Ms. Allen:

I appreciate the opportunity to respond to your September 14, 2000 letter and the attached U.S. General Accounting Office's draft report to the Senate Special Committee on Aging and Senator Christopher Bond entitled Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives. (GAO/HEHS-00-197). Since becoming the Director of the Division of Aging (DA) on February 14, 2000, I have been working diligently with staff to ensure implementation of and compliance with Medicare and Medicaid regulations including the Nursing Home Initiatives (NHIs).

While generally in agreement with the findings and recommendations contained in the report regarding the NHIs, DA has the following comments and suggestions related to key areas within the report:

Survey Methodology

The Health Care Financing Administration's (HCFA's) major redesign of its nursing home survey methodology utilizing Quality Indicators (QIs) from the Minimum Data Set (MDS) is a first step in implementing needed modifications to the survey process. QIs allow survey staff to enter facilities with information in-hand specific to the general population, as well as identifying individual residents with specific care issues (i.e., pressure ulcers, weight loss, dehydration). DA agrees with GAO's concern that the QI reports are generated from information self-reported by the nursing facilities. With the September, 2000 addition of the requirement for facility staff to attest to the MDS

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services provided on a nondiscriminatory basis

information being collected in accordance with applicable Medicare and Medicaid requirements, HCFA has taken a step towards ensuring facilities understand the responsibility of accurately and timely completing these resident centered assessments. Resources have not been provided to the state survey agencies to allow for periodic reviews of MDS assessments and care plans outside the annual survey cycle. Periodic independent validation of the accuracy of the MDS data gathered by the facility would further strengthen the use of the data in ensuring the survey process addresses specific issues or concerns in each facility.

As the GAO report indicates, these initial survey modifications need to be in place a longer period of time prior to a final determination being made that they have resulted in the desired outcomes. However, continuing to modify and add to an already highly complex system, does not necessarily address the inflexibility and rigidity seen in the current process. We recommend HCFA, the state survey agencies, long-term care industry, consumers and other interested parties come together to perform a comprehensive review and evaluation of the existing survey process with a common goal of designing, developing and implementing the best possible system including the use of technology. HCFA and state survey agencies need this system to readily identify, document, track and report on the quality of care and quality of life in facilities including identification of "early warning" signs of developing problems and violations in nursing facilities. The current survey process remains "one size fits all". HCFA and the state survey agencies need to be able to accurately assess facilities quality care and services. Survey resource allocation should be managed to minimize resource expenditure for compliant homes enabling limited resources to be directed to facilities needing close scrutiny to ensure appropriate program decisions are made timely when facilities are unwilling or unable to successfully sustain compliance.

#### Survey Predictability

DA concurs with GAO's finding that the 10% staggered survey NHL, by itself, is too limited in scope to truly reduce survey predictability. DA is in compliance with the NHL related to staggered surveys; management reports for federal fiscal year (FFY) 2000 show that we met the minimum compliance requirement of 10% by the end of June with completion of 49 surveys ( $492 \times 10\% = 49$ ) starting on weekends and/or off-routine hours. During the remaining months of FFY 2000, we have continued to begin surveys on weekends and/or off-hours to assist in further reducing the predictability of the recertification survey process. We have recommended to HCFA that they modify the practice of using the federal On-line Data Inquiry and Entry/On-line Survey, Certification and Reporting (ODIE/OSCAR) system as the primary data source for information related to this NHL. Currently, ODIE/OSCAR data entry requires all information to be entered only after completion of the survey process including Informal Dispute Resolution. The timing of data entry into the ODIE/OSCAR system results in state survey agencies appearing to be non-compliant. Data entry modifications have been recommended to HCFA by the state survey agencies to allow completion of initial entry of key survey data prior to completion of the IDR process. However, state agencies have

not yet received information regarding plans for any implementation of ODIE/OSCAR system changes allowing for more timely data entry. (We do understand HCFA has begun a major redesign project (QIES) that will eventually replace the existing system.)

While we concur with GAO's recommendation that annual surveys would be less predictable if the process was segmented to allow surveyors more than one review visit during a year, the manner in which this segmentation occurs -- along with the ability of state survey agencies to include a segment of the survey in another process, such as a complaint investigation -- would need to be taken into consideration given current resource limitations.

#### **Resource Planning**

We concur with GAO's finding that states were not able to fully expend federal fiscal year 1999 NHI funding due to late distribution. We cannot stress enough the importance of adequate planning for program implementation and communication at all levels within HCFA's central office, regional offices down to the state survey agencies. Even though additional federal funds may be made available during a fiscal period, states have budgetary policies that require state legislative action to allow the state agency to obtain required state shares and provide authority for utilization of federal funds. Further, when continuation of federal funds from period-to-period is questionable, states are not always successful in obtaining state appropriation authority for full time equivalent (FTE) employees to perform mandated functions.

Statements related to future funding appear to indicate that HCFA's funding methodologies will continue to be at odds with the objective of assuring quality oversight and monitoring of Medicare/Medicaid certified facilities. Use of OSCAR data for determining resource allocations to states is indicative of a continuing pattern of emphasizing survey productivity rather than quality of the surveys conducted. We understand that HCFA continues to work towards funding surveys based upon an "average survey" without consideration of survey quality or the need to direct resources towards problematic facilities. Currently, state survey agencies are not funded at a level that allows for determination of the number of hours to be spent in a facility based upon the conditions found or known to exist in the facility or to allow for monitoring of compliance in an adequate number of problem facilities.

#### **Special Focus Facilities**

While worthwhile, DA concurs with GAO that the special focus facility NHI is too narrow in scope excluding many homes that were providing poor care. Each state had two facilities that were identified as special focus facilities. We would recommend HCFA consider providing sufficient resources for expansion of this NHI requiring two full surveys rather than one annually in facilities providing poor care and that consideration be given to modifying the process to allow for monitoring or abbreviated surveys as an extension of this NHI.

**Training Issues**

A key area of concern for state agencies is training to ensure our staff are competent and qualified to perform survey functions. Much of our time is spent ensuring consistent application of federal survey guidelines across teams and regions. Another concern is the short time frames provided for implementation of new initiatives resulting in extremely limited training opportunities for staff prior to implementation of the federal guideline. During state fiscal year (SFY) 2001, DA will be implementing the new nationally developed Preceptor's Training Program. This program will assist DA in assuring that training of surveyors is managed in a uniform and consistent manner throughout our state.

HCFA needs to ensure that prior to conducting training sessions their guidelines are finalized and materials provided to trainers are consistent throughout their train-the-trainer sessions. Recent experience with NHI training sessions being conducted with draft materials is an example of state trainers not receiving the same training between sessions. Routinely, state agencies are allowed to send only two individuals to train-the-trainer sessions resulting in the need for additional state staff to be trained as trainers prior to conducting actual sessions for approximately 200 total staff. Additionally, when establishing time frames for implementation HCFA should consider that state agencies cannot discontinue responding to complaint investigations and completing ongoing processes to have all regional staff attend a single training session requiring repetition of sessions.

HCFA is responsible for providing basic surveyor training for all state survey staff prior to those staff sitting for the federal Surveyor Minimum Qualification Test (SMQT). We have noted over time that modifications are made to the training program, but information about the modifications is not always provided timely to the state training coordinator to ensure all existing survey staff remain up-to-date. We believe HCFA should consider remanding responsibility for training to the HCFA regional offices, so that a regional training coordinator can be assigned to assist in ensuring that training provided throughout the region is consistent. Frequently, HCFA has utilized various regional office staff for training sessions without consideration of the variances within their own regions. This results in confusion for state surveyors who return to teams where other team members may have heard different interpretations dependent upon which HCFA regional office conducted a specific session.

We noted reference to an OSCAR and other data tracking coordinator responsible for ensuring that HCFA regions have the necessary trained personnel and that regional administrators and the central office are to be apprised of data analysis results. A need for a similar position exists in the state survey agency. Training on the ODIE/OSCAR system has been infrequent and system modifications have occurred without prior notice to state agencies. We anticipate as major system modifications are made and as QIES continues to develop, HCFA will assist states in ensuring state staff have access to a trained and qualified state data tracking coordinator.

**Complaint Processes**

Timely investigation of the growing number of complaints is essential in ensuring an accurate reporting of the events that resulted in the complaint being filed. However, to meet the federal program mandates and state inspection requirements (two inspections per year), as well as time frames for completion of complaint investigations, additional resources are needed to ensure all time frames are met. HCFA continues to prioritize the completion of the annual survey ahead of completion of complaint investigations. DA continues to request annually, through the state and federal budget processes, funds for additional survey staff. Historically, state survey agencies have not been consistently successful in obtaining sufficient resources to meet the increasing need for complaint processes, as well as all other federal and state mandates.

**Table 11**

This table uses as a comparison California with 3 percent of the nursing homes in the state found deficiency free on their most recent survey compared to about 16 percent in Missouri. Appendix II of this report identifies the national average percentage of deficiency free homes to be 16.0%.

In regard to the adequacy of complaint investigations, DA identified problems with our complaint process prior to the Missouri state auditor's review conducted in state fiscal year 1999 and therefore, we concurred with her recommendations for improvement. In SFY 1996, DA staff identified the need for sweeping revisions to the complaint system. Beginning in SFY 1997, DA conducted internal reviews and convened focus groups to clearly identify issues and to make recommendations for systemic revision. Requests for budget appropriation for additional staff were made in 1998, 1999, 2000 and 2001 to obtain sufficient numbers of staff to implement the recommended revisions. These requests were partially funded. In addition, plans were made to replace the antiquated Central Registry for Abuse, Neglect and Exploitation (CRANE) system, through which all complaint reports are reported, tracked and documented. Until the new system comes on-line, an interim tracking and monitoring system has been implemented. The new on-line system is currently in the preliminary testing phase.

In mid-SFY 1999, DA began phasing in region-by-region a new complaint investigation process including a case management approach to ensure that complaint investigations are initiated timely and, at a minimum, a call is placed to the reporter to determine the need for an immediate on-site visit. This process change resulted in increased community participation (family, friends, facility operators and other concerned individuals), bringing to positive resolution issues affecting the day-to-day lives of facility residents.

DA concurred with the state auditor that additional improvements are needed to the complaint system. DA took action following discussions with state audit staff to:

- Designate a central office complaint coordinator and monitor to ensure: complaint investigations are timely handled; reporters are called; required notices are mailed; and complaint investigation data is received and entered into a regional complaint tracking system with the regional data base forwarded to central office on a monthly basis for review and action, as applicable.
- Request additional DA staff to allow us to begin in September, 2000, to at least quarterly, monitor quality through a random selection of completed complaint reports. Comparisons of the selected reports to established quality assurance criteria will be completed; feedback will be provided to survey staff and training will be focused on areas needing improvement.
- Initiate a management and internal control review of complaint processing beginning with the Kansas City Regional Office.
- Provide investigative skills training for all staff at the SFY 2001 Annual Surveyor's Training and later in the fiscal year provide an advanced course for supervisors and complaint investigators.

Additionally, we have submitted to the HCFA regional office a detailed training plan for all staff within the region responsible for the facility where the federal comparative survey was conducted in February 2000. The plan contains required training elements on each task cited within the comparative survey as not meeting federal guidelines and requires the training be monitored by the central office state training coordinator. Further, the plan requires supervisors to continue monitoring after the training each team's surveys for these tasks and that each supervisor submit a sample of surveys completed by teams under their supervision to the central office quality assurance unit for review.

#### **Comparative Surveys**

DA believes the federal comparative survey process could be beneficial in determining state survey agency compliance, but requires refinement. In our review of the comparative surveys conducted in our state, we noted that these federal surveys are completed using different criteria and resources than those set forth by HCFA for use by state agencies. Differences include: utilization of different numbers and types of survey staff; use of different samples of residents; reviews of different areas of resident care; the periods of time surveyed are not the same and findings from the federal comparative survey are not required to be legally defensible.

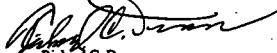


APPENDIX VIII

APPENDIX VIII

Missouri looks forward to continued work with HCFA, the other state agencies, advocates, residents and their families in further implementing these and other NHIs to improve the quality of care and life for residents in our state's nursing facilities. Choosing a nursing facility for a family member or loved one is never an easy task. Our common goal must remain ensuring that facilities offering services to some of our most vulnerable citizens maintain the dignity of the individual; provide them with the respect, they so rightly deserve; and ensure their safety, security and comfort while receiving quality care and services appropriate to meet their individual needs.

Sincerely,



Richard C. Dumm  
Director

RCD/pw

COMMENTS FROM WASHINGTON'S  
DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES



STATE OF WASHINGTON  
 DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
 AGING AND ADULT SERVICES ADMINISTRATION  
 PO Box 45600 • Olympia, WA 98504-5600

September 20, 2000

William J. Scanlon, Director  
 Health Financing & Public Issues  
 General Accounting Office  
 441 "G" Street NW  
 Washington D.C. 20548

Dear Mr. Scanlon:

We appreciate the opportunity to provide comment on the report regarding implementation of the Nursing Home Quality Initiatives. While full implementation of the initiatives is ongoing, the information and data presented in the report is of interest.

The report recognizes many of the challenges related to Federal enforcement. Washington State has a proactive state enforcement system which has been in effect since 1989. State enforcement processes can serve to heighten the effectiveness of the Federal system. Should the GAO or Congress wish to review the components of the Washington State system that further protect nursing home residents, we stand ready to participate in that process.

Sincerely,

Patricia K. Lashway, Director  
 Residential Care Services

APPENDIX X

APPENDIX X

GAO CONTACT AND STAFF ACKNOWLEDGMENTSGAO CONTACT

Walter Ochinko, (202) 512-7157

STAFF ACKNOWLEDGMENTS

This report was prepared by Connie Peebles Barrow, Jack Brennan, Leslie Gordon, Bob Lappi, Peter Oswald, Sangeetha Raghunathan, Janet Rosenblad, Peter Schmidt, Don Walthall, and Opal Winebrenner under the direction of Walter Ochinko.

RELATED GAO PRODUCTS

Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality (GAO/HEHS-00-6, Nov. 4, 1999).

Nursing Homes: HCFA Should Strengthen Its Oversight of State Agencies to Better Ensure Quality Care (GAO/T-HEHS-00-27, Nov. 4, 1999).

Nursing Home Oversight: Industry Examples Do Not Demonstrate That Regulatory Actions Were Unreasonable (GAO/HEHS-99-154R, Aug. 13, 1999).

Nursing Homes: HCFA Initiatives to Improve Care Are Under Way but Will Require Continued Commitment (GAO/T-HEHS-99-155, June 30, 1999).

Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit (GAO/HEHS-99-157, June 30, 1999).

Nursing Homes: Complaint Investigation Processes in Maryland (GAO/T-HEHS-99-146, June 15, 1999).

Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents (GAO/HEHS-99-80, Mar. 22, 1999).

Nursing Homes: Stronger Complaint and Enforcement Practices Needed to Better Ensure Adequate Care (GAO/T-HEHS-99-89, Mar. 22, 1999).

Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards (GAO/HEHS-99-46, Mar. 18, 1999).

California Nursing Homes: Federal and State Oversight Inadequate to Protect Residents in Homes With Serious Care Violations (GAO/T-HEHS-98-219, July 28, 1998).

California Nursing Homes: Care Problems Persist Despite Federal and State Oversight (GAO/HEHS-98-202, July 27, 1998).

(201018)

The CHAIRMAN. Thank you, Dr. Scanlon.  
Now Administrator Hash.

**STATEMENT OF MICHAEL HASH, DEPUTY ADMINISTRATOR,  
HEALTH CARE FINANCING ADMINISTRATION, BALTIMORE, MD**

Mr. HASH. Chairman Grassley, Senator Breaux, Senator Kohl, I also want to thank you for inviting us here today and also for holding this important series of hearings because clearly, as all of us have acknowledged, your continued focus and commitment to the improvement and maintenance of quality of care and quality of life for nursing home residents has had a profound implication for the good in ensuring that we make progress in this important area.

We are happy to be here today to share with you and the Members of the committee our progress in implementing the Nursing Home Initiative that the president announced in July 1998. We are today releasing an interim report on this initiative, which shows measurable success in several areas. It also shows areas in which we clearly need to strengthen our efforts. Key successes include a substantial increase in the number of surveys conducted on nights and weekends, off-hour surveys; more citations for substandard care and failure to prevent problems like pressure sores and malnutrition and dehydration; the vast majority of facilities with serious problems are being referred for immediate sanctions by surveyors; homes terminated from Medicare and Medicaid participation because of quality problems are not reinstated until it is clear that they have made the necessary corrections; and finally, public response to our consumer education efforts has been very positive. This is especially true for our award-winning website, Nursinghomecompare, which is located at Medicare.gov, which allows consumers and their families to search by zip code or facility name for data on each individual facility, information about that facility's care and safety record and other pertinent information that consumers need when making this kind of important decision.

But, as I said, there are clearly shortcomings where we need to focus our efforts. About one-third of states are still not promptly investigating serious complaints. Some states need to do more to address so-called special focus facilities, designated as such because of serious and persistent quality problems. About one-third of states are not conducting surveys of every facility within the prescribed 15-month period under law or submitting in a timely manner data on their survey findings.

We also need to make further improvements in our Federal oversight of state survey activities and to do more to ensure consistency in our own efforts across the country.

We are working to address these shortcomings and to build on our successes. We are also working to further our ground-breaking research on the link between staffing levels and quality of care in nursing homes. As you know, we released a study earlier this year, phase one of a study on staffing and quality. Phase two of that staffing study will expand the sample that we looked at of states and nursing homes and assess options for making assessments of case mix differences among institutions and the impact that minimum staffing levels would have on facility costs and other related aspects of nursing home operations.

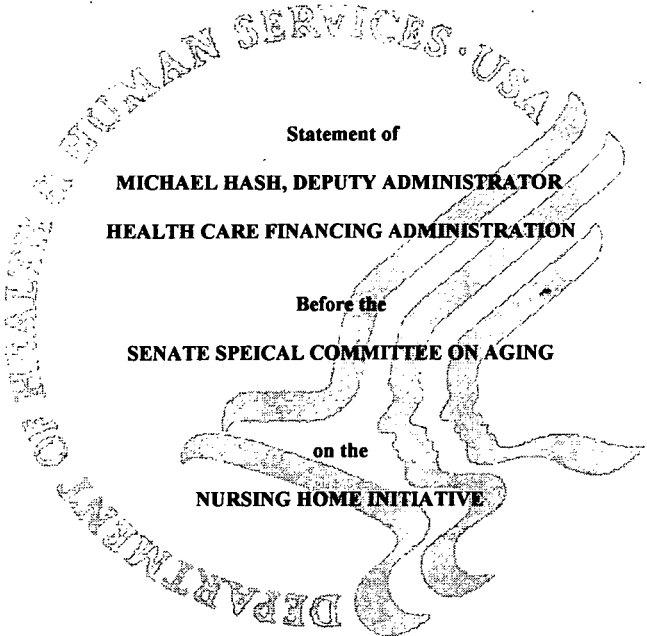
In addition, the president has recently proposed a \$1 billion 5-year initiative of incentive grants to help states explore innovative ways to improve the level of staffing in nursing homes. This committee in particular has been invaluable in helping us obtain the funding that has been necessary to carry forward the nursing initiative and to improve the quality of care and quality of life in nursing homes. And, of course, we look forward to working with you as Congress continues in this cycle of the annual appropriations process for the fiscal year 2001.

We are committed to continuing work with residents and their families and advocacy groups, providers, states, and, of course, the Congress to ensure that the Nursing Home Initiative is fully and effectively implemented and that nursing home residents receive the quality of care and protection that they deserve. We greatly appreciate the additional support Congress has provided for this initiative and especially for the leadership of this committee.

With continued cooperation and support, we are confident that the Nursing Home Initiative will succeed in our joint goal to improve oversight in quality of care for nursing home residents.

I want to thank you again for holding this and other hearings, Chairman Grassley, and I look forward to responding to any questions that you and other Members of the Committee may have.

[The prepared statement of Mr. Hash follows:]



Statement of  
**MICHAEL HASH, DEPUTY ADMINISTRATOR**  
**HEALTH CARE FINANCING ADMINISTRATION**

Before the  
**SENATE SPEICAL COMMITTEE ON AGING**

on the  
**NURSING HOME INITIATIVE**

September 28, 2000



**Testimony**  
**Michael Hash, Deputy Administrator**  
**Health Care Financing Administration**  
**on**  
**The Nursing Home Initiative**  
**before the**  
**Senate Special Committee on Aging**  
**September 28, 2000**

Chairman Grassley, Senator Breaux, distinguished Committee members, thank you for inviting us to discuss the quality of nursing home care and our progress in implementing our Nursing Home Initiative. We are releasing a report on this Initiative which shows measurable success in several areas. We also can clearly see the need to strengthen efforts in other areas.

**Key successes include:**

- a substantial increase in the number of surveys conducted on nights and weekends;
- more citations are being made for substandard care and failure to prevent problems like bed sores;
- the vast majority of facilities with serious problems identified by surveyors are being referred for immediate sanctions;
- homes terminated from the Medicare and Medicaid programs because of quality problems are staying out until it is clear that they have made necessary corrections; and
- public response to our consumer education efforts is very positive, especially for our award-winning Nursing Home Compare website, which allows consumers to search by zip code or facility name for data on each facility's care and safety record, staffing levels, number and types of residents, facility ownership, and comparison to State and national averages.



Shortcomings where we need to strengthen efforts include:

- failure by about one third of States to promptly investigate serious complaints;
- weaknesses in some States' efforts to address levels of quality in "special focus" facilities, designated as such because of serious, repeated problems;
- failure by about one third of States to conduct surveys of every facility at least every 15 months, as required by law, and to submit data on survey findings in a timely manner; and
- Federal oversight of State survey activities.

We are working to address these shortcomings and build on our success. We also are working to further our groundbreaking research on the link between staffing levels and quality of care. The President has proposed \$1 billion over five years in incentive grants to help States explore innovative ways to raise staffing levels. This Committee, in particular, has been invaluable in helping us obtain the funding we need for our efforts to improve nursing home quality, and we look forward to working with you again to secure passage of this important legislation.

#### **Background**

Protecting the 1.6 million residents in the nation's 17,000 nursing homes nursing home residents is a priority for this Administration and our Agency. In 1995, we began enforcing the toughest nursing home regulations ever. These new regulations led to several improvements, including reductions in improper use of anti-psychotic drugs and physical restraints. However, findings in our 1998 Report to Congress, as well as GAO investigations, made clear that problems persisted. State-run nursing home inspections were too predictable, with inspectors frequently appearing on Monday mornings and rarely visiting on weekends or evening hours, allowing nursing homes to prepare for inspections. Several States rarely cited nursing homes for substandard care. Residents were suffering from easily prevented problems such as bed sores, malnutrition, and dehydration. And they were experiencing physical and verbal abuse, neglect, and misappropriation of property.

To address these issues, in 1998 we launched the President's Nursing Home Initiative (NHI), and have been continually building on it since that time. The NHI includes many ongoing provisions to meet specific goals, such as:

- preventing dehydration, malnutrition, and abuse
- making inspections less predictable and helping States improve the quality of inspections;
- quickly investigating complaints alleging actual harm to residents; and
- cracking down on facilities with repeated violations by making them subject to greater scrutiny and immediate sanctions, and preventing those terminated from Medicare and Medicaid from immediately reentering the programs.

We have obtained essential support for the NHI by working with Congress. The overall amount provided to the Department for the NHI in FY 1999 was \$15.2 million, and in FY 2000 the total was \$79.7 million. For FY 2001, the President has requested a total of \$84.9 million. These totals have many components. For example, State survey agencies, which have the primary responsibility for conducting inspections and protecting resident safety, received \$8 million in FY 1999 to begin phase in of the NHI activities. For FY 2000, Congress increased funding to the State survey agencies by \$40.5 million for NHI activities. In FY 2001, the President is requesting \$55.4 million for the States for NHI activities.

In addition to providing investment funds for State activities, Congress also has increased funding to HCFA and the Department of Health and Human Services to support the NHI. The \$7.2 million provided to the Department in FY 1999 promoted quality assurance, increased federal oversight, and provided additional funds for reducing the backlog of appeals. In FY 2000, \$31.2 million is targeted towards these oversight activities.

It has now been two years since the NHI began. Many provisions are still being implemented, and it would be premature to draw definitive conclusions about the impact of various NHI provisions from the limited, preliminary data available to date. There also is substantial variation among States in all measures examined. However, the preliminary findings in our report will begin to help us identify where improvements are being made and where further efforts are needed.

### *Summary of Findings*

Some NHI provisions have been implemented successfully in most States.

- State surveyors have nearly reached the goal of conducting 10 percent of such surveys on nights and weekends.
- They are identifying more substandard quality of care, with the average number of deficiencies found per survey up from 6.3 to 7.0, and the number of facilities cited for failure to prevent or care for bed sores up from 16.4 percent to 17.7 percent.
- They also are citing more nursing homes for abuse, with the total up from 7.5 percent in 1997 to 14.1 percent in 1999.
- Over 90 percent of facilities with severe deficiencies were referred for immediate sanction.
- Only 10 of 33 nursing homes involuntarily terminated from the Medicare program in 1999 had been readmitted. Those that were readmitted had remained out of the program an average of 5 months while they made corrections to come back into compliance.

However, more work is needed to successfully implement other NHI provisions.

- Not all States are using a streamlined process for investigating serious complaints. That may be because States and HCFA had different expectations about the support we would provide, but clearly the support we did provide was not sufficient.

Nevertheless, more than two-thirds of the States reported that they are investigating complaints alleging immediate jeopardy within 2 days and 13 States are investigating all complaints alleging actual harm within 10 days.

- Some States may not have fully implemented protocols for investigating “special focus” facilities, designated as such because of serious, repeated problems. Overall, however, this effort has helped to document serious problems. Ten percent of these facilities were removed from the Medicare and Medicaid programs or voluntarily withdrew, while another 25 percent improved sufficiently to now be considered in substantial compliance.
- About a third of States are not conducting surveys every 15 months, as required, or submitting data on survey findings in a timely manner. We have written these States urging them to come into compliance as a first step that could lead to significant sanctions.

Our report also examines resident characteristics that may indirectly reflect NHI interventions. Use of physical restraints has continued to decline, from 16.3 percent in 1997 to 11.1 percent in 1999. However, data on other measures are mixed and vary by data source, making it difficult to reach firm conclusions.

In addition, our report reveals the continuation of significant variation in the type and number of deficiency citations across States. For example, our report finds that there is variation across States in the numbers of citation for abuse, substandard quality of care, and pressure sores. Such variation could be attributed to differences across States in nursing home case-mix, actual quality of care, or surveyor practices. The inability to explain this variation makes it difficult to determine, with any degree of confidence, whether the quality of nursing home care is good or bad overall, or in any particular State.

Finally, our report reviews other NHI consumer education efforts. Perhaps the most successful is our award-winning Nursing Home Compare website at [www.medicare.gov](http://www.medicare.gov).

Nursing Home Compare allows consumers to search by zip code or facility name for data on each facility's care and safety record, staffing levels, number and types of residents, facility ownership, and ratings in comparison to State and national averages. The site is recording 500,000 page views each month and is by far the most popular section of our website. In addition, we have revised our "Guide to Choosing a Nursing Home" booklet and video and have greatly expanded distribution. We have begun national education campaigns to raise awareness of malnutrition and dehydration, resident abuse, and the rights to quality care. And we have tested post cards that allow residents, families, and staff to submit anonymous complaints.

### *Next Steps*

We are committed to continuing to strengthen and build upon the NHI, and we will take several specific additional actions to do so. These include:

- Continuing to work to increase consistency in the survey process and in interactions between our Regional Offices and State survey agencies, including investigating the feasibility of conducting more Federal comparative surveys to determine the reliability of State deficiency citations;
- Developing and requiring continuing education for surveyors to bring consistency in how different deficiencies are categorized, and requiring periodic recertification of surveyors;
- Examining how to make optimal use of available remedies and the possible need for additional authorities;
- Implementing Standards of Performance for State survey agencies to provide a consistent basis for evaluating and comparing the performance across States;
- Enhancing monitoring efforts to more quickly detect and address concerns about States' compliance with special focus surveys, off-hour surveys, and annual surveys; and

- Refining data systems to allow better linkages between data sources, greater insights into variations, more timely access, and easier conversion to consumer-friendly formats.

### *Increased Staffing*

We also will continue efforts to address the link between staffing levels and quality of care. We recently published preliminary findings that, for first time ever, demonstrated in a statistically valid way that there is a clear relationship between staffing levels and quality of care. The study found significantly more problems in facilities with less than 12 minutes of registered nursing care, less than 45 minutes of total licensed staff care, and less than 2 hours of nursing aide care per resident per day.

More than half of nursing homes do not meet these rates, and the troubling results suggest that many facilities may need to increase staffing levels. We are now working to expand and further validate our research, refine ways to adjust minimum staffing requirements for the types of patients in a given facility, and determine the costs and feasibility of implementing minimum staffing requirements.

Also to address these findings, the President has proposed legislation authorizing \$1 billion over five years in incentive grants to help States explore innovative ways to raise staffing levels. The proposal also includes enhanced requirements for reporting by individual nursing on their staffing levels, and a commitment to develop minimum staffing regulations within two years.

In addition, the President is proposing that facilities cited for violating care and safety standards be required to immediately pay civil money penalties. This is necessary because, currently, nursing homes often avoid payment for years while they pursue appeals. Under this proposal, fines collected would be used to partially finance the grant program for increasing staffing levels, and nursing homes that successfully challenge the fines would receive refunds with interest.

We are disappointed that the House Commerce Committee did not include these important provisions in its mark-up of the Beneficiary Improvement and Protection Act of 2000. We will continue to work with Congress to secure enactment of these proposals, as well as Administration proposals to establish criminal, civil, and injunctive remedies for patterns of violations that harm nursing home residents, and to require criminal background checks for nursing home employees.

***Conclusion***

States have generally implemented the NHI in ways that should lead to improvements in oversight and quality of care. There have been substantial increases in staggered surveys, a rise in citations for quality problems, and reductions in use of restraints. More work is needed in specific areas, such as implementing speedier complaint investigations. We are committed to continuing to work with residents and their families, advocacy groups, providers, States, and Congress to ensure that the NHI is fully and effectively implemented and that nursing home residents receive the quality care and protection they deserve. We greatly appreciate the additional support Congress has provided for the NHI, and the cooperation we have received from States, resident advocates, and nursing home providers. With continued cooperation and support, we are confident that the NHI will succeed in its goal to improve oversight and the quality of care for nursing home residents.

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The CHAIRMAN. Thank you, Mr. Hash.  
Now Auditor McCaskill.

**STATEMENT OF CLAIRE C. McCASKILL, MISSOURI STATE  
AUDITOR, JEFFERSON CITY, MO**

Ms. McCaskill. Thank you, Senator Grassley. I must thank the Committee because if it were not for your work, I would not be here today. I was campaigning for state auditor in 1998 in the summer and I read an article in USA Today about this committee's work and the allegation that states were not doing their jobs in investigating nursing homes. I used that as an example during the campaign as to what kind of performance audits needed to be done in the State of Missouri.

And when I took office in January 1999, we began work immediately to take a very comprehensive look at how well are we doing the job of ensuring quality care in Missouri's nursing homes? Our audit was released in March of this year and there were significant findings. They dealt with five different areas: inspections, complaint investigation and follow-up, repeat deficiencies and sanctions, staffing levels, and disqualified employees working in the nursing home setting.

I would like to tell you as I begin, if I could make an analogy of what I think the most serious problem is that you could conceivably have an impact on, I keep catching my son with food in his room that is unsanitary and this is what would happen if this were a nursing home setting.

I would say to my son, "Son, if I catch you one more time with food in your room, you're going to be in trouble. And, by the way, I'll be back at 6 tomorrow night to check." I come back at 6 the next night and there is food in the room and I say to my 13-year-old son, "You know, I'll be back again tomorrow night at 6:05. If you've got food in your room, you're really going to be in trouble."

I come back again the following night, the following night, the following night, all around 6 to 6:15, and every night I find food in his room and I look at him and I say, "You know, Son, what I'm going to do with you is I'm going to ignore the first five times I caught you with food in your room. I'm going to penalize you and say you can't watch TV, use your video games or use the computer, but I won't impose the penalty until about 2½ years from now."

Now I think that summarizes what we've got in terms of a problem. That does not touch on some of the other areas but I wanted to lead with that because the frustration I have is the idea that sanctions are ever immediate. And this is not just on the state level; this is on the Federal level. It takes years to get sanctions imposed and when they are, they are pennies on the dollar. They are never at the level that is imposed against the nursing home at the point in time.

And we still are struggling, even with the efforts this committee is making, with the idea that if you cure, we forget about what you have done. And when you have repeat deficiencies at homes time after time after time, I do not believe that this Nation's elderly can afford for us to forget when these kinds of problems have occurred year after year after year, regardless of the immediate effort to solve the problem.



Inspections being predictable was clearly a problem in Missouri. Not only were they predictable; we found an acknowledgement on the part of the surveyors that these homes staffed up. My common sense tells me and Senator Grassley, I appreciate the hour we began because this is the hour that we are used to in Missouri and Iowa, and my common sense in Missouri tells me if these are supposed to be meaningful inspections and the people doing the inspections know they are staffing up, what is the point? What kind of accurate picture are we getting of the quality of care? Obviously not a very accurate picture.

And I believe candidly that 10 percent is not enough in terms of random. Ten percent is not enough in terms of off-hours and weekends in terms of inspections. I would like to see us go to a system where nursing homes never know when someone is going to walk in the door and take a very hard look around at what is happening with the patients there that cannot help themselves.

The minimum number of inspections were not being met in Missouri. The complaints were not being followed up on as they should within the time period. On that note, I will tell you that I think the Federal prioritization of annual surveys over complaint investigation may be a mistake and I would urge you to continue to look at that issue.

In our state agency, they prioritize the annual survey over complaint investigations. They are required to do so. And I am not comfortable with that. I am not comfortable that we are going out to do an annual survey on a home that has never had a deficiency or has not had a deficiency that was serious in terms of actual harm, that we are prioritizing that work over the work of a serious allegation of physical harm to someone in a nursing home.

I am a former prosecutor. I know how quickly evidence disappears. I particularly am sensitive to how quickly evidence disappears in a nursing home where these are victims that may not be with us for a long period of time. I think it is crucial that we prioritize complaint investigations over the annual survey work.

Clearly, inspectors need training. That is another issue that we should discuss and I would be happy to address any questions you have about the situation that Senator Bond referenced in terms of the deficiencies disappearing. I think that is an issue in that case.

I will not go into the employee disqualification. We are continuing to do audit work in this area. We have people working in nursing homes that should not be there. We have people that are on child abuse and neglect lists, that are on disqualification lists for mental health care, and they are working in our nursing homes by the hundreds.

Finally, I want to tell you about audit work that we are continuing that I think might be of interest to you. As we tried to pass legislative reforms last session that would address some of the concerns I have had on the state level, the nursing home industry continued to talk about funding. We are now engaged in a full examination of the finances of nursing homes in Missouri. What is the true picture of Medicaid reimbursement? Are costs over expenses or is it the other way around? And I will look forward to sharing our information with this committee when we finish that audit work within the next 60 days. Thank you.

[The prepared statement of Ms. McCaskill follows:]

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**Testimony of**  
**Missouri State Auditor**  
**Claire McCaskill**  
**on**  
**Monitoring Missouri's Nursing Homes**  
**before the**  
**Senate Special Committee on Aging**

**September 28, 2000**

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Thank you Chairman Grassley, Senator Breaux and distinguished committee members for inviting me to this hearing and including us in your efforts to improve the care for our nation's elderly. As you are aware, our audit staff is producing significant work revealing the reality of care in Missouri's nursing homes.

We released our most substantial review so far in March 2000 with our audit of Missouri's Division of Aging, which monitors Missouri's nursing homes. We found that Missouri residents *cannot* completely depend on the state to ensure quality care for their loved ones and should take it upon themselves to inspect, monitor or review a home for family members. Our report mirrors many findings of federal auditors working on behalf of your committee and exposing the systemic nature of our nation's quality of care issues.

Since our report, several improvements have occurred because of changes on both the federal and state level, but we are still far from where we want to be. We realize that the responsibility to fix the problems lay in both federal and state hands and we are thankful for this committee's work.

To help the committee aid states charged with the arduous task of monitoring nursing homes, I will briefly share the results of our review, our recommendations, and the improvements thus far. I will also update committee members on the effects in Missouri of new federal initiatives to shed light on what is working for Missouri, and what is not. Finally, I will preview our current task of delving into the complex financing of Missouri's nursing home industry.

Our audit highlighted five areas: inspections, complaint investigation and follow-up, repeat deficiencies and sanctions, staffing levels and disqualified employees. What follows is a brief synopsis of our top concerns for each area. In many instances, the "results" mentioned are improvements division officials have said they have made. We have not yet gone back and audited these statements.

**INSPECTIONS:****Predictable**

- **Finding:** Despite federal and state regulations that inspections be a “surprise,” we found facilities could predict the next inspection time. Division officials said that due to the predictability, it was “common practice” to make cosmetic changes and add staff beforehand. Division officials acknowledged that this practice skews the picture of facility staffing. Our concern is the practice may mask underlying problems. Division officials said the federal requirement to revisit a facility after it claims to have corrected deficiencies has also increased the predictability of the visits.

**Recommendation:** Continue to develop policies to reduce predictability.

**Results so far:**

- The division adopted a new inspection scheduling policy *before* our audit began requiring regions to vary inspections dates of homes in the same vicinity.
- Division officials said inspectors start at least 10 percent of their inspections in the evenings, nights or weekends.
- In July 2000, directors required managers to establish a schedule and introduce “random” changes throughout the year.

**Minimum Number Not Met**

**Finding:** Despite a state law requiring two inspections a year, we found the division could not make this minimum number, much less perform additional inspections. In 1999, the division failed to conduct 416 of the required inspections. Of the uninspected facilities, 23 homes had at least two notices of noncompliance – the state-level equivalent to a federal sanction. Looking back to 1996, there were no inspection records at all for at least two facilities.

**Recommendations:** Perform all inspections required by law. Develop a centralized inspection monitoring system, in which inspection data is entered timely, to better track and document inspections.

**Results so far:**

- In fiscal year 2000, the division, without increasing staff exceeded its goal of completing one inspection in each facility. The department did not complete the state requirement of two inspections in either 1999 or 2000. But the numbers of required second inspections did increase from 64 percent in 1999 to 96 percent in 2000.
- Received funding for 27 new employees in 2001 to help with inspections.
- Noting shortcomings in federal OSCAR data, the division created a new centralized database to support all primary agency operations and meet federal and state data collection requirements. The new system is being tested now.

### **Federal Comparative Data Not Used**

**Finding:** The division had not studied federal OSCAR summary reports in detail and could not explain why a specific region's average cite rate for deficiencies was lower than the national average or the variation in cite rate by region (i.e. Southwest Missouri had 3.36 cites per facility, compared to 7.25 cites per facility in Northwest Missouri). Industry officials and advocates for the elderly said their most significant concerns with the division's inspection program are inconsistency, variation in interpretation and enforcement between regions.

**Recommendation:** Analyze available reports of deficiency patterns to note areas of weak enforcement.

#### **Results so far:**

- Division officials said they use OSCAR data as a starting point (although we found little evidence of this), but find the data unreliable "as a predictor of survey staff ability or facility status."
- The division has created an intranet Web page offering to managers HCFA statistical reports and new division-generated reports analyzing survey activities and citation patterns by region.

### **Inspectors Need Training**

#### **Findings:**

- Similar to November 1999 GAO findings, Missouri nursing home inspectors flag more violations when accompanied by federal inspectors. Of the 31 facilities that had a federal observational survey, 308 deficiencies were cited during the federal survey, as compared to 208 by the previous division inspection. One facility increased from 5 to 45 deficiencies.
- After looking at statements of deficiencies, we found two statements that were extensively changed after facilities disputed them. One facility originally had 11 federal and 9 state violations, but was later declared deficiency-free. A division official said these residents were so impaired, confused or demented that their statements were unreliable.

**Recommendations:** Ensure inspectors are adequately trained and supervised and require the informal dispute process to be followed when facilities appeal statements. Adequately document changes to statements of deficiencies.

#### **Results so far:**

- In 2001, the division will institute the new national Preceptor's Training Program to keep surveyor training consistent. Annual training will also include 24 hours of "investigative skills" including interview techniques and documenting facts.
- The division has also studied its administrative review process and "strengthened internal and management controls over documentation requirements."

## COMPLAINT INVESTIGATION

### **Investigations Not Timely**

#### Findings:

- Complaints are not investigated in a timely manner. Despite state law and division policy that requires an investigation to start within 24 hours of an abuse allegation or violation that puts a resident in imminent danger, about 6 percent of these investigations were not started in that timeframe. A delayed start makes it more difficult to determine if a violation occurred.
- After looking at a list of overdue complaints, more than 1,200 were at least 120 days past due, including 108 received in 1997. Overdue reports are given a low priority and many citizens complained that the division did not respond to them.
- We also noted five cases in one regional office in which a letter to the resident's family, as required by state law, was never sent because the report was so overdue.

Recommendations: Ensure complaints are initiated and completed timely, the results are submitted timely to ensure appropriate enforcement actions, the required reports are available to the public and a resident's family is notified with the results of all complaint investigations. Study the merits of creating a process for dissatisfied complainants to appeal the results of an investigation.

#### Results so far:

- The division called for "sweeping revisions" to its complaint process in 1996 (before our audit) and has repeatedly requested additional staff since 1998 to implement the revisions. Some of these requests were partially funded.
- In 2001, the division will hire 27 new employees to help with complaints and inspections
- The division is testing a new on-line system to better track and document complaints.
- The division set a new minimum requirement in mid-1999 (before our audit) that at least a call is placed to a reporter to determine the need for an immediate on-site visit.
- A central office complaint coordinator has been designated.
- Beginning September 2000, the division is monitoring quality of complaint investigations through a random selection of reports.
- Beginning September 2000, the division is testing a new Informal Dispute Resolution project to resolve issues through face-to-face contact with the resident, their family members or guardians when the resident is the subject of a complaint.
- Division officials note that HCFA prioritizes the annual survey ahead of complaint investigations, which also affects the ability to realize the above goals. But improvement has occurred with only 400 overdue complaint reports in July 2000 as compared to more than 1,800 in July 1999.

**REPEAT DEFICIENCIES, SANCTIONS****Sanctions Do Not Prevent Repeat Deficiencies****Findings:**

- Of the 490 certified facilities in the state, 90 were issued a repeat deficiency for the same violation in the two most recent inspections. No federal or state sanction was issued in more than 200 inspections where a facility had 10 or more violations. And one facility had been cited for 111 problems in its last four inspections. These numbers are evidence of the roller coaster inspection process. The division cannot penalize a nursing home for a violation unless the facility fails to correct the problem within a given grace period. As a result, nursing homes are cited for problems, which they repair, only to be cited again.
- The division does not study the effectiveness past sanctions have on future compliance and does not always consider a facility's history of past noncompliance when determining sanctions. The division also does not verify that the state's Medicaid agency imposed a denial of payment sanction or whether such a sanction resulted in a fine.
- Division officials said that often when a facility has significant noncompliance, a change of ownership occurs resulting in a new license. That "new entity" then no longer carries with it the previous history of noncompliance.

**Recommendation:** Consider the facility's history of past noncompliance when selecting sanctions and study sanctions to determine which are most effective.

**Results so far:**

- Several federal changes in January have helped curbed the roller coaster problem including: allowing states to issue immediate penalties if nursing homes have repeat violations resulting in harm of just one resident, the ability of the state to impose a "per instance" civil monetary penalty with no opportunity to correct, and clarifying that a survey ensure an "on-site" visit to check for compliance rather than accepting a written statement.
- Additional federal administrative hearing staff should help with the backlog in the facilities appeal process, which has delayed the imposition of a fine for a civil monetary penalty, division officials said. Since January 2000, the division has requested a civil monetary penalty seven times and a denial of payment for new admissions 53 times.
- Division officials said the new initiatives have resulted in additional sanctions. Current numbers show federal sanctions have nearly tripled from 1997 to 2000; while state sanctions have more than doubled in the same time period. The division believes it is "too early to determine if these sanctions will have the intended effect of resulting in sustained compliance."
- The division has stopped issuing an operating license if a facility has a history of noncompliance or repeat violations. And if a complaint has not been investigated when a license is due, only a temporary permit is issued.
- The division also tried to increase its enforcement action. Officials created a graduated sanctioning process that would require automatic fine increases when repeat violations occurred. The division proposed this extra step to HCFA, but the HCFA regional office

did not feel the need to take it. HCFA officials said a denial of payment for new admission was enough to prompt a facility to correct violations. Our audit showed that denial of payment is not the most effective sanctioning tool. Several facilities with an increase in violations from one inspection to another were given a denial of payment sanction.

#### **Civil Monetary Penalty (CMP) Works, Hard to Collect**

##### Findings:

- We found that the imposition of civil monetary penalties (up to \$10,000 a day for the most serious violation) have a greater deterrent on facility noncompliance than the sanction of denying payment for new admissions. In looking at facilities where violations significantly decreased from one inspection to another, the sanction imposed was a civil monetary penalty. And in facilities where the violations increased between inspections, the sanction was a denial of payment. Of seven facilities subjected to a civil monetary penalty, only one had a repeat violation.
- Division officials noted difficulties in collecting a state-level civil monetary penalty due to the onerous court process. Of the 25 cases filed as of August 1999, nine were filed in circuit court. But only one civil monetary penalty was collected and that was the result of a negotiated settlement.

Recommendation: Work with the legislature to modify the state CMP process and make it less burdensome, less costly and a more effective sanctioning tool.

Results so far: The division has pledged to work with the legislature.

#### **Some Corrections Plans Do Not Stop Repeat Violations**

##### Findings:

- Plans of Correction met state and federal requirements, but the facilities were cited for repeat violations. In these cases, it appears the facility failed to monitor compliance with the correction plan.
- Several correction plans for a repeat violation contained identical wording to the prior plan that failed.
- Some plans could not be expected to prevent a repeat deficiency. The plan only addressed the specific resident currently affected and did not incorporate a systemic change.
- If the facility was cited for insufficient staffing, the plan did not state whether the facility would add staff or provide details on staffing levels. In these cases, it is not possible to monitor whether the violation was adequately addressed.

Recommendations: The division ensure all correction plans can reasonably expect to correct the problem and not accept plans that have failed in the past. The division should develop procedures to monitor compliance with correction plans for facilities with histories of repeat violations.

Results so far:

- Division officials said new federal initiatives established in January have helped make correction plans more effective. They said the additional guidance established a definition of an "acceptable" plan. But our staff noted only one of these guidelines was actually new: that a date be set for when the corrective action would be completed. Division officials said it is too early to tell if these modifications will result in "better and more timely" correction plans and in sustained compliance. We question whether the new guidelines are enough. Facilities should be required to self-monitor correction plans and submit regular status reports on the corrections they have made.
- The state entity responsible for correction plans is currently recruiting for a Quality Assurance Coordinator who will manage quality assurance tasks within the division.

STAFFING LEVELSMinimum Requirements Set AsideFindings:

- Many complaints received by our office alleged facilities were understaffed, which resulted in inadequate care. State law requires the division to set minimum staffing requirements, but the division rescinded these minimums in 1998.
- We found a direct correlation between the number of violations and the staffing level at the five facilities we visited. The facility with the highest staffing level had two violations, while the three with the lowest staffing level had from five to nine violations. The facility with the lowest staffing level was cited in 1999 for seven violations, including two which caused actual harm.
- During inspections, the staffing levels rose up to 26 total hours per day higher than the three-month average staffing level. One facility flew in four staff members to coincide with our on-site visit.
- One facility should have been cited for a "widespread pattern" of inadequate staffing. Two residents had fallen 28 times in nearly three months and suffered 15 injuries, with at least three hospital visits. But the home was not cited for a "pattern," but rather "isolated incidents," a sanction level with no fine. Upon revisiting the facility in April 1999, the division found them in compliance. Four days after this revisit, the division received another complaint of inadequate staffing. The division returned and cited the facility for inadequate staffing. This time the division cited for a "pattern," but a pattern that did not cause "actual harm," so the facility received no further sanctions. The correction plan approved by the division set the sufficient staffing levels at the old minimum (1.85 hours per resident per day). It is difficult to understand why the division accepted this correction plan when division officials also believed the old standard was too low.

Recommendations: Establish minimum staffing ratios. Develop a system to track actual staff hours at a facility to identify potential problems. Inspectors should use recommended and actual staffing data to help identify negative resident outcomes. The division should pursue inadequate staffing levels by imposing maximum federal and state sanctions. \



Results so far:

- The division disagrees with our recommendation for minimum levels and quotes a HCFA study that stated more research was necessary before determining the benefit of setting staffing minimums.
- Division officials said there are no federal or state laws requiring inspectors to use a minimum standard or industry benchmark in reviewing staff levels.
- Regarding the facility our staff thought had a pattern of inadequate staffing, division officials said the federal process prevented inspectors from considering all facts in the file and including that information in sanctioning decisions. The division is "gravely" concerned about the federal process that results in closure of incidents if the violation has been corrected. Inspectors need to be able to include a facility's entire noncompliance history in their current inspection. Officials said although recent changes will help stop the roller coaster inspection issue, HCFA needs to make even more modifications to ensure facilities correct their system problems or stop caring for the elderly.
- The division will hire four additional auditors in this fiscal year to assist in inspections, including reviewing payroll and staffing level records.

UNSUITABLE EMPLOYEES**Employees previously abused elderly, children and mentally ill**Findings:

- We found 21 instances where a facility hired an employee named on a list of persons who have abused, neglected or exploited the elderly. In addition, more than 1,100 persons were working in nursing homes who were listed on the Department of Mental Health's disqualification listing or the Central Registry of Child Abuse and Neglect.
- A second employee match and follow-up report issued in August 2000 showed the division had improved tagging employees listed on its own disqualification list. But we still found 12 instances of current employees listed on the division's list.
- Our second match showed more than 600 instances of hiring employees named on the mental health disqualification list or the child abuse registry.
- In a subsequent report in April 2000, we advocated that the state promote a national screening system. Currently, if someone is working in Illinois and has abused the elderly, they could move to Missouri and be employed without the Illinois charge transferring to Missouri's Division of Aging disqualification list.

Recommendations: Seek legislation to prohibit employment in nursing homes of persons who have abused or neglected children or the mentally handicapped. The division should develop an automated process to note these individuals. And the division should aggressively sanction and fine facilities that make these inappropriate hires.

Results so far:

- Since our audit, the division has created an automated process to flag all persons on its disqualification lists that were inappropriately hired. Our August 2000 follow-up showed the need to fine-tune the system so the division obtains the most accurate and timely information.

- Legislators drafted bills in the 2000 session to require the division to cross-reference current employees to all three lists – aging, mental health and the child abuse registry. But the nursing home industry killed the legislation the last day of session.
- The division disagreed with our recommendation that stiff sanctions should be levied against nursing homes that hire disqualified employees.

#### CURRENT FEDERAL SANCTION COLLECTION

In preparation for this hearing, our staff reviewed what has been collected on current federal sanctions. This review was *not* part of our March 2000 audit of the Division of Aging.

- From 1996 to now, the division has requested civil monetary penalties against 65 homes. Fourteen of these sanctions are under appeal. In two of these appeals the time lag between the inspection and the final determination has exceeded 18 months. Seventeen homes waived their appeal rights and received an automatic 35 percent reduction in their fine.
- Bankruptcy is still an issue with nine sanctions against seven homes uncollectible due to bankruptcy. These include five homes owned by one company.
- In four instances the civil monetary penalty decreased after an administrative review or an informal dispute resolution (IDR). In one case, the fine decreased by 95 percent. Requested sanctions were rescinded four times, three due to state administrative review or IDR and once due to a federal IDR.
- Two of the homes with uncollected fines are from sanctions filed in 1996 and 1997.
- In the 1997 case in which a home owes more than \$24,000, the state Medicaid agency is ready to proceed with collection, but is waiting on word from HCFA as to when it can start collecting.
- The 1996 case involves a nearly \$400,000 fine. The chain that operates that home filed for bankruptcy and the home has changed owners three times. HCFA wants the state to collect this fine and go after the new owner. State officials said they are waiting for “final authorization.”
- Eleven homes received settlement agreements, which reduce the sanctions in all cases. The percentage decrease ranged from 43 percent to 87 percent.

#### CURRENT WORK ON MEDICAID REIMBURSEMENT

We are now reviewing the complex financing of the nursing home industry. What follows are our objectives for this study and some preliminary results.

##### **Objectives:**

- Determine if the Medicaid rates are sufficient to offset the cost of providing nursing home care. We will compare the costs noted on the 1998 cost reports to rate data.
- Determine if Missouri nursing homes are profitable. We will use the revenues and costs as reported on the 1998 cost reports making adjustments for the NFRA (Nursing Facility Reimbursement Allowance, a tax on providers) assessments, which are not included in

the cost reports as an allowable cost. We will also attempt to locate profitability data from other states for comparison.

- Determine the major factors causing homes to be profitable or unprofitable. Are costs greater than rates or rates greater than costs?
- Determine how Medicaid rates and costs in Missouri compare to rates and costs in other states and to national medians.
- Determine estimates of the total cost to rebase the rates using the 1998 cost reports.
- Determine if there is a relationship between quality of care and homes having higher negative or positive differences between rates and costs. We define quality of care as whether a home was sanctioned during the cost report period or had high numbers of deficiencies in their 1998 inspection.
- Analyze various funding methods used by other states to determine if there are funding alternatives that might enhance the quality of care for Missouri nursing home residents.

#### **Preliminary results**

- We have determined that approximately 60 percent of the Medicaid days provided by nursing homes in their 1998 cost reporting year were reimbursed at less, sometimes significantly, than the costs of providing that care. We have also noted that some providers are being paid significantly more than cost.
- We have determined that in 1998 about 2/3 of Missouri nursing homes have revenues that exceed the allowable expenses (i.e. profitable based upon allowable costs).
- We have tentatively determined that homes with high overall occupancy are more likely to be profitable. We also noted that homes in metro areas are more likely to have higher occupancy. Homes in metro areas have costs significantly higher than rural homes.

#### **CONCLUSION**

Our staff will continue to press for the true picture of nursing home care in Missouri and then push to fix it. It is clear many of the new federal initiatives are helping states improve care. We expect that our continued probe into state-level nursing home issues will also improve care in Missouri. It is too early to tell how significantly the changes in federal and state regulations will enhance care or keep facilities in compliance. But we will continue to return to those monitoring the industry and review the status of such new initiatives. We would be happy to keep the committee posted on our efforts, reviews and results. Again, thank you for inviting me to address this committee and I am happy to answer your questions.



REVIEW OF  
CARE GIVER SCREENINGS

**From The Office Of State Auditor  
Claire McCaskill**

Report No. 2000-23  
April 12, 2000

# AUDIT REPORT



Office Of The  
State Auditor Of Missouri  
Claire McCaskill

April 2000

**The following areas of concern were discovered as a result of a review conducted by our office of Care Giver Screenings.**

Our elderly, children and mentally challenged often do not have the capability to fully protect themselves from abuse and neglect. Various state agencies maintain listings of individuals who have been found to have abused or neglected children, the elderly, or the mentally challenged. We matched individuals on these listings to 1998 employment information and noted instances of illegal, inappropriate, or questionable employment situations. While several state agencies utilize these listings to some degree, no agency has developed an automated match to identify employers who were not performing the required screenings or who employ individuals contrary to guidelines. Except for recent legislation regarding certain child care workers, there currently are no laws which require these state agencies to screen for persons being employed inappropriately or illegally. Instead the laws either require certain employers to perform background checks, or simply state that certain employment situations are illegal. Also, most of the inappropriate or questionable employment situations identified in our report are not currently unlawful.

One of the goals of the Family Care Safety Act, and the Governor's Executive Order 99-05, both enacted in 1999, was to promote family and community safety by allowing access to comprehensive information accumulated by various state agencies.

We also noted that screenings will not require that the history of child and elder care workers be checked against information from other states, and will not require employees in schools to be checked against the listings of abusers. Finally, it will be an onerous task for individuals selecting personal care services to check backgrounds of employees of large providers and providers with high employee turnover.

Additional controls and procedures should be put into place to fully protect the elderly, children, and mentally challenged. These include:

- Placing all disqualified individuals (and their social security number) from the Division of Aging Employee Disqualification Listing, the Department of Mental Health Employee Disqualification Listing, as well as individuals who have been determined to have committed a serious child abuse or neglect incident, in a single abuse registry.

(over)

YELLOW SHEET

- Passing legislation which prohibits these individuals from being employed by care providers and schools.
- Implementing the necessary system improvements to allow for more timely background screening results.
- Requiring care providers and schools to check the abuse registry prior to employment of new individuals.
- Developing an automated process to periodically identify all instances of individuals inappropriately working for care providers and schools.
- Developing procedures to remove those individuals from inappropriate workplace settings.
- Developing procedures to aggressively fine and sanction care providers and schools who employ individuals listed on the abuse registry.
- Developing procedures so that family members can more easily and conveniently determine whether a particular care provider or school is employing individuals listed on the abuse registry. Consideration should also be given to what extent information on the registry should be available to the public.
- Requiring the backgrounds of Family Care Safety Registry registrants who have not resided in Missouri for the preceding three years be checked against information in the registrant's former state of residence. In addition, the state should promote the establishment of a national screening system.
- Establishing a fair and consistent appeal process which considers the nature and severity of the incident which resulted in placing an individual in the abuse registry, and the results of any subsequent rehabilitation.
- Passing legislation to clearly allow background information to be disclosed to state agencies responsible for monitoring provider compliance.

REVIEW OF  
CARE GIVER SCREENING

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STATE AUDITOR'S REPORT





**CLAIRE C. McCASKILL**  
Missouri State Auditor

Honorable Mel Carnahan, Governor  
and  
Members of the General Assembly

We conducted a review of state agencies' practices and procedures and of state legal provisions regarding care giver screenings. The objectives of this review were:

1. To determine whether persons who have abused the elderly, clients of the Department of Mental Health, and/or children are employed in illegal, inappropriate, or questionable work settings.
2. Review and evaluate various state agencies' compliance with certain executive orders and statutory requirements regarding care giver screenings.
3. Review certain state laws relating to abuse against persons and determine areas of concern needing improvement or clarification.
4. Review certain management controls and practices to determine the propriety and effectiveness of those controls and practices as they relate to care giver screenings.

Our review was made in accordance with applicable generally accepted government auditing standards and included such procedures as we considered necessary in the circumstances. In this regard, we reviewed applicable executive orders, state laws, interviewed or surveyed applicable personnel, and inspected relevant records and reports.

Our review was limited to the specific matters described above and was based on selective tests and procedures considered appropriate in the circumstances. Had we performed additional procedures, other information might have come to our attention that would have been included in this report.

The Comments, Analysis, Conclusions, and Recommendation presented in the report represent the results of our review of care giver screenings.



Claire McCaskill

State Auditor

December 6, 1999 (fieldwork completion date)

The following auditors participated in the preparation of this report:

Director of Audits:	Kenneth W. Kuster, CPA
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EXECUTIVE SUMMARY

REVIEW OF  
CARE GIVER SCREENINGS  
EXECUTIVE SUMMARY

Our elderly, children, and mentally challenged often do not have the capability to fully protect themselves from abuse and neglect. Various state agencies maintain listings of individuals who have been found to have abused or neglected children, the elderly, or the mentally challenged. We matched individuals on these listings to 1998 employment information and noted instances of illegal, inappropriate, or questionable employment situations. While several state agencies utilize these listings to some degree, no agency has developed an automated match to identify employers who were not performing the required screenings or who employ individuals contrary to guidelines. Except for recent legislation regarding certain child care workers, there currently are no laws which require these state agencies to screen for persons being employed inappropriately or illegally. Instead the laws either require certain employers to perform background checks, or simply state that certain employment situations are illegal. Also, most of the inappropriate or questionable employment situations identified in our report are not currently unlawful.

One of the goals of the Family Care Safety Act, and the Governor's Executive Order 99-05, both enacted in 1999, was to promote family and community safety by allowing access to comprehensive information accumulated by various state agencies. Our review of this legislation and the executive order noted background screenings will not be totally comprehensive. We also noted that screenings will not require that the history of child and elder care workers be checked against information from other states, and will not require employees in schools to be checked against the listings of abusers. Finally, it will be an onerous task for individuals selecting personal care services to check backgrounds of employees of large providers and providers with high employee turnover.

COMMENTS, ANALYSIS, CONCLUSIONS, AND RECOMMENDATION

REVIEW OF  
CARE GIVER SCREENINGS  
COMMENTS, ANALYSIS, CONCLUSIONS, AND RECOMMENDATION

**COMMENTS AND ANALYSIS**

**1. Data Match and Agency Procedures**

Various sections of state law require the Division of Aging (DA) to maintain an Employee Disqualification Listing (EDL) which includes names of persons who have been finally determined by the department, pursuant to Section 660.315, RSMo 1994, to have recklessly, knowingly, or purposely abused or neglected, or to have misappropriated any property or funds of a nursing home resident or in-home services client. Section 660.315.11, RSMo 1994, establishes who will be provided the DA EDL.

There are approximately 700 persons on the DA EDL. Nursing homes and residential care facilities, providers of in-home services under contract with the Department of Social Services (DSS), employers who hire nurses and nursing assistants for temporary or intermittent placement in health care facilities, entities approved to issue certificates for nursing assistants training, hospitals and related health services, and home health and hospice providers are prohibited by state law from employing any person on the DA EDL.

The Department of Mental Health (DMH) maintains a listing of persons who have been administratively determined to have abused or neglected a DMH client under Section 630.167, RSMo Cumulative Supp. 1999. Pursuant to Section 630.167, RSMo Cumulative Supp. 1999, this listing is confidential. There are about 250 persons on this listing. Persons on the listing are disqualified by 9 CSR 10-5.200 from holding any position in any public or private facility or day program operated, funded, or licensed by the DMH or in any mental health facility or program.

The Division of Family Services, under Section 210.145, RSMo 1994, maintains a Central Registry of individuals where the division has found probable cause to believe or a court has substantiated through court adjudication that the individual has committed child abuse or neglect, or the person has pled guilty or has been found guilty of a crime under Sections 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo. The Central Registry of Child Abuse and Neglect (CA/N) contains identifying information on the perpetrators of child abuse and neglect. Pursuant to Section 210.150, RSMo 1994, this listing is confidential.

- A. We obtained the listing of persons on the DA and DMH EDLs. We also obtained a listing of all persons listed in the CA/N for which the incident date was within the last five years. We further limited our selection criteria to the investigation conclusion codes of A (court adjudicated) or B (probable cause or reason to suspect); the severity codes of C (serious/severe), D (permanent injury), or E (fatal); and the categories of abuse of 1 (physical abuse), 2 (neglect), or 6 (sexual maltreatment).

Applying that selection criteria to the CA/N, about 16,700 persons were identified, of which approximately 14,350 included a Social Security number of the person. We matched persons from the EDLs and the CA/N against 1998 employment information records and noted the following instances of illegal, inappropriate, or questionable workplaces:

Employment Area	People on each listing employed in the applicable area		
	CA/N	DA EDL	DMH EDL
Nursing Home	1,009	12 *	15 **
In-Home, Home Health, and Residential Services	274	10 *	7
Daycare	249	19	3
Hospital	191	10 *	5
Individual and Family Social Services	159	0	2
Schools	120	13	5
Job Training and Vocational Rehabilitation	48	0	1
Foster Care	9	1	0
Total	2,059	65	38

\* Employment is currently prohibited by state law.

\*\* 11 of these are also DMH providers and therefore employment is currently prohibited by state regulation.

In total, we identified thirty-two people that were employed in areas that were prohibited by state law. In addition, many of the 249 individuals listed in the CA/N Registry that were employed in the daycare area are now subject to restrictions under legislation which became effective August 28, 1999. We identified 1,870 instances in which people that abused or neglected the elderly, clients of the DMH, or children, were employed in potentially inappropriate or questionable work settings.

- B. As noted above, approximately 2,350 of the 16,700 persons listed (using our criteria) on the CA/N did not include a social security number. Considering social security numbers will be required in any computer matches to be performed, procedures should be improved to ensure social security numbers are entered for all individuals listed in the CA/N.
- C. State agencies utilize these EDL listings and the CA/N to varying degrees as follows:
- The DA performs quarterly checks of employment records for twenty-five percent of the persons on their EDL. Also, during inspections, inspectors review personnel files on a test basis to determine if providers checked the DA EDL before employment.

- During inspections of mental health facilities, DMH inspectors review personnel files on a test basis to determine if the provider checked the DMH EDL.
- The Division of Family Services screens Foster Care providers against the CA/N. Foster Care providers with substantiated instances of child abuse or neglect are sometimes allowed to continue in the Foster Care program if deemed appropriate following a team review or determination of each case. The DFS also has begun screening new registered day care providers against the CA/N and it performed an automated match to screen existing registered day care providers against the CA/N. However, that match did not identify at least 38 instances in which a registered day care provider was listed in the CA/N. A specific cause for these instances being missed by DFS could not be determined. The DFS has no plans to perform periodic matches in the future, but intends to screen for providers in the CA/N at the local level upon completion of a probable cause determination.
- The Department of Health (DOH) has screened applicants for day care licensure against the CA/N. Also during inspections of day care facilities, inspectors review personnel files on a test basis to determine if the provider checked the CA/N. If an applicant or day care employee is identified as being listed in the CA/N, the DOH reviews each case on an individual basis and, if deemed appropriate, allows the provider or employee to continue providing day care.

Instances of illegal employment noted during our review were referred to the appropriate state agency. While several state agencies utilize these listings to some degree, no agency has developed an automated match to identify providers who were not performing the required screenings or who employ individuals contrary to guidelines. Except for recent legislation regarding certain child care workers, there currently are no laws which require these state agencies to screen for persons being employed illegally. Instead, the laws either require certain providers to perform background checks, or simply state that certain employment situations are illegal. Also, many of the inappropriate or questionable instances identified above are not currently unlawful.

2.

#### Family Care Safety Act and Executive Order 99-05

The Family Care Safety Act, passed by the 90th General Assembly in 1999, requires the DOH establish the Family Care Safety Registry (FCSR) by January 1, 2001. This Act is included in Section 210.900 through 210.936, RSMo Cumulative Supp. 1999. Every child care and elder care worker hired on or after January 1, 2001 must file a registration form with the DOH. Registrants will be screened against criminal records, the CA/N registry, the DA EDL, and foster parent denials, revocations, and suspensions. The Act also requires the DOH to



establish a toll-free telephone service. Persons contemplating placement of an individual in a child or elder care setting may obtain information from the registry regarding individuals registered in the FCSR. Callers may find out only if the individual is in the registry and for what background check they are listed. Under the law, the DOH is required to notify the registrants listed in the FCSR of the name and address of inquirers. The DOH is also required to report to the General Assembly by January 1, 2001 on its recommendations regarding various issues applicable to the FCSR.

On March 31, 1999, the Governor signed Executive Order 99-05. The goal of the Executive Order was to provide Missouri families with a more comprehensive and streamlined access to information on individuals who have a history of abuse and neglect. Under this order, individuals can submit a single form to obtain information related to whether a caregiver is included on either the DA or DMH EDL, the CA/N registry, or has a criminal background. However, due to the state's existing confidentiality laws, the signature of the caregiver must be obtained prior to disclosure of information related to the EDLs and CA/N registry. In addition, two state agencies and one industry association expressed concerns that current screenings take two weeks or longer to complete resulting in substantial delays before an individual could be hired. Another state agency suggested a real-time interface between the various state agencies to allow for more timely background screening results.

Our review on the Family Care Safety Act and Executive Order 99-05 noted the following concerns:

- A. The FCSR will not be a comprehensive listing of potentially inappropriate or abusive individuals identified by state records. Except for some childcare workers, only workers entering employment on or after January 1, 2001 will be entered into the FCSR. As a result, many of the people currently on various listings (noted in part 1 above) would not even be listed in the FCSR. In addition, the Act does not require the Registry to check against individuals listed on the DMH EDL.

One of the goals of the Family Care Safety Act was to promote family and community safety by allowing access to comprehensive information accumulated by various state agencies. Obviously, by not including current care givers within the FCSR, and not checking against individuals who have been determined to have abused clients of the DMH, the goals of the Act cannot be fully achieved.

- B. The FCSR will not check registrants against information from other states. As a result, care workers who are disqualified in other states could come to Missouri and continue in similar employment without detection.

The State of Wisconsin has laws in effect which require that the backgrounds of registrants who have not resided in that state for the preceding three years be checked against information in the registrant's former state of residence. Current caregiver background screening already requires registrants to disclose addresses for the previous three years.

- C. Under the Act, individuals will be able to check whether potential care givers are listed in the FCSR and use this information in determining their placement decisions. Under the Executive Order, individuals can currently find out whether caregivers are on the C/AN registry or either the DA or DMH EDL, but must obtain the caregiver's signature and approval before obtaining this information. These processes may work well for smaller care providers with low turnover of employees. However, it would be an onerous task to expect individuals selecting personal care services to screen for numerous employees at large care providers, such as a nursing home, large day care provider, or Home Health Agency. Also, staff turnover is often high for these types of employment. It would not appear feasible to expect individuals to constantly check new hires against the FCSR.

The State of Wisconsin may refuse to license, certify or register a care giver who has failed the background check.

- D. The Department of Elementary and Secondary Education (DESE) performs criminal background checks of teachers as required by Section 168.071, RSMo Cumulative Supp. 1999. However, the DESE is not required to screen school district employees against the CA/N, the DA EDL, or the DMH EDL.

Missouri's public schools should at least consider whether individuals who have been found to have abused or neglected children, elders, or the mentally ill should be allowed to work in our public schools.

- E. Another state agency noted the Act allows to disclosure of background information for employment purposes only. The Act does not address whether information can be disclosed to state agencies responsible for monitoring provider compliance. For example, there is no specific allowance for a licensing state agency, such as the DA when inspecting nursing homes, to obtain and have access to information in the FCSR. To avoid any duplication of effort between state agencies, and to help ensure that providers take appropriate action when an employee fails a background check, these state agencies should be allowed access to information in the FCSR.

## **CONCLUSIONS**

Additional controls and procedures should be put into place to fully protect the elderly, children, and mentally challenged. These include:

- Placing all disqualified individuals (and their social security number) from the DA EDL, the DMH EDL, as well as individuals who have been determined to have committed a serious child abuse or neglect incident, in a single abuse registry.
- Passing legislation which prohibits these individuals from being employed by care providers and schools.

- Implementing the necessary system improvements to allow for more timely background screening results.
- Requiring care providers and schools to check the abuse registry prior to the employment of new individuals.
- Developing an automated process to periodically identify all instances of individuals inappropriately working for care providers and schools.
- Developing procedures to remove those individuals from inappropriate workplace settings.
- Developing procedures to aggressively fine and sanction care providers and schools who employ individuals listed on the abuse registry.
- Developing procedures so that family members can more easily and conveniently determine whether a particular care provider or school is employing individuals listed on the abuse registry. Consideration should be given to what extent information on the registry should be available to the public.
- Requiring the backgrounds of FCSR registrants who have not resided in Missouri for the preceding three years be checked against information in the registrant's former state of residence. In addition, the state should promote the establishment of a national screening system.
- Establishing a fair and consistent appeal process which considers the nature and severity of the incident which resulted in placing an individual in the abuse registry, and the results of any subsequent rehabilitation.
- Passing legislation to clearly allow background information to be disclosed to state agencies responsible for monitoring provider compliance.

#### **RECOMMENDATION**

Since many of the conclusions noted above require statutory revisions through additional legislation, **WE RECOMMEND** the General Assembly consider the contents of this report when enacting future legislation that addresses the safety and protection of Missouri's children, elderly, and mentally challenged.

This report is intended for the information of applicable government officials. However, this report is a matter of public record and its distribution is not limited.

\* \* \* \* \*



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September 7, 2000

SEP 11 2000

Ms. Claire C. McCaskill  
Missouri State Auditor  
Truman State Office Building, Room 880  
Jefferson City, MO 65101

Dear Ms. McCaskill:

The purpose of this letter is to provide you with an update on the implementation of the State Auditor's recommendations or Division of Aging (DA) alternatives to such recommendations contained in the Review of the Division of Aging's Monitoring of Nursing Homes and Handling of Complaint Investigations Report No. 2000-13. A summary of current status and actions follows:

- MAR Number 1 - Inspections.

State Auditor's Recommendations:

A - D. SAO

Develop and utilize a centralized inspection monitoring system to track inspections and then ensure completed inspections are submitted to the Central Office and entered into the system in a timely manner.

DA Status

DA has taken action to strengthen our internal controls over entry of data into the Central Registry of Abuse Neglect/Exploitation (CRANE) system; a required CRANE report review by regional managers and monitoring of the subsequent submission of the paper file to the central file unit. An interim centralized tracking system was used by the regions to feed information into a central office monitor during FY 2000.

DA, working with consumers and the long-term care industry, noted the shortcomings in the federal On-line Survey, Certification and Reporting (OSCAR) System and began developing and implementing a new automated state system. Currently, the new ALICE (Automated Licensure and Inspection Certification Environment) system is being deployed. When fully implemented, this system will result in a centralized data base designed to support all primary agency operations and meet federal and state data collection requirements. At this time, components of ALICE are being tested in several DA regions.

#### SAO

We also recommend the DA perform all inspections as required by state law, and take the necessary steps which would allow the DA to perform additional inspections of poor performing facilities.

#### DA Status

During SFY 2000, as in past years, DA continued to achieve fully the top federal survey priority for completion of all Medicare/Medicaid certification surveys within a statewide 12 month average (surveys conducted between 9 and 15 months). Without an increase in staffing in SFY 2000, DA's goal for state licensure activities was to ensure that one full annual state inspection or state interim inspection was completed in every licensed long-term care facility in the state. DA's regional offices have provided summary reports indicating this state goal was exceeded. Due to regional offices needing to maintain the working files until the revisit or informal dispute resolution is completed final fiscal year end 2000 report statistics will not be available until September 2000. (Note: A limited number of facilities may have an ongoing open process preventing initiation of another inspection prior to fiscal year end.) Although DA received additional staff in the SFY 2001 appropriation, it should be noted that in order to meet the federal program mandates and state inspection requirements (two inspections per year), as well as time frames for completion of complaint investigations, additional resources are needed to ensure all time frames are met.

DA concurs that the state requirement for two state inspections per year, one of which is an interim inspection, was not met in SFY 1999 and SFY 2000. The division completed in SFY 1999 full licensure inspections including adult day care programs for 1,173 or 95% of the facilities and programs in the state. With the exception of those facilities that had an ongoing open process that prevented initiation of the annual inspection, regional offices have reported that all full licensure inspections were completed in SFY 2000. During SFY 1999, the division completed a total of 762 or 64% of the required interim inspections. In SFY 2000, regional offices have reported that 96% of the required interim inspections were completed. As noted above, with the additional staff received in the SFY 2001 appropriation (23 new survey FTE and 4 clerical support FTE.), DA has sufficient resources to meet the state requirement for two licensure

inspections, one of which is an interim inspection, in each licensed facility during SFY 2001.

E. SAO

Continue to develop and implement policies to reduce the predictability of inspections.

DA Status

Due to the number of times DA staff are in facilities, predictability is somewhat inherent in the process, but actions have been taken to control for this tendency. State law requires two inspections within a twelve month period (state fiscal year) and federal requirements related to survey averages and revisit timeframes (i.e., revisit near the time the facility alleges all corrections have been made) further increase the predictability of our visits. DA concurs with the goals of reducing the predictability of inspections and will continue to implement methods of reducing predictability. A memorandum dated July 17, 2000, from the Deputy Director of Institutional Services to program managers requires the managers to establish a schedule and then introduce "random" changes in the schedule throughout the year to reduce predictability.

F. SAO

Analyze the available reports of deficiency patterns to identify areas where enforcement may be weak or inconsistent and consider their impact upon the inspection process.

DA Status

As noted in our response to the auditor's recommendation, DA does review national and regional deficiency rates and patterns. The HCFA OSCAR system serves as a starting point for our review, but has historically proven unreliable as a predictor of survey staff ability or facility status. DA does examine multiple variables to make accurate assessments of facility performance and our survey staff's technical ability. DA has established an intranet web page providing regional and central office program managers with statistical reports from HCFA and DA developed state reports related to the state's survey activities and citation patterns between regions. This information is discussed quarterly during program manager's meetings and utilized to determine the need for additional staff training.

G&H.

SAO

Ensure inspectors are adequately trained and supervised, require the informal dispute resolution process to be followed when facilities dispute statements of deficiencies, ensure all deficiencies are adequately documented, and are accurately and properly reported, and develop procedures to ensure the reasons for changing draft SOD's are adequately documented.

DA Status

During SFY 2001, DA will be implementing the new nationally developed Preceptor's Training Program. This program will assist DA in assuring that training of surveyors is managed in a uniform and consistent manner throughout the state. Training of all supervisors and program management staff will take place at a session planned in the spring of 2001. During August and October, the Annual Surveyor's Training will provide 24 hours of investigative skills enhancement concentrating in the areas of interview techniques including documentation of facts. In the spring of 2001, an advanced investigative skills training including scheduling and investigation planning will be held for supervisors and complaint team coordinators.

DA's standard operating procedure allows for central office reviews -- including administrative reviews of statements of deficiencies (SODs) -- to determine if errors have occurred in the survey process and to determine if supporting documentation and evidentiary matter is sufficient to warrant inclusion of a finding in the SOD. DA agrees that changes to SODs need to be adequately documented. We have reviewed the central office administrative review and quality assurance processes and have strengthened our internal and management controls over documentation requirements for these processes; this includes required feedback to field survey staff and management monitoring of the feedback process.

□ MAR Number 2 - Complaint Investigation Processing & Procedures.

Recommendations:

A&B. SAO

Ensure complaint investigations are initiated and completed timely, the results of those investigations are properly documented, and reports are submitted in a timely manner to help ensure appropriate enforcement actions are taken against facilities that are not in compliance with state and federal regulations. In addition, the DA should ensure required reports are available to the public, and the resident's next of kin or the reporter is notified of the results of all complaint investigations.

DA Status

DA identified problems with the complaint process prior to the state auditor's review and therefore, we concurred with the auditor's recommendations. In SFY 1996, DA staff identified the need for sweeping revisions to the complaint system. Beginning in SFY 1997, DA conducted internal reviews and convened focus groups to clearly identify issues and to make recommendations for systemic revision. Requests for budget appropriation for additional staff were made in 1998, 1999, 2000 and 2001 to obtain sufficient numbers of staff to implement the recommended revisions. These requests were partially funded. In addition, plans

were made to replace the antiquated Central Registry for Abuse, Neglect and Exploitation (CRANE) system, through which all complaint reports are reported, tracked and documented. Until the new system comes on-line, an interim tracking and monitoring system has been implemented. The new on-line system is currently in the preliminary testing phase.

In mid-SFY 1999, DA began phasing in region-by-region a new complaint investigation process including a case management approach to ensure that complaint investigations are initiated timely and, at a minimum, a call is placed to the reporter to determine the need for an immediate on-site visit. This process change resulted in increased community participation (family, friends, facility operators and other concerned individuals), bringing to positive resolution issues affecting the day-to-day lives of facility residents.

DA concurred with the state auditor that additional improvements are needed to the complaint system. DA took action following discussions with state audit staff to:

- Designate a central office complaint coordinator and monitor to ensure: complaint investigations are timely handled; reporters are called; required notices are mailed; and complaint investigation data is received and entered into a regional complaint tracking system with the regional data base forwarded to central office on a monthly basis for review and action, as applicable.
- The additional DA staff received in this fiscal year will allow us to begin in September, 2000, to at least quarterly, monitor quality through a random selection of completed complaint reports. Comparisons of the selected reports to established quality assurance criteria will be completed; feedback will be provided to survey staff and training will be focused on areas needing improvement.
- Initiate a management and internal control review of complaint processing beginning with the Kansas City Regional Office.
- Provide investigative skills training for all staff at the SFY 2001 Annual Surveyor's Training and later in the fiscal year provide an advanced course for supervisors and complaint investigators.

DA agrees that timely investigation of complaints is essential in ensuring an accurate reporting of the events that resulted in the complaint being filed. However, in order to meet the federal program mandates and state inspection requirements (two inspections per year), as well as time frames for completion of complaint investigations, additional resources are needed to ensure all time frames are met. HCFA continues to prioritize the completion of the annual survey ahead of completion of complaint investigations. The division continues to request annually, through the state and federal budget processes, funds for additional survey staff. Historically, we have not been consistently successful in obtaining sufficient resources to meet the increasing need for complaint investigators, as well as all other federal and state mandates. On July 8, 1999, Institutional Services had 2,944 outstanding complaint reports with 1,833 overdue to central



office. On July 10, 2000, Institutional Services had a total of 1,068 outstanding complaint reports with 400 overdue to central office. During SFY 2000, regional field staff decreased the number of overdue reports by 25%.

C. SAO

Reexamine the policies related to enforcement actions when corrective action had been taken before the investigation was completed. In addition, the DA should consider stronger enforcement actions which may lead facilities to develop additional preventive measures.

DA Status

As contained within DA's audit response, we have reviewed our policies related to enforcement actions when corrective action has taken place at the facility before the investigation has been completed. Our policies currently comport to federal and state enforcement action requirements. From past and continuing experience, DA -- in following the required administrative process -- has found in specific cases where corrective action has taken place that we have been unable to successfully sustain cases brought forward for action when the facility has taken corrective action. DA notes that on January 18, 2000, the Missouri Court of Appeals, Western District, decided *State of Missouri, Department of Social Services, Division of Aging v. Carroll Care Centers, Inc.*, -- S.W.2d --, WD 56714 (Mo. App. Jan. 18, 2000), holding that it was proper to dismiss a Civil Monetary Penalty (CMP) claim if the nursing home has corrected a cited deficiency at the time of reinspection. Here, the deficiency had been corrected by the time of reinspection. In such a case, the State's claim for sanctions was not authorized.

DA continues to explore a wide range of sanction options and other initiatives to increase the quality of care provided to residents of long-term care facilities. DA proposed to HCFA in January, 2000, a modification including graduated sanctioning as a component of the state agency's sanctioning process; however, HCFA provided a response that in the HCFA Regional Office's opinion a denial of payment for new admissions would encourage the facility to make prompt corrections and achieve substantial compliance. DA continues to work with HCFA in assessing per instance CMPs and finalization of modifications to the state penalty policy.

D. SAO

Study the merits of establishing a process for dissatisfied complainants to appeal the result of complaint investigations.

DA Status

Beginning September 1, 2000 in Region 1, Springfield, the division is implementing an Informal Dispute Resolution (IDR) project to informally resolve issues through face-to-face contact with a facility resident, their family members or guardians when the resident is the subject of a complaint investigation or cited

in a facility inspection or survey completed by DA pursuant to chapter 198, RSMo. The primary purpose of the meeting will be to gather additional information and bring to a satisfaction conclusion the resident or families concern(s).

☐ MAR Number 3 - Repeat Deficiencies, Sanctions & Corrective Action.

Recommendations:

- A. Consider the facility's history of past noncompliance when selecting sanctions and study sanctions to determine those which are most effective in reducing noncompliance.

As noted in our initial report response, DA does review and consider the effect past sanctions have on future compliance, as applicable. Frequently, when facilities are assessed as being significantly out-of-compliance, a change in owner/operator/management company or reorganization of the corporation occurs resulting in a new state licensure application. The "new entity" no longer carries with it the previous history of noncompliance. DA continues to believe that statutory change is needed to address this issue. Changes in the HCFA State Operations Manual made in January, 2000, limit some facilities' opportunity to correct deficiencies and may ultimately reduce "roller coaster" compliance.

Again, as noted in the initial DA response, the division put into place the following to address the auditor's recommendations:

- Not issuing operating licenses as they come due, if there is a current class I or class II deficiency and/or if upon review the facility has a history of noncompliance or the violations cited are repeat violations.
- Issuing only a temporary operating permit (TOP) if a complaint against a facility has not been investigated at the time the license is due. If deficiencies are cited at a class I or class II standard as a result of the complaint investigation, and/or the operator has a history of noncompliance or the violations are repeat in nature, his or her license will then be denied.
- Offering operators an opportunity to enter into a consent agreement in an attempt to achieve a permanent resolution to their compliance problems and thereby improve care and/or conditions for residents.
- Citing administrators, as appropriate, for failing to maintain compliance to regulatory requirements when class III violations are cited repeatedly. Repeat class III violations can then result in an uncorrected class II notice of noncompliance and the operator will be required to correct or face termination from the program.
- Amending our policy related to requests for imposition of sanctions to require an automatic increase in the sanctioning request whenever a recurrence of a violation occurs. However, DA only makes recommendations, HCFA has final authority over the sanction to be imposed. DA proposed to HCFA in

January, 2000, a modification including graduated sanctioning as a component of the state agency's sanctioning process, however HCFA responded that in the HCFA Regional Office's opinion a denial of payment for new admissions would encourage the facility to make prompt corrections and achieve substantial compliance. DA continues to work with HCFA in assessing per instance CMPs and finalization of modifications to the state penalty policy.

- B. Work with the legislature to modify the state CMP process so that it can be a more effective tool in bringing facilities into compliance.

The division continues to work closely with the legislature to enhance and improve the state civil monetary penalty process to bring about immediate action against facilities that fail to meet state licensing requirements.

- C. Ensure Plans of Correction fully meet the established criteria including methodologies for facilities to monitor their continued compliance with the POCs, and ensure the POCs adequately address any systemic deficient conditions. We also recommend the DA ensure all POCs can reasonably be expected to correct the deficiency and not accept POCs which have failed in the past. Further, the DA should develop procedures to continually monitor compliance with POC provisions for facilities with a history of repeat deficiencies.

As noted in DA's response, the division has been meeting the federal guidelines related to plans of correction. We agree the federally required plan of correction process, as it existed prior to January 14, 2000, was not effective. HCFA provided additional guidance that clarified and modified the enforcement guidelines contained in the State Operations Manual including those related to accepted POCs. The division believes this information has enabled us to address the majority of issues contained within the state auditor's recommendations for POCs. As detailed within DA's audit response, additional training in the review of POCs will be conducted. At this time, Institutional Services is recruiting for a Quality Assurance Coordinator FTE who will be responsible for the coordination of quality assurance tasks within Institutional Services. The QA Coordinator will coordinate the POC training with the DA Training Unit for implementation in the spring of 2001 and it will be provided to managers and supervisors in conjunction with the advanced investigative skills training.

□ MAR Number 4 - Staffing of Nursing Homes.

Recommendations:

A&B. SAO

Establish reasonable minimum staffing ratios as required by state law. In addition, the DA should take steps to develop a system which accumulates the actual staff hours at facilities, and compare recommended staffing levels to actual staffing at facilities to identify potential staffing problems.

DA Status

As stated in DA's audit response, we suggest that staffing ratios alone do not routinely take into consideration the acuity differences between individual residents and their need for specific types and levels of services. Multiple variables need to be considered when determining the staffing level and types in a nursing facility. DA believes use of a ratio in determining types and levels of staff with a lack of consideration for the resident case-mix or acuity level in the facility will not ensure care needs of individual residents are met.

Recently, HCFA released an eight year study (Phase I) entitled a Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes. The study reports from the analyses conducted that "there may be critical ratios of nurses to residents below which nursing home residents are at substantially increased risk of quality problems." However, the report does not contain any specific staffing recommendations. The report notes that "The potential establishment of a regulatory minimum ratio requirement will require further research on more states in order to identify alternative minimum thresholds and optimal case-mix adjusters, and to assess relative costs and benefits of such thresholds. In addition, more research will be required to assess the feasibility of implementing minimum ratio requirements." Estimated staffing thresholds detailed in the report are noted as being relatively high and that a considerable number of facilities would be impacted if these thresholds were to become minimum requirements. The HCFA report indicates that Phase II will more fully examine empirically-derived minimum staffing levels and methods for case-mix adjustment (acuity based). Additionally, HCFA noted that Phase II will examine the costs and benefits associated with possible study recommendations for a regulatory requirement of minimum nurse staffing ratios. HCFA indicated they expect this cost analysis to include an assessment of the impact of regulatory changes on providers and payers, including Medicare and Medicaid. Further, they stated there is an expectation of a workforce analysis being integrated with the cost analysis because, even if cost increases associated with higher staffing levels could be absorbed, it may not be possible to secure the necessary staff at realistic wage levels.

DA plans to continue working with the University of Missouri-School of Nursing (UMC) to determine the best method to provide comparative feedback to nursing facilities and consumers related to acuity based staffing versus actual staffing levels in Missouri facilities. It remains likely the Code of State Regulations will be modified as a result of the research being conducted.

C&D. SAO

Inspectors utilize recommended and actual staffing data to help identify negative resident outcomes. We further recommend the DA aggressively cite staffing deficiencies and subject facilities that are found to be out of compliance with the staffing requirements to the maximum federal and state sanctions (including civil monetary penalties) warranted.

DA Status

Currently, there are no federal or state statutory requirements for survey and inspection staff to utilize a minimum standard or industry benchmark in their review of staffing levels. During the survey and inspection processes, field staff review resident outcomes to determine understaffing as required by HCFA. Field survey staff collect information about facility staffing for a two week period to be input into the federal OSCAR System. However, as noted by the auditor and many national studies, facilities appear to increase staff during the survey process. This results in a skewed picture of facility staffing for that two (2) week period. DA received four (4) auditor FTE in SFY 2001 to assist field staff in performing survey and inspection activities including the review of records (i.e., payroll and staffing).

SAO

In addition, the DA should ensure approved POCs are reasonably expected to address the staffing deficiencies noted.

DA Status

As noted in DA's response, the division has been meeting the federal guidelines related to plans of correction. We agree the federally required plan of correction process, as it existed prior to January 14, 2000, was not effective. HCFA provided additional guidance that clarified and modified the enforcement guidelines contained in the State Operations Manual including those related to accepted POCs. The division believes this information has enabled us to address the majority of issues contained within the state auditor's recommendations for POCs. As detailed within DA's audit response, additional training in the review of POCs will be conducted. At this time, Institutional Services is recruiting for a Quality Assurance Coordinator FTE who will be responsible for the coordination of quality assurance tasks within Institutional Services. The QA Coordinator will coordinate the POC training with the DA Training Unit for implementation in the spring of 2001 and it will be provided to managers and supervisors in conjunction with the advanced investigative skills training.

□ MAR Number 5 - Employee Disqualification Listings, Central Registry & Criminal Backgrounds.

Recommendation:

SAO

The Division of Aging seek legislation which would prohibit the employment of individuals found to have abused and/or neglected children and DMH clients from working in nursing homes.

DA Status

As noted in DA's original response, we concur that legislative action is needed for verification of Department of Mental Health Employee Disqualification List (DMH EDL) and the Child Abuse and Neglect (C/N) registry listings by division providers and facilities. While inclusion of these individuals on the DA EDL may further protect elderly and disabled adults in long-term care facilities, this issue needs to be addressed through the legislative branch who implement public policy through enactment of state law. DA provided comments and information to the general assembly related to the state auditor's recommendations regarding individuals listed on the DA EDL, the DMH EDL, the C/N central registry and/or individuals with criminal backgrounds. None of the proposed legislation passed into law during the 2000 legislative session. DA continues to believe the process of consolidation was begun with passage of the "Family Care Safety Registry and Access Line" (L. 1999 H.B. 490 & H.B. 308); that current computer technology will make information more readily accessible to the public; and that additional legislative action may be anticipated.

SAO

The DA should then develop an automated process to identify instances in which persons listed on the DA EDL, the DMH EDL, or the C/N central registry, or individuals with criminal backgrounds are inappropriately working for nursing facilities, in-home service providers, or other entities prohibited from hiring those persons.

DA Status

During SFY 2000, DA took the following steps to address the auditor's recommendations and further strengthen our processes:

- Established an automated process with the Department of Employment Security (MODES) for identification of instances in which those persons listed on the DA EDL are inappropriately working for nursing facilities, in-home service providers, or other entities prohibited from employing them.
- Reviewed and strengthened Institutional Services administrative processes and assigned processing of referrals of individuals for placement on the EDL and the information obtained from the MODES tape match to a single distinct EDL Section.

During SFY 2001, DA is taking the following additional steps to enhance processes through technological advances to assist facilities and in-home services providers in obtaining more timely and accurate EDL information updates:

- Implementing mainframe data base modifications to link EDL data to other DA systems and enhance management reporting.
- Instituting a new policy requiring surveyors to request a listing of all current employees during every annual full licensure inspection for completion of an EDL check by DA staff.
- Modifying the agreement with MODES to provide monthly mainframe tape matches of the EDL Listing to MODES data.
- Implementing a new interactive voice response unit to allow facilities access to the system 24 hours per day 7 days per week.
- Pursuing funds for implementation of an Internet web site to allow providers to check on-line, real time the EDL status of individuals; provide a method for submission of periodic information (tape or diskette) for checking all facility employees status on the EDL and increase EDL Unit staff by (2 FTE) to ensure timely responses to telephone requests for information.

#### SAO

In addition, the DA should more aggressively sanction and fine facilities and providers who hire persons listed on these EDLs and/or Central Registry. The DA should also consider raising the violation for hiring a person listed on the EDL to a Class I violation.

#### DA Status

As noted in DA's audit response, state law requires facilities and in-home services providers not later than two days of hiring any person to request a criminal background check from the highway patrol and to make an inquiry to the department of social services as to whether the person is listed on the employee disqualification list. DA does not have the statutory authority to prohibit facilities from "hiring" individuals listed on the DA EDL or possessing a criminal background. When a facility fails to take appropriate and timely action to terminate an individual identified through the DA EDL and/or criminal background check processes or fails to complete the processes, DA has the statutory authority to cite those facilities for such violations.

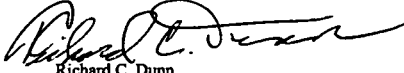
DA has reiterated to field survey staff, at a minimum, a Class II violation occurs when a provider or facility fails to meet Section 660.317, RSMo 1998 that requires facilities to ensure individuals appearing on the DA EDL and/or having a criminal background are terminated in a timely manner. Again on July 1, 2000, the Division Director affirmed his expectation to field survey staff that facilities found in violation of Section 660.317, RSMo 1998 will be issued a Class II violation.

As noted in DA's audit response, DA does not concur with the auditor's suggestion that identification of an individual as being on the DA EDL immediately rises to the level of "imminent danger" necessary to cite a Class I violation. Further, as noted in DA's audit response, a Class I violation will continue to be issued under 13 CSR 15-14.042(16) to

those providers and/or facilities that act in such a manner and where such circumstances can be proven and are legally defensible.

If you have any questions or comments concerning the information contained in this update report, please feel free to contact me at (573) 526-8535.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard C. Dunn", written in a cursive style.

Richard C. Dunn  
Director





**CLAIRE C. McCASKILL**  
**Missouri State Auditor**

August 29, 2000

Mr. Richard Dunn, Director  
Missouri Division of Aging  
P.O. Box 1337  
Jefferson City, MO 65102

Dear Mr. Dunn:

As you know, in March this office completed an audit of the Division of Aging (DA) that identified several problem areas related to the DA's monitoring of nursing homes. One of the most significant findings related to nursing home employment of individuals who are disqualified not only from working in nursing homes, but are prohibited from working with the mentally handicapped, or were determined by the state to have abused or neglected children.

While not currently a violation of state law, I believe those individuals who are forbidden to work with our mentally handicapped as well as those who have neglected or abused children should also be banned from working with our elderly. Last session, I lobbied for statutory revisions to our state law via House Bill 1615, sponsored by Representative Hosmer, that would have prohibited the employment of such persons by nursing homes. Unfortunately, the nursing home industry successfully killed this legislation on the last day of the session.

However, as I promised on the last day of session, the issue of quality care for our state's elderly population is too important to me to give up the fight. This office has recently conducted follow-up audit procedures at the DA focusing solely on issues regarding employee disqualification listings. Our office cross-referenced employees of licensed nursing facilities and in-home care providers against three lists: the DA's disqualification list, the Department of Mental Health's (DMH) disqualification list, and the Division of Family Services' central registry of child abuse and neglect (CA/N). The results of this review are discussed below.

Since we released our report in March 2000, the DA has created an automated process to flag all persons on their disqualification list that were inappropriately hired to care for the elderly. However, our follow up showed the need to fine-tune the system so that the DA obtains the most accurate and timely information.

When we reviewed employment records for the first quarter of 2000, we still found 12 persons on the DA's disqualification list that had been working at a licensed nursing facility or an in-home service provider.

Of the eight disqualified employees we found working at nursing facilities, the DA had identified four and the facility terminated their employment. Two persons had earned less than \$200, indicating the facility likely ended their employment once the DA finished its check. And the DA has started but not finished the inquiries into the remaining two workers. Of the four disqualified persons employed at in-home care providers, two persons had since been removed from the disqualification list and the DA has not finished checking into the remaining two workers.

It is clear the DA is striving to improve its system to check its own lists and take action after noting violations. But what is more troubling is that state law does not require the DA or the nursing home industry to also check lists of employees considered unfit to work with mentally handicapped or even worse - our children.

Our tests for this year's first quarter showed 30 persons working for nursing facilities or in-home health providers, who are also on the Department of Mental Health's disqualification list. We then found 574 persons caring for our elderly who were listed on the child abuse and neglect registry. These employees were on the registry because the Division of Family Services found probable cause, or a court determined, they had physically abused, neglected or sexually maltreated a child. The severity of their offenses ranged from serious or severe injury to fatalities.

I look forward to receiving your response that addresses the exceptions noted above. Specifically, I want to ensure that those employees identified as ineligible were in fact terminated by their employers and that the DA has appropriately recovered any wages paid to disqualified employees by in-home care providers.

I know you share my concern that the residents of Missouri's nursing homes and recipients of in-home health care receive the proper care, treatment, and respect they deserve. We in state government must take the necessary precautions to protect these persons from harm. Indeed, we have not only a legal duty, but a moral and ethical obligation to ensure they are provided a safe environment, free from any potential consequences associated with the employment of persons of questionable character.

Sincerely,



Claire McCaskill  
State Auditor

Attachment

**Employee Disqualification Listings and Central Registry**

**Auditors repeated the research steps performed in the March 2000 review of the Division of Aging to screen the background of employees hired to care for the elderly. This second check for inappropriate employees working in the first quarter of this year resulted in the following:**

- A. Various sections of state law require the DA to maintain an Employee Disqualification Listing (EDL) which includes the names of persons who have been finally determined by the department, pursuant to Section 660.315, RSMo 1994, to have recklessly, knowingly, or purposely abused or neglected or to have misappropriated any property or funds of a nursing home resident or in-home services client. There are approximately 735 persons on the DA EDL. Nursing homes and residential care facilities, providers of in home services under contract with Department of Social Services (DSS), employers who hire nurses and nursing assistants for temporary or intermittent placement in health care facilities, entities approved to issue certificates for nursing assistants training, hospitals and related health services, and home health and hospice providers are prohibited by state law from employing any person on the DA EDL.

We matched persons on the DA EDL as of January 1, 2000 to the first quarter 2000 employment information records and noted eight persons were employed by a licensed nursing facility and four persons were employed by an in-home health provider under contract with the DSS. Of the eight nursing facility employees, four had been identified by DA and were subsequently terminated from their employment. DA did not issue a Statement of Deficiency against the providers because termination did occur; however, DA stated that for any EDL violation identified in the future, Statements of Deficiency will be issued. Two of the remaining four had earned wages less than \$200. DA indicated that the facility likely terminated these individuals once the EDL check was completed. DA stated they will begin inquiries into the employment of the other two. Of the four in-home health provider employees, all had been identified by DA. However, at the time of inquiry, two individuals had been removed from the DA EDL. DA may be able to recoup wages paid by the providers to these individuals at the time they were listed on the DA EDL. DA has yet to complete inquiries of the remaining two individuals to determine if their employment was prohibited by state law. The DA has developed an automated process to identify instances in which persons listed on the DA EDL are working for nursing homes, in-home service providers, and other entities prohibited from hiring those persons. Use of the automated process should result in the DA being able to identify all instances in which an employer inappropriately hired a person listed in the DA EDL. However, modifications to this process are necessary in order to ensure the DA obtains accurate and usable information in a timely manner.

- B. The Department of Mental Health (DMH) also maintains a listing of persons who have been administratively determined to have abused or neglected a DMH client

under Section 630.167, RSMo Cumulative Supp. 1999. Pursuant to Section 630.167, RSMo Cumulative Supp. 1999, this listing is confidential. Persons on the listing are disqualified by 9 CSR 10-5.200 from holding any position in any public or private facility or day program operated, funded, or licensed by the DMH or in any mental health facility or program. There are about 315 persons on this listing. We matched persons on the DMH EDL as of January 1, 2000 to the first quarter 2000 employment information records and noted twenty-five persons were working in a licensed nursing facility and five persons were working for an in-home health provider under contract with the DSS.

In our opinion, it does not appear appropriate for individuals who have abused or mistreated DMH clients to care for the elderly. The DA should develop an automated process to identify instances in which persons listed on the DMH EDL are working for nursing home operators and in-home care providers.

The Division of Family Services, under Section 210.145, RSMo 1994, maintains a Central Registry of individuals where the division has found probable cause to believe or a court has substantiated through court adjudication that the individual has committed child abuse or neglect, or the person has pled guilty or has been found guilty of a crime under Sections 565.020, 565.021, 565.023, 565.024, or 565.050, RSMo. The Central Registry of Child Abuse and Neglect (CA/N) contains identifying information on the perpetrators of child abuse and neglect. Pursuant to Section 210.150, RSMo 1994, this listing is confidential. We obtained a listing of all persons listed in the CA/N for which the incident date was within the last five years. We further limited our selection criteria to the investigation conclusion codes of A (court adjudicated) or B (probable cause or reason to suspect); the severity codes of category of C (serious/severe), D (permanent injury), or E (fatal); and the categories of abuse of 1 (physical abuse), 2 (neglect), or 6 (sexual maltreatment). Applying that selection criteria to the CA/N, about 18,330 persons were identified, of which approximately 15,270 included a Social Security number of the person.

We matched persons from the information obtained from the CA/N as of January 1, 2000 to the first quarter 2000 employment information records and noted 510 persons were working in a licensed nursing facility and 64 persons were working for an in-home health provider under contract with the DSS that were on the registry.

In our opinion, it does not appear appropriate for individuals who have been found to have abused or mistreated children to care for the elderly. The DA should develop an automated process to identify instances in which persons found to have abused children are working for nursing home operators and in-home care providers.

The CHAIRMAN. Thank you, Auditor.  
Now Ms. Benner.

**STATEMENT OF CAROL BENNER, DIRECTOR, OFFICE OF HEALTH CARE QUALITY, DEPARTMENT OF HEALTH AND MENTAL HYGIENE, CATONSVILLE, MD**

Ms. BENNER. Thank you, Senator Grassley, Senator Breaux, Senator Kohl, for inviting me on behalf of the Association to testify before you today. The Association recognizes the tremendous strides that this committee has made to improve the regulatory process, as well as the quality of care and life in our Nation's nursing homes. We sincerely appreciate this and are grateful for it.

For the last 2 years, states have diligently worked to implement the Nursing Home Initiatives. The enhanced survey protocols for nutrition, hydration and abuse prevention have, along with the quality indicators, significantly improved our ability to evaluate care and identify problems. Staggered surveys are on-going throughout the country; deficiencies are identified; enforcement has increased and there is at least anecdotal evidence that overall quality is improving.

There are issues, however, that continue to require further guidance from HCFA. You have our written testimony and these are discussed in detail. I would like to highlight some of these issues for you.

The first issue is the tremendous increase in workload. We have testified before about the need for adequate planning and preparation prior to new policies or protocols being implemented. The chart that we have back there shows the dramatic increase in workload in Maryland from fiscal year 1998, the year prior to the initiatives, through this current fiscal year, 2 years following the initiatives. It is important to understand that in fiscal year 1998, the Maryland state agency was able to complete all of its federally mandated work within the budget that we were given.

In August 1998 HCFA changed the revisit policy and required states to verify corrective action for all noncompliance by an onsite survey. You can see that the number of follow-ups—that is the yellow—tripled from 1998 to more than 200 surveys in fiscal year 2000. In the same period, the number of complaints that were investigated tripled, and I think a picture is worth 1,000 words when you take a look at that.

Although the actual number of visits per nursing home increased from an average of two per year to more than five per year, there was an overall decrease in the number of annual surveys conducted and an inability of the state to meet the federally mandated 12-month average. However, in any month we were in one-quarter of Maryland's nursing homes. These were truly unannounced and unpredictable surveys and they gave us a lot of information that led to serious enforcement actions.

Even so, our Governor and our legislature have approved hiring of an additional 30 surveyors and we fully expect that if we receive the Federal funding that we have requested, we will meet all Federal requirements in fiscal year 2001. Other states have similar data. In New Jersey, complaints have increased 170 percent and follow-ups have increased 65 percent.

Responsibilities of survey agencies go well beyond these output measures of surveys, complaints and revisits. Increased enforcement, especially if it is to withstand legal scrutiny, requires significant reviewing efforts, as well as increased dispute resolution. The relationship with provider organizations has become much more adversarial. Because the stakes have increased, deficiencies are routinely challenged and debated and this takes time.

The second area I would like to highlight has to do with the budget process. We acknowledge and appreciate the funding increase that HCFA has sought and that this committee has supported.

The budget issues are complicated. HCFA complains that states are given money and we do not spend it. On the other hand, states complain that HCFA does not give us enough money. Oddly, both of these statements are true. A state cannot spend money, even Federal money, unless it has approval at the state level. State legislatures usually give us approval months, sometimes a year, prior to HCFA's appropriation to the states. If HCFA gives a state extra money for additional staff and the state legislature has not approved its expenditure, states cannot expend the money, especially for a salaried position. A state in this case is likely to go back to its legislature and indicate that Federal funds are available. Legislatures may still be reluctant to approve positions unless there is an on-going commitment for the Federal funding.

In the other example, some states have been given positions in anticipation and expectation of additional Federal money and the funding has not been and is not forthcoming. It must be understood that even if and when a state legislature approves additional hiring and the funding is in place, it takes another 12 to 18 months to hire staff and provide orientation, training and testing before a surveyor is able to survey independently. This underscores the need for adequate planning and lead time for any new initiatives that require additional staff. Otherwise, the initiatives will not be successful and the states will be doomed to failure.

The third issue I would like to mention is state performance measures. The Nursing Home Initiatives include a requirement that HCFA develop a set of performance measures to assess the state agencies. HCFA has announced these standards and is prepared to implement them. States are concerned that these measures are focused on output measures and not on appropriate quality measures. A state's performance will be evaluated on the number of surveys conducted, number of deficiencies written, whether Federal timeframes are met and the flaws in comparative surveys. Although these are important, these are not indicators of a quality or effective state agency. We need to define quality outcome measures based on effectiveness of the state agency to gain early compliance in nursing homes and to maintain compliance over a long period of time. This is a difficult issue and will require earnest dialog between HCFA and the states. We are prepared to work with HCFA on this issue.

Finally, we have a series of recommendations that are presented in the written testimony. We would be happy to provide the committee with additional information about these recommendations.

In closing, although issues remain that need to be addressed, the association believes that we are moving forward. We look forward to a continued relationship with this committee and with HCFA and I will be happy to answer any questions.

[The prepared statement of Ms. Benner follows:]

**Statement of**

**Carol Benner**

**on behalf of**

**The Association of Health Facility Survey Agencies**

**Before the Senate Special Committee on Aging**

**September 28, 2000**

Chairman Grassley, Senator Breaux, distinguished Committee Members, thank you for inviting me, on behalf of the Association of Health Facility Survey Agencies (AHFSA), to participate in this hearing. I am Carol Benner, Vice President of AHFSA. AHFSA represents the leaders of State Survey Agencies across the country. We were established in 1970 to provide a forum for the State Agency directors to share information and to work with HCFA, provider organizations, and advocates to monitor quality of care in all types of health care settings.

State Survey Agencies represent more than 5000 surveyors, who go into nursing homes every day to monitor quality of care and to determine compliance with Medicare, Medicaid and State licensure regulations. We believe that surveillance and enforcement activity is the most important and effective means by which the federal and State governments can protect individuals and ensure quality health care for our elderly and disabled adults.

We appreciate the work of this Committee and we recognize the strides that you have made to improve the regulatory system. We commend your efforts and are grateful for them.

For the last two years, States have been diligently working to implement the 1998 Nursing Home Initiatives. We look forward to participation in this two-year evaluation and hope that our comments are useful to you.



The goal of the NHI's - to improve the quality of care in nursing homes is good, and AHFSA wholeheartedly supports that goal.\* We believe that some of the initiatives have already significantly improved the survey process. The enhanced survey protocols for nutrition, hydration and abuse prevention, for example, have - along with the Quality Indicator information provided by the Minimum Data Set - significantly improved our ability to evaluate care and identify problems.

Staggered surveys are ongoing throughout the country, the number of actual problems identified has increased, enforcement has increased and there is at least anecdotal evidence that overall quality is improving.

There are issues, however, that continue to require further guidance from HCFA. In June of 1999, AHFSA testified before you and expressed concerns that the NHI's were implemented without adequate planning, a clear definition of desired quality outcomes, and sufficient financial resources. In November 1999, we testified again. We stressed the need for planning, resources, reliable and consistent information, instruction and feedback from HCFA to the States. These same issues remain as concerns to State survey agencies today, and directly affect our efforts to fully implement the NHI's and to fully carry out federal regulatory responsibilities.

The hearings held by your committee and the development and implementation of the NHI's by HCFA have generated considerable activity at the State level. In addition to our federal responsibilities, states have also taken the initiative to improve quality of care and quality of life for nursing home residents through state licensure improvements, the development of consultative activities, improved training to surveyors and the provision of consumer information to the public.

States routinely participate in activities over and above what HCFA requires and measures. States sponsor training programs for providers on the top noted deficiencies; they participate in studies and participate in projects that look at quality and seek methods to improve it. In Maryland alone, we have co-sponsored three training programs with the industry on pressure sores, dehydration and malnutrition, and falls. We have contracted with our local PRO to study the effects of relocation trauma on a group of nursing home residents who were forced to move following closure for quality purposes, and we are working with the National Citizen's Coalition on Nursing Home Reform to build and strengthen family councils in Maryland nursing homes. In addition, you are aware of the major state legislation to reform our licensing system that was passed in Maryland last year and our efforts to create a state-of-the art across the board rating system.

These projects are not unique to Maryland. Similar activities are ongoing in all states. Other states including California, Colorado, Florida, Massachusetts, New Jersey, North Carolina, Texas and Wisconsin are in the process of or have developed ratings systems, strengthened state enforcement systems, established technical assistance programs, initiated quality improvement programs and developed creative, positive uses for civil money penalty funds. This year at our

national training conference, we will be highlighting state activity to improve care and performance and we will be happy to send you additional examples of our best practices.

At this time, as you review the activities of the past two years, it is critical that all of this activity be considered.

There are several issues that we need to highlight and we will follow with some recommendations for ongoing improvement in these critical programs.

### **Ongoing Issues**

#### ***Workload Increase***

The federal initiatives have significantly and dramatically increased state survey agency workload. The enhanced survey protocol requires more hours per survey; complaint investigations have doubled in some states; and, increased enforcement actions require additional surveys. Because of the increased enforcement, time for supervisory review, informal dispute resolution and preparation for administrative hearings and other legal activities have increased.

In Maryland, the increase in workload has been dramatic. In FY98, the state was able to complete all of its federal requirements. From FY98 to FY00, the number of complaints that were investigated tripled and the number of follow-up visits more than tripled. Although the actual number of visits to nursing homes increased from an average of 2 per year to more than 5 per year, there was a decrease in the number of annual surveys conducted and an inability of the state to meet the twelve-month average. Although we have worked hard to correct this problem, this shift in workload and priority shows the impact of a policy change without adequate preparation.

In another state example, the number of complaints in New Jersey increased 170% in the same time period from 1480 to 2500. The number of standard surveys went up by 7%, revisits by 65%.

In addition, duties and responsibilities survey agencies go well beyond output measures such as number of surveys, number of complaints, number of revisits, and these have increased too. Increased enforcement, especially if it is to withhold legal scrutiny, requires significant review and effort as well as increased dispute resolution. Because of the increased enforcement, the relationship with provider organizations has become much more adversarial. Because the stakes have increased, deficiencies are routinely challenged and debated.

If a nursing home closes, a survey agency may spend 600 or more survey hours preparing families and residents for relocation. When a survey agency identifies serious and immediate jeopardy or life-threatening conditions to residents, surveyors routinely shift from survey responsibilities to on-site monitoring to ensure protection of residents until the life-threatening conditions are removed. Situations such as these require change of schedules and workload plans that stress an already stressed system. Terminations of a facility, especially when there are only

low-severity level deficiencies remaining consume significant portions of time, and often create anxiety and panic for residents and their families. While we agree that there must be some means to sanction a facility for slow compliance with the regulations, this ultimate sanction needs to be reassessed in light of both the outcomes for the effort and the impact on nursing home residents.

#### ***Budget Process***

We acknowledge and appreciate the funding increases that HCFA has sought and which this committee supported over the past two years. Unfortunately, the budget process has not been responsive to the states' resource needs.

The issue for many states is not always the amount of the appropriation, but the timing of the appropriation and the ability to plan for the expected increase in activity by the federal government. For example, the final budget amounts and final clarification of the HCFA workload priorities for the current fiscal year was not completed until ¾ of the current fiscal year has elapsed. We believe that many states will not be able to fully spend these funds. Many state budget and accounting staff were reluctant to authorize hiring and training of additional staff when there was no assurance of funds beyond the remaining three months of the fiscal year. In addition, because this extra money was allocated "out-of-cycle," states were not able to use it. The fact that funding has been increased does not guarantee that an initiative has been fully implemented.

We have testified at previous hearings that many states need a full state budget cycle *prior* to allocation of federal funds to plan for additional positions. After state legislatures have approved hiring additional staff and the federal monies are appropriated, it takes another 12 to 18 months to hire staff and provide orientation, training and testing before a surveyor is deemed satisfactory to survey independently. This underscores the need for adequate planning and lead time for any new initiatives that will require additional staff. Otherwise, the initiatives will not be successful and the states will be doomed to failure.

This year, states were clearly told to prepare budgets that are based on actual need. We now understand, that in reviewing the FY 2001 budget requests, HCFA is using past performance data, including FY 1998 figures as the basis for decision-making. Although, this may be the most recent data available to HCFA, it clearly predates the NHI's and does not take into consideration the dramatic workload increases including changes to the revisit policy, complaint initiative, double G policy or the enhanced survey protocols. Budget allocations made on this basis will not satisfy current resource needs. Next year, we will be here again, testifying that there are not enough resources and that we are still not meeting federal time frames.

We are aware of the frustration that is created when you are informed that the budget has been increased but that the expected "bang for the buck" has not been achieved. The budget allocation process, the workload expectation and the difference in survey costs between states all need to be resolved. AHFSA is recommending that the efforts undertaken several years ago to evaluate budget issues, state barriers to fully expending the funds, and the cost differences be started

again. AHFSA has members who will participate in this process through a reconstituted HCFA/AHFSA workgroup. Until this activity is completed there will be doubts and frustrations about this issue.

#### *State Performance Measures*

An important aspect of the NHI's was increased oversight of the states by HCFA to ensure that quality of care problems in nursing homes are both properly identified and addressed through strong enforcement. HCFA has proposed and has begun to implement several measures that it believes will adequately address this concern.

States want accountability, want to demonstrate effectiveness and are accustomed to scrutiny. Elected officials, governors' offices, auditors, local media and the public routinely hold individual states accountable. We understand however that this does not resolve the federal efforts and objectives for standardization and consistency among all states. However, before HCFA and the states can resolve this issue, we must all agree on defined quality outcome measures that clearly demonstrate effectiveness.

Current federal accountability measures focus on units of output and not outcome. Significance is attached to the number of deficiencies that are cited, or not cited, by the state surveyors, number of surveys conducted, and adherence to federal time frames. We agree that these are important measures and every state should certainly prepare and monitor its workload to comply with federal operating procedures. However, it should be understood that these are not measures of quality and do not indicate the overall ability of a state to maintain or improve quality of care or life in a nursing home.

In fact, quite the opposite is true. Some of the information collected by HCFA and used to evaluate state performance may be misleading to the public and create unnecessary lack of confidence. The mere fact that a state has completed all of its survey activity within the stated time frames demonstrates that the state has scheduled and monitored completion of the survey, but does not necessarily focus on the quality of the survey.

States can ensure that all surveys are completed by allocating hours for each survey based on the hours available. However, we need to be concerned that the standards and the threat of sanctions do not create a perverse incentive to just make sure all surveys are done and not worry about the adequacy of the survey. It is hard to predict how long a survey will take once you have entered the facility. We can use averages based on past performance, but this is primarily a planning tool and should not be used in a rigid fashion.

We are concerned that the performance standards established by HCFA may be premature and not representative of overall effectiveness of the state agency to achieve and maintain compliance effectively. In Maryland, last year, we restricted the number of revisits to two and required a period of at least 30 in between surveys. Many facilities were sanctioned, and some harshly. This year, with the exception of one of these facilities, all have maintained compliance. The State

Performance Standards do not consider outcomes such as this.

### ***OSCAR Data and State to State Variability***

You are aware that the OSCAR data are not always timely and not always accurate. This is an issue that HCFA is working on but which has a two to three year timeline for completion. OSCAR redesign is critical to the ability to monitor survey efforts. The nation requires a state-of-the-art tracking system that can monitor survey and enforcement activity contemporaneously and make it available to consumers and to states.

Currently, some states have complained that they cannot access the system efficiently. Surveys cannot be entered into OSCAR until all components of the survey process are completed. This means that a health component cannot be entered until the life safety or fire component is completed. Surveys are not entered until IDRs are completed. This means that information concerning a troubled facility may not be readily available.

OSCAR data entry is costly and labor intensive. With limited resources, data entry takes a back seat to actual surveys and complaint investigations. Thus, it is not surprising that comparisons among states yield uneven, outdated and inaccurate results.

Further, OSCAR does not collect all data that states need to effectively manage survey activities. It does not readily allow for the transport of data to state data management and information systems. It is not timely and is not routinely modified to meet changing needs. For example, staggered surveys were required by HCFA beginning in January 1999, but states were not notified that OSCAR was updated to capture this data until February of 2000.

Modifications to the OSCAR/ODIE system must be made quickly to ensure that information is more readily available, accurate and user-friendly.

In addition to variation among the states as a result of budget issues, OSCAR/ODIE problems, variation can also be attributed to the limitations of HCFA training. Modifications to HCFA policies and procedures are sometimes made after training sessions. Seats or slots at HCFA train-the-trainer sessions are often insufficient and the time allowed for state trainers to train survey staff between the HCFA sessions and the implementation date of an initiative is inadequate.

Uniform implementation of policies is yet another variable that affects consistency. This can only occur with healthy and timely communication between the HCFA central office, regional offices and the states. It must also include a timely feedback so that states can investigate and look for causes of national variances. To date, states are still not receiving timely and consistent feedback from Federal Observational (FOSS) and comparative surveys. States that have received feedback question the usefulness of the information, and, considering the intensity of resources and efforts, question the overall impact it will have to actually affect state performance. Other inconsistencies include the manner in which terminations are managed, citations of abuse deficiencies, restraint policy, and the ability to use non-nursing personnel to assist with meals

It is also critical to incorporate a formal and fair process for states to discuss and bring to resolution identified variances. Otherwise, discrepancies in state performance will continue -- in the FOSS and comparative surveys, OSCAR data and with the new state performance measures developed by HCFA.

We agree there are identifiable differences between states that will always affect our behavior and that will be evident in trend analyses. These must be acknowledged. State licensure and enforcement requirements vary based upon state statutes and regulations. Federal budget levels continue to vary, as do the state budgets. All of this affects our ability to address new initiatives while maintaining compliance with existing requirements. Medicaid rates, labor markets, even the character of state provider organizations impact the type and level of services and the type of survey program that is allowed to exist within the states. Labor contracts and state travel policies affect both the budget and the ability to implement initiatives such as staggered surveys. Measuring trends alone without consideration of other factors also implies a stagnant industry and economy, and this is simply not the case today especially in the health care industry.

We are aware of HCFA's acknowledgement of these problems and applaud the steps being planned to deal with these issues at the federal level through its Alliance for Consistency. We are appreciative of HCFA's offer to the Association to participate in this important effort. Many states have undertaken similar reviews at the state level and we realize that this is a time consuming project. However, we do agree that there should be the expectation among residents, families and providers that the national system outlined in the laws and regulations for nursing home enforcement should be consistently applied across the country. We are participating with HCFA in a Consistency Clearinghouse to review regional office program letters in order to establish consistency in the directions provided to the survey agencies.

Recognizing the importance of consistency, AHFSA has initiated several efforts to promote consistency among the states. We have convened a workgroup to look at actual harm deficiencies, especially in the area of quality of resident life. Another is development of data management systems to meet state needs for quality assurance and sharing of information between the states. We have our State Best Practices Program -- now three years old -- where states share information on ways to carry out survey and enforcement responsibilities. We have established an Intranet site to facilitate communication and to share information.

### ***Recommendations***

In closing, there are many issues that we have not addressed. These include special focus facilities, use of the instant civil money penalty, and the very real difficulty that we are all facing with the labor shortage.

I would like to present the following recommendations to guide our collective, continuing efforts to implement the NHI's and, most importantly, to improve the quality of care for all nursing

home residents.

**Recommendations:**

- **Increase involvement and communication between HCFA and the states prior to implementation of new policies and procedures**
- **Establish a budget workgroup that includes State Agency representatives to jointly review issues prior to a new budget cycle**
- **Consider a two-year budget cycle to allow states to merge federal and state budget processes**
- **Expedite overhaul of the OSCAR/ODIE data entry system**
- **Continue efforts on cooperative relationship to look at consistency and state to state variances**
- **Review of alternative methods to make the survey process more effective**
- **Clearly identify the priorities to be achieved which must include a consideration for entities other than the nursing homes**
- **Consider complaint surveys to meet off-hour survey requirements**
- **Review State Performance Standards to include quality outcomes rather than or in addition to output measures**
- **Develop a national nurse aide abuse registry database. Consider a criminal background check requirement**
- **Support research on nursing home staffing to capitalize on the current momentum for evaluation and funding for staffing**
- **Support the development of advanced training paths and career ladders for direct care staff.**
- **Encourage creative use of CMP funds for the benefit of residents**

Thank you for the opportunity to speak with you today. AHFSA and our state members continue to implement the NHI's to improve resident outcomes. We remain committed to ensuring provision of quality care to our Nation's elderly and disabled populations and appreciate the efforts of the Special Committee on Aging to focus attention on quality of care and life to our nursing home residents and the effectiveness and the consistency of the survey process.

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The CHAIRMAN. I thank all of you for your testimony.

We will take 5-minute turns and if we do not get done before 5 minutes to 10 for Senator Breau and me, we will have to quit at 5 minutes to 10 because of the Finance Committee meeting, if it goes ahead. At that point we would submit questions for answers in writing.

We will start with you, Mr. Hash. You based your testimony on the report that Congress requested about the quality of care in the nation's nursing homes. The committee is interested in two particular items: first, the status of quality of care in the nation's nursing homes and second, whether the Nursing Home Initiative or any enforcement efforts successfully motivate improvements in the quality of care. And I think that Chapter 3 of your report began to address these issues and I hope to see this analysis expanded and made the central focus of next summer's update to Congress.

So let me ask you the basic question. How should we define and measure quality and will a decrease in deficiencies indicate improved quality?

Mr. HASH. Mr. Chairman, I think when we try to get our hands around the issue of quality of care in nursing homes we have to look at a series of variables. One of the indicators of quality certainly is performance in the annual survey and the extent of deficiencies but clearly that is not the most appropriate and accurate resident-level measure of quality. That is why we are investing significantly in improving the application of the standard survey by refining the protocol that surveyors use. We have already introduced into that protocol attention to specific quality indicators prior to the arrival of the survey team at the nursing home, looking at the nursing home's frequency with regard to pressure sores, dehydration, malnutrition and abuse.

These kinds of clinical indicators of quality are the ones at the resident level which we expect to rely on over time as the most important measure of quality of care in nursing homes. These quality data are reported on a regular basis as a result of information from the resident assessments that are made on each and every nursing home patient at the time of their admission and periodically thereafter.

So what we have been trying to do is to strengthen the application of the survey process so that it focuses on the prevalence of indicators of clinical quality of care or lack of quality of care in critical areas.

The CHAIRMAN. Dr. Scanlon, do you think that the quality of the surveys and the information in the OSCAR data base is reliable enough to make judgments about the level of quality provided in the nation's nursing homes?

Dr. SCANLON. Mr. Chairman, I am afraid it is not. I think that the variation that we see across states is troubling in the sense that we do not have confidence that the surveys are being administered consistently and that consequently any information going into OSCAR can not be used on a comparative basis.

I think the fact that the variation has declined since the initiative has begun is a positive fact but we need to go further in terms of understanding the variation that persists. We have no confidence



that this variation reflects the actual care that is being provided in homes across states.

I would also emphasize strongly that we are looking at an aspect of quality in these deficiency measures. We are looking at the incidence of actual harm or genuinely poor care to residents. Quality, as we seek to improve it, hopefully is going to involve eliminating those completely and then improving upon that base.

The CHAIRMAN. Now Mr. Hash and Dr. Scanlon, representatives of nursing home owners have argued that the current enforcement system does not measure outcomes and that if it did, we would see that a generally high level of care is being provided in the nation's nursing homes.

Do you think that the tools HCFA and the states are using to assess nursing homes give us information about the quality of care provided in them and what do they tell us about the care provided?

Mr. HASH. Well, I think we are improving on those tools, as I mentioned a moment ago, Chairman Grassley. We are using this resident assessment data, the so-called Minimum Data Set, as a source of on-going real-time information about homes' performance at the individual resident level. Each nursing home now gets a quarterly report of the prevalence of their performance on certain quality indicators, like pressure sores and malnutrition, in comparison to a peer group, which sets into motion the possibility of quality improvement activities within the nursing home but it also gives us at the national level and at the state survey level a tool to focus the surveys on those subsets of patients who have conditions that are not appropriate for quality of care in the nursing home.

The Minimum Data Set that we are using to focus our quality improvement efforts is really critical and in order to strengthen the survey process, we have to make sure that all of the surveyors are properly trained in the application of those quality improvement measures.

The CHAIRMAN. Dr. Scanlon.

Dr. SCANLON. Mr. Chairman, I do agree with the industry that we are not measuring outcomes of care in the process of the survey but I would also indicate that that should not be our goal. Our goal at this point is to assure that minimum quality of care is being provided to all nursing home residents, that actual harm is not occurring to some residents.

We have never indicated in any of the reports that we have provided you that a majority or even somewhat more than a minority of homes is providing poor quality care. We have always emphasized that what we are talking about is a significant minority of homes that are providing poor quality care. That is the focus of the initiatives, to eliminate that minority providing poor quality care so that we can then use that as a starting point to improve quality of care overall. But we should not lose focus on what the real purpose of the initiatives has been.

The CHAIRMAN. I will continue on my second round.

Senator Breau.

Senator BREAU. Thank you very much to the panel members for their testimony and for being with us.

This is, I guess, at least the third in a series of hearings on nursing homes. We have had hearings about the quality of care, we have had hearings on the bankruptcy problems of nursing homes and now we are having a hearing this morning on really the inspection and enforcement systems that are out there.

I am a big believer in the importance of inspections and also random inspections. If you send a note as to when the inspections are going to occur, everybody gets fixed up for that period and then the next day they forget about it. So I think that surprise inspections, if you will, are important and should be continued to a greater degree.

But I was wondering, we are being bombarded, Senator Grassley and myself and other members of the Finance Committee, by all of these ads and contacts by the nursing home industry. I was just looking this morning in the Hill newspaper, actually Roll Call newspaper that is on the Hill. There is a full-page ad, "Real cuts, real people, the facts, America's nursing home crisis," pointing out that 1,800 nursing homes are in bankruptcy.

Now I am not saying whether that is true or not. Mr. Hash, we can have the best inspection system in the world but if we have nursing homes that are in bankruptcy, the inspections will probably tell us that they are not doing an adequate job and they would argue they are not doing an adequate job because they do not have the financial wherewithal to do it. So the inspection systems are not going to improve the care. They are just going to tell us how bad it is.

How much of the things that we are finding in Dr. Scanlon's review of the inspection programs that are showing deficiencies can be attributable to the financial conditions of the nursing homes in HCFA's opinion?

Mr. HASH. I think some of it definitely can be, Senator Breaux, because, as you point out, the financial distress of some institutions leads to issues related to staffing and their ability to recruit and retain a workforce that is necessary to provide quality care. And in today's full employment economy, the difficulty of attracting particularly certified nursing assistants, nurse's aides, who actually provide the bulk of resident care in nursing homes, is extraordinarily difficult and competitive. The turn-over rates of that level of staffing in some cases is as high as 90 percent a year. That leads to discontinuity in the provision of care and certainly to quality problems for the residents of nursing homes.

So that is why we are investing in this analysis of staffing patterns in nursing homes in order to establish the linkage between staffing levels and quality of care results for residents. We are working toward, as the president announced earlier this month, a requirement by 2002 of national minimum staffing standards for nursing facilities.

Senator BREAUX. But the problem is we can pass the best standards in the world and say that they have to have so many nurses per patient, they can only work so many hours, they have to do this, that, and the other. But I am concerned and I am not sure who is right and who is not right on this, that we can write the best standards in the world but if they are not able to make it financially, they will never meet the standard.

Mr. HASH. That is correct, Senator Breaux. And I think to address the financing of nursing home care, as you may know, the administration has proposed a number of modifications to payment policies in the Medicare program for nursing facilities and we have taken certain administrative actions in our payment policy, the result of which is that there will be about a 20 percent increase in the coming fiscal year in Medicare payments to nursing homes. So I think that—

Senator BREAU. Is that the recommendation? That is not internally to HHS and HCFA. That is depending on what we do with the balanced budget add-back.

Mr. HASH. It is a combination, sir, of both. We actually are continuing the special add-on payments that were authorized in the Balanced Budget Refinement Act of last year, which put a 20 percent increase on certain payments to skilled nursing facilities under Medicare. Those would have normally expired at the first of October but we are continuing them into the next fiscal year and there is also an update to the payment rates that is being put into place on October 1.

So those are administrative actions but in addition to that, there are recommendations in the administration's package that would put another funds into nursing facilities.

Senator BREAU. Well, we are going to be considering the balanced budget add-back amendments, I take it, next week sometime in the Finance Committee, along with that.

Mr. HASH. Yes, sir.

Senator BREAU. I know in my State it is not so much the Medicare payment rate but the Medicaid payment rate which is killing them.

Mr. HASH. Yes.

Senator BREAU. I have the lowest Medicaid payment rate match in the nation by far. It is like \$50 something.

Mr. HASH. Yes, sir.

Senator BREAU. Ludicrous.

Ms. McCaskill, in Missouri how much of the problems that as auditor you have seen can be a result of inadequate financing versus other problems that may be causing the things that you are seeing in your state?

Ms. MCCASKILL. Well, you are accurately stating that the problem is really Medicaid reimbursement and not Medicare reimbursement in terms of the overall financial picture. Our preliminary work in the financial analysis we are doing indicate that based on the 1998 cost reports, about two-thirds of Missouri's homes were profitable based on allowable costs. And those numbers are skewed somewhat because those that are very unprofitable, Senator, are those that are participating in a hospital-based program, so they are losing a lot of money and that is skewing the numbers somewhat.

Senator BREAU. What is your state Medicaid rate?

Ms. MCCASKILL. 90—

Senator BREAU. Oh, Jesus.

Ms. MCCASKILL. Oh, yes. But we hear the same complaint in Missouri. That is why we cannot have minimum staffing, that is why we cannot do away with right-to-cure, because they are not

getting enough reimbursement. So that is why we are trying to get to the bottom of all those numbers, so the legislature for the first time probably will have a real accurate financial picture of what is going on in Missouri.

Senator BREAUX. Tell them they could live in Louisiana.

Ms. MCCASKILL. I will tell them.

Senator BREAUX. Mr. Scanlon, my final question. Is there a problem in the sort of dual system of regulation and inspections, where we have this hybrid operation where the feds set the rules, the state does the inspections and the enforcement? Would it be better if we just had the Federal Government doing it all? Does it seem to be a problem with the dual hybrid system of one group setting the standards and another group trying to enforce it?

Dr. SCANLON. There is no question that this has created a whole series of coordination problems and communication problems that exist but, at the same time, I think what we have done is we have built upon the fact that states do have primary responsibility for assuring the safety of their citizens. Before we had Medicare and Medicaid, they were licensing nursing homes and inspecting nursing homes and we tried to incorporate that into the process because it is not clear that that would go away if we Federalized the inspections. States may still have their own requirements and then we would have the additional burden upon homes of having two inspectors appear, a Federal inspector every year and a state inspector every year, and have two complaint systems.

So I think that our best approach is to focus potentially on trying to overcome these coordination problems, overcome these communication problems, and actually I think we have made progress in the last 2 years. We just have a lot more distance to go.

Senator BREAUX. My final point. Some would say that the reason why the deficiencies are up is because we now have better inspections and some would say no, we are just doing a bad job of running the nursing homes. Is there a balance between those two?

Dr. SCANLON. I think both are potentially true and we cannot really distinguish between the two. And I would not say it is necessarily a bad job of running nursing homes and that it has gotten worse over the last 2 years. I think when we went to all the states that we visited, as well as other states, we heard concerns about the issue of staffing and it was related to the fact that we are in an incredibly good economy and that hiring lower-wage workers is always extremely difficult. You just have to drive around and see all the signs in store windows saying "help wanted" and you realize how hard it is to recruit workers.

This is a problem that a number of states are trying to address in terms of increasing Medicaid payments in various ways and I think it is something that may have contributed to the problems that we see in the quality of care today.

The CHAIRMAN. Ms. McCaskill, the survey process does identify some facilities that repeatedly exhibit poor quality of care. In your report you voice an expectation that the Division of Aging should be able to subject chronically poor performing facilities to additional onsite inspections. Has your state agency been able to do this? And I would like to have Carol Benner also respond.

Ms. MCCASKILL. They are doing a better job. They are hampered by the requirement that the annual surveys must take precedence over complaint investigations, as I mentioned in my prior testimony.

I also would say that the roller-coaster syndrome and the repeat violations, they made an effort after our audit, Senator, to inquire about being able to graduate sanctions, civil monetary penalties, and they were denied by HCFA and told that they should continue to do a denial of new patient sanction, as opposed to graduated sanctions based on civil monetary penalties.

And I should point out that our audit showed clearly that the civil monetary penalties were more effective in getting rid of these deficiencies than the DNP and we would certainly encourage a change in that policy that would allow the states—and we are working on changing the state law that would also allow us to graduate sanctions without a right to cure. That is currently the Missouri law, so we are looking to the Federal Government because we have no ability to do it in Missouri, because clearly we have embraced the roller-coaster syndrome by our current statutory scheme in Missouri.

The CHAIRMAN. Ms. Benner.

Ms. BENNER. Senator Grassley, I think that is a very good question. By default, whenever we have a chronic poor performer, we are in that nursing home over and over and over again. The enforcement process requires that we go in to do a revisit.

I think that the issue is, and I think Ms. McCaskill described it very eloquently about her son, going back over and over, is how many times do you go back before you cut it off and say this is it, we are going to do the ultimate sanction?

In Maryland what we have done is a year ago, because of the resource issue and also because we thought it was important, we limited the number of revisits to two and said that we would not go back more than two times. You have two bites at the apple and that is it. And you can imagine the industry was very upset about that because they are used to a third, fourth, fifth and sometimes even more revisits.

What we have found today is that the nursing homes in our state have very much gotten used to the fact that we are only coming back twice. And what we have seen is that they are coming into compliance much sooner and also they are staying in compliance much longer, and that is what we are after.

We have taken the harsh action in Maryland that if a nursing home is not in compliance within two revisits that we do go forward with termination for Medicare and Medicaid. In fiscal year 1999 there were nine terminations in Maryland and that is fairly significant out of 260 nursing homes. That is very significant.

And in a sense, that is the ultimate civil money penalty because it happens right away. You do not have this two, 2½-year delay with the Federal sanctions. A termination occurs and it happens right away. And what we have found now is that of those nine, only one of those nursing homes has gotten into trouble again.

So again this is what I was talking about before, about looking at an overall quality measure to look at a state agency. Our goal is to get compliance early and maintain compliance over a long pe-

riod of time and I think that we are very much moving into that direction.

The CHAIRMAN. Ms. McCaskill, the GAO report found that 26 percent of Missouri nursing homes have actual harm violations, 34 percent know when state surveyors will come. About 2,600 complaints alleging actual harm to residents were filed against 500 nursing homes over 13 months. Sixteen percent of Missouri's nursing homes were found to be deficiency-free, yet 84 percent of these deficiency-free homes—no, that is 16 percent but of that 16 percent, 84 of these homes had over 600 complaints filed against them, an average of seven per home.

Obviously those are startling figures. Could you explain what was going on in Missouri?

Ms. MCCASKILL. I think there is a combination of things and I think really the audit in its entirety helps explain it. It is a combination of understaffing, lack of training, a lack of consistency, a failure to prioritize complaint investigations over annual surveys, and clearly we do have a user-friendly system for complaints in Missouri and I think that should be pointed out. It is highly publicized. It is posted. And I know that when we began our audit and asked for complaints on our hotline, the kind of response we had from Missourians. So that should be factored in, also.

We have gotten 27 new staff members in last year's budget. They will go on line over the next several months and I think—and by the way, we will be back every year. This is an area that our office is very focused on now and we will continue to be focused on and we will see improvement or I believe that we will have serious action taken in the Missouri legislature. I think the legislature, we have their attention.

If I could briefly, Senator, I want to correct the record. I do not want Senator Breaux to think we are rolling in money in Missouri. We are reimbursing 93 percent of the allowable costs, not \$93. I wanted to make sure that we did not—

Senator BREAU. What would that match come out to be?

Ms. MCCASKILL. I want to say for the Federal match about 60, maybe. I think that is correct. I did not bring the financial information with me. I was not prepared to speak about that.

The CHAIRMAN. The average per diem nursing home rate in my state is \$84.64 and Iowa's FMAP is 63/77.

Ms. MCCASKILL. Then we are at the high 60's, I believe, for the Federal portion.

The CHAIRMAN. Mr. Hash, could you explain the special facility program, including how the facilities are selected and why they are selected?

Mr. HASH. Yes, Mr. Chairman. We are working with a set of criteria to identify things like repeated serious violations of homes and sanctions that have been applied, developed a list, a national list of homes that we then submitted to each of the states and requested that they select two, at least two from the that list in order to increase the frequency of comprehensive standard surveys from one a year to two a year. And that has been the goal, to get at least that level of participation in the program.

As I noted in my testimony, we have not achieved full compliance. Out of, I think, 110 homes that have been identified by the

states for special focus activities, only about 60 of them had the increased semi-annual standard survey visits. But the good news is of those who did, in fact, implement the special focus facility plan, 28 of those 60 facilities are now in substantial compliance with Federal nursing home requirements. Twelve of that 60 group have actually been terminated or withdrawn from the program.

So we think the special focus activity is having an effect. Obviously we want to work with the states to get more participation in paying attention to stepping up the frequency of standard surveys in highly troubled homes that have a record that would indicate that that frequency is warranted.

The CHAIRMAN. Ms. Benner, considering only Federal requirements that surveys be performed an average of 12 months and within a nine- to 15-month period of time, do you think it should be possible to give extra attention to chronically poor performing facilities by conducting surveys close to every 9 months and then schedule those that seem to need less oversight for surveys closer to 15 months?

Ms. BENNER. I believe that that was the intent of setting up the system that way, to allow us to go back to the poorer facilities on a much closer interval. The problem, Senator Grassley, is that states right now are fighting to get all of the facilities done within 12 months and to get that standard survey done. The pressure is on to do every facility without a lot of attention to looking at past performance.

The CHAIRMAN. To the two ladies, the staggered survey element of the Nursing Home Initiative was designed to prevent predictability of surveys in order for surveyors to assess the usual day-to-day conditions in the facilities, rather than special preparation made just for the survey.

So to both of you, the General Accounting Office report indicates that even with surveys beginning on evenings and weekends, they are predictable. Is there any way to mix up the order of survey visits to prevent this predictability, if you agree that there is predictability?

Ms. MCCASKILL. I agree there is predictability. I think there are ways to mix it up. I think one of the problems we have had in our state is regional work, where all the facilities in one region know that it is going to be their turn quickly because they are in the area, so to speak.

So I know the Division of Aging in Missouri is looking at the random nature of where they are going in the state at any given time with their survey work. But clearly we are not there yet on random.

The CHAIRMAN. Ms. Benner.

Ms. BENNER. I would echo what Ms. McCaskill says but also say that this underscores the importance of the complaint investigations. These are the truly unpredictable, unannounced surveys and these are the ones that nursing homes do not expect, and they occur at off-hours, as well.

The CHAIRMAN. In a previous report, the GAO recommended that the surveys be broken into a number of parts so that surveyors visited facilities more often on a less predictable schedule.

HCFA has not appeared to agree with this. Mr. Hash, could you explain why?

Mr. HASH. Well, Mr. Chairman, we have been looking at that recommendation from the GAO. I think where we have come to is the notion that the standard survey itself is an interrelated kind of protocol and that the notion of being able to make an appropriate judgment and to apply the criteria of the survey protocol in parts raises questions about the validity of how that might be done and whether or not you would really be capturing appropriately an accurate picture of the performance of the nursing home.

We are anxious to continue discussing this with the GAO and I would also say breaking the standard survey into parts has important resource implications because, of course, again that would have the effect of, on the standard surveys, having multiple visits to every facility, in addition to the complaint surveys and the revisits.

So there are important resource implications associated with breaking up the standard survey and administering it at different points in time.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. I have no other questions.

The CHAIRMAN. Ms. Benner, it appears that many states are unable to comply with the Federal requirement to conduct surveys on an average of every 12 months and the requirements are not new. Why are these state agencies unable to meet the requirement?

Ms. BENNER. I think the reasons are pretty clear, Mr. Chairman. The number of complaints across the country have skyrocketed and when we are faced with doing a standard survey in a home that has had no deficiencies or has had a good track record over a period of time and we have a complaint that someone's mother has been dropped in physical therapy and has a broken hip or someone has gone to a hospital with dehydration, we do what is the right thing and that is to go out and to do the complaint investigation.

We are faced today with the resource issue in the states. Although we have been able to hire 10 of our 30 positions, the states are feeling the nursing shortage, as well. We cannot hire nurse surveyors, the same way that the nursing homes cannot hire nurses.

There have been changing priorities from HCFA over the past year, which has made it difficult for some states to get all of their work done, and it is a real balancing act, trying to get the most important thing done at the right time.

The CHAIRMAN. Ms. McCaskill, in your audit you noted examples of deficiencies being inappropriately removed from the inspection report. Could you give us more detail on this problem? For example, why is it a problem and what is being done to prevent it?

Ms. MCCASKILL. Well candidly, I think part of the problem is that the nursing home industry has been very effective at knocking us around the courtroom pretty well in the State of Missouri and I think there has been historically some reluctance on the part of the state agency to really go mano a mano with the industry when they come in with their attorney after these reports have been written up and begin to say this is wrong, this is wrong, this is wrong.



Clearly in the instances I cited in the audit, there is no good answer because their processes were not followed. If they were going to take those deficiencies away, it should have been through their dispute resolution process. It should have been documented as to why they were taken away.

They claim that it was a personnel issue, that someone was not trained and did a very bad job on that particular report, but that does not change the fact that the report was written, the inspector was there, and then they all disappeared without their own processes being followed.

I do not believe you are going to see that occurring in Missouri again. If they are going to remove deficiencies in the future, I think at a minimum, they will be following their own processes and doing it through a procedure where the public can understand what is going on. The public has a right to scratch their head on this.

The CHAIRMAN. Do any of you know if this is a problem outside of Missouri?

Mr. HASH. I do not have any systematic data. Of course, I know there have been problems in some other states. You may be aware, Mr. Chairman, of a criminal investigation that proceeded in the State of Oklahoma regarding inappropriate activities by state survey agency personnel and I assume there may be other, isolated hopefully, incidents of such activity. But I do not have any sense that it is a widespread problem in terms of failure to follow appropriate procedures in an informal dispute resolution process to remove deficiencies or to change findings in a survey process.

The CHAIRMAN. Mr. Hash, the GAO reports that Federal surveyors found more serious care problems than the state surveyors did in 70 percent of 157 comparative surveys conducted within the last year and a half. Now that tells me that state surveyors are not catching real problems. I recall that HCFA has been reluctant to accept the General Accounting Office's recommendations to increase the number of these informative surveys. However, the General Accounting Office report notes that HCFA may be conducting more comparative surveys to assess the quality of work being done by the state surveyors. Could you give us more detail about your plans in this area?

Mr. HASH. Yes, sir. As you know, the law requires a sample of 5 percent of all nursing homes be the subject of Federal oversight evaluation and we have been satisfying that requirement in two ways: one, by doing comparative surveys in which Federal surveyors come in and do a complete replication of the standard survey in a nursing home within 60 days of a state-level standard survey. The second way in which we have been addressing this problem is by having one or more Federal surveyors participate with a state survey team and observe them and provide on-the-spot training and advice and counsel during the survey process.

The GAO has observed in several reports that the comparative surveys have been successful, those which are Federal repeat surveys have been successful in identifying deficiencies that were not identified by the state survey process. We are investigating expanding the number of comparative surveys that we do and we do agree with the GAO that certainly the opportunity to fully evaluate the

effectiveness of the state survey can only really be done in that sense with a comparative survey done by Federal surveyors.

We have plans of trying to improve the proportion of those kinds of surveys that we do. As you probably know, this is also a resource issue because in order to do a full comparative survey it requires a team of four or five Federal surveyors, whereas participation in a state survey as an observer usually involves one or two Federal surveyors. So we are trying to adjust our resources in order to support an increasing number of comparative surveys.

The CHAIRMAN. Dr. Scanlon, the General Accounting Office report refers to a situation in Oklahoma involving allegations that the head of the state survey agency was taking bribes in exchange for preferential treatment of nursing homes. From your study, would you say that HCFA should have identified this potential problem?

Dr. SCANLON. We do not think that HCFA could have identified the problem a priority about the allegations of bribery but we do think that there was information available to suggest that there were problems in the Oklahoma survey agency and their activities.

In looking at OSCAR data on Oklahoma, we discovered that there was a significant number of surveys that were very old. There was no record that homes had been surveyed within the last 15 to 18 months. There were no indications that revisits were occurring for a long period of time to identify that deficiencies had been corrected.

In addition, there was information outside of the OSCAR survey from the comparative surveys that were done indicated many more discrepancies found in the Federal survey than were being found in the state survey. I think these all could have been signals to the regional office that a closer examination of Oklahoma was warranted.

The CHAIRMAN. Mr. Hash, anything you want to say on that? You do not have to but if you want to, I will give you—

Mr. HASH. Yes, sir. I think we agree with the GAO and in fact, one of the things we are doing, and Ms. Benner referred to this, is putting into place a tracking system and a monitoring system with respect to state survey agency activity, including timely entry of OSCAR data from the survey process into the on-line system and to have a system to better monitor the performance of states so that those kinds of indicators that Dr. Scanlon referred to are available in real time and will enable us to spot that kind of problem in a more rapid and effective way.

So that is definitely something that we need to improve on and that is why we are trying to build a management information system and build into our evaluation of the state survey agencies certain specific performance measures, some of which Dr. Scanlon alluded to there, to hold them accountable for timely input of data, for revisit validation and activities of that sort.

The CHAIRMAN. My last question would be to get from any or all of you any sort of suggestions you might have and these would be in addition to enforcement efforts. What could states do or even the Federal Government, let me suggest, what states or the Federal Government are trying to do to motivate improved quality of our

nursing homes? Anything you see out there that would be in addition to enforcement? Any suggestions you have for states or—

Ms. MCCASKILL. I would certainly suggest that we try to work on the problem of civil monetary penalties being actually imposed prior to 3 or 4 years down the line and pennies on the dollar. The appeal process is so long that it becomes meaningless in terms of the initial impact of the sanction and I do believe that CMPs are more effective than DMPs in terms of bringing a home into compliance.

I think Ms. Benner's point about termination—homes will get better if they think that we are serious and I think if HCFA will allow states to do graduated CMPs based on actual record, as opposed to the long process that is involved, I think that would make a big difference.

The CHAIRMAN. I appreciate that suggestion. It kind of emphasizes something you said before. I am also looking for nonenforcement-type suggestions you would have for state and/or the Federal Government to do to improve quality.

Ms. MCCASKILL. Well, staffing. I think minimum staffing—we are anxiously awaiting a recommendation from HCFA on that.

The CHAIRMAN. Ms. Benner.

Ms. BENNER. Chairman Grassley, I think it would be important to look at the complaint investigation process and perhaps put more emphasis on it, allow states to do complaint investigations, if necessary, ahead of the annual surveys, ahead of our priority, and also to expand the complaint process, survey process, to include the quality indicators, have an abbreviated survey that would count toward the staggered surveys and to count toward the overall measure of the state's performance and what we are doing.

The CHAIRMAN. I think I take your admonition to heart. I do not know whether I will want to make a comment on that now but I might give Mr. Hash an opportunity to comment because both of you state people have suggested that to the Federal Government.

Would you like to make a comment, Mr. Hash? And I am not saying that you ought to agree or disagree with them because if you are looking to me for direction on that, I have not made up my mind yet.

Mr. HASH. I understand, Mr. Chairman. I think it is a balancing act in terms of setting the priorities as between a comprehensive annual standard survey and an adequate and responsive complaint survey activity. And we are trying to redesign, working with the state survey agencies, the complaint investigation protocol so that it can be more efficient and effective. And I think we need to make sure that there are adequate resources to accomplish both the standard survey, as well as a responsive complaint.

I would also say in terms of the imposition of civil monetary penalties, the administration has recently submitted a legislative recommendation to the Congress to permit the collection of an assessed civil monetary penalty at the time of the assessment, rather than pending the exhaustion of administrative appeals, to which Mrs. McCaskill referred to and described quite accurately. And we think such an effort would actually put teeth into the existing civil monetary penalty tool because for many institutions, it never hap-

pens and therefore it does not really represent a strong incentive to come into and stay into compliance with Federal requirements.

The CHAIRMAN. Dr. Scanlon.

Dr. SCANLON. Mr. Chairman, I think that both certainty that sanctions will be imposed, as well as the fact that you are going to be observed, are very powerful forces in affecting whether or not you are interested in providing quality care.

I think, though, we have heard about the tensions that exist in terms of trying to do both of these things with the resources that are available and I think that in that environment, we need to potentially be as imaginative as possible in how to best target those resources. And some of the suggestions here deserve consideration, though I, too, would reserve judgment on accepting any of them.

I think also we need to be concerned about the fact that resources need to be certain. As we have heard from Ms. Benner, states have difficulties spending money in the short term and they also very reasonably do not want to make long-term commitments when the money is only available in the short term.

So thinking about how we can, at the Federal level, assist the states in terms of knowing that resources are going to be available is important. I would point to the Medicare Integrity Program as part of the Health Insurance Portability and Accountability Act where in that area we have told HCFA and the contractors that there is going to be money available over the long term to be able to pursue fraud and abuse activities within Medicare and that certainty has assisted in planning those activities and I think making them more effective.

So I think since we know we are going to be involved in nursing home oversight for the long term, we should think about this as a long-term problem and address it that way.

Mr. HASH. Mr. Chairman, if I may, I do want to underscore what Dr. Scanlon just said. I think above all, from the Federal level, evidence that we have a sustained commitment, both programmatically and through policy but also through resources, to an on-going, long-term effort here is absolutely critical because the vagaries of support make it difficult for states to make the kind of commitment that needs to be made and the same kind of commitment needs to be made at the Federal level, as well.

So I think Dr. Scanlon put his finger on what is a very critical long-term issue here, which is some way of assuring that the sustainability of this effort is going to remain a high priority at the Federal level.

The CHAIRMAN. That opens me up to some closing comments I want to make. First of all, I need to thank all of you for taking time out of your busy schedules early in the morning to come and help us do our job and fit into the overall congressional schedule for today.

Following on where you left off, Mr. Hash, obviously there is going to be a new president, a Republican or a Democrat, in November—after November. And I am a hold-over member of the U.S. Senate. You never know for sure what your position will be from one to the next. If we are in the majority, I expect to be Chairman of this Committee again. And I would hope that all of us would be

cognizant of making sure that the next administration continues this.

You are speaking more directly to the adequate funds to make sure that it is done and we have that sort of a commitment, but it seems to me that we have to have from the president of the United States down, through HCFA Administration and then separately with separate administrations of the states, this commitment that we started, to make sure that there is not a lapse in Federal efforts and state efforts.

Perhaps we could go back to the history of the mid-1980's as an example, that there was not proper follow-through. Sometimes during the 1970's and I think we even have something from our files that we dug out that this committee was involved in something in the 1960's to point out some of the shortcomings of care in nursing homes.

So we have to be diligent, not only just with money but to make sure that the money is spent wisely, and that is where leadership is so important.

As you all know, it has been 2 years since this committee's first hearings on nursing homes and Health Care Financing Administration's enforcement of the Nursing Home Reform Act of 1987 and we hear today again of HCFA's taking very seriously the efforts to implement this initiative, the initiative of July 1998 particularly, and we are seeing states recognizing much more the importance of performance assessment, which can be used to evaluate the implementation of the initiative, and their survey activities more generally.

This committee will continue to oversee implementation of the Nursing Home Initiative by both the Health Care Financing Administration and by the states. And for my part, I would be very insistent with the Health Care Financing Administration to continue to promote consistency in identifying nursing home deficiencies; refine the Federal comparative and observational survey process; see to it that complaints are investigated in the time required by HCFA; ensure that OSCAR is a reliable and timely source of information and data about the quality of care in nursing homes; and last, ensure that Federal dollars purchase quality care.

The main point made by the General Accounting Office in their testimony today I want to reemphasize: fully and effectively implementing the improvements that we discussed today is essential to obtaining quality care in the nation's nursing homes and it may not be the only thing that we have to do to improve the quality of care but it is the most essential thing to do and a sustained effort will be required to do that. The current Health Care Financing Administration staff and the incoming administration must maintain the efforts that we started just 3 years ago with this committee's forum on malnutrition in nursing homes.

For my part, I am taking the following actions to promote quality of care in nursing homes. First, I will be introducing the Nursing Home Staff Improvement Act of 2000. This will be a modified version of the president's discussion in his Saturday radio address 2 weeks ago. The purpose of the administration's bill and my bill is to encourage states and their nursing facilities to improve nursing home staffing levels. I very much hope that we can include this legislation in the Balanced Budget Act revisions that the Committee

on Finance is supposed to be working on next week. I am on that committee and will be there to see that through.

And then second, through the appropriations process, I requested a second, follow-up status report from HCFA to Congress by next July on the progress in improving quality of care in our Nation's nursing homes. As I previously said today, I would like to see the Health Care Financing Administration focus on quality measures and track their improvement or lack of improvement as we continue the Nursing Home Initiative.

Last, I am going to continue to oversee HCFA's implementation of the Nursing Home Initiative and quality provided in the nation's nursing homes by requesting the General Accounting Office to continue tracking the initiatives.

And last, thank you all for participating. Thank you.

[Whereupon, at 10:05 a.m., the committee was adjourned.]

## APPENDIX

### DR. SCANLON'S RESPONSES TO SENATOR KOHL'S QUESTIONS

*Question.* I have worked hard for the past several years to increase funding for HCFA Survey and Certification because it is critical that we strengthen the survey process. However, today we have heard that—despite the obvious increase in State's responsibilities—not all funds are being spent, and that States are having trouble planning their budgets. In Wisconsin, I've also heard that because so many resources are being spent on the timely resolution of complaints, there are not enough resources for timely surveys. Can any of you give us in Congress guidance on what kind of annual funding would be necessary for full implementation of the Nursing Home Initiative? How can HCFA better prepare States for the duties they will be asked to perform?

*Answer.* It is more than a question of the level of funding. It is also a matter of how funds are made available. An important step would be to enable states to make longer range staffing plans that take into account the increased workloads associated with the nursing home quality initiatives—including the requirement for the more timely resolution of serious complaints. States need to know with some certainty about the future availability of resources if they are to make the appropriate staffing commitments. What Congress did in the Health Insurance Portability and Accountability Act to assure future years' funding of program integrity activities in Medicare suggests how states could be a model for providing survey resources. With appropriate levels for future years established in statute, states could be reassured as to what kind of resources will be available over the long term. At this point, I can not provide you an estimate of what funding level would be sufficient. We know that essential activities are not being performed and that all available resources are not being utilized. Assuring that dollars allocated are used effectively should be our first step.

*Question.* Dr. Scanlon, you mentioned the need for HCFA to do more comparative surveys to determine if State surveyors are doing a good job. I support that concept, but recently in Wisconsin, Federal surveyors did a comparative survey in a facility with a seven-year track record of the highest quality care—a facility that has been recognized as a model for improving staffing. The Federal surveyors were only able to find one low-level deficiency. I understand the need for strong oversight of the State surveyors, but given the limited resources we have for surveys, it strikes me that we should be focusing our attention on facilities where we know problems exist. Have either of you considered how we can better target these comparative surveys to problem facilities?

*Answer.* How to best target comparative surveys, particularly given their scant number, is difficult. The purpose of comparative surveys is to assure HCFA that state nursing home inspections appropriately identify instances of poor quality of care to residents. HCFA guidance to its regional offices is to select homes for which the state did not find serious deficiencies categorized as immediate jeopardy, actual harm, or substandard quality of care. The premise is that state surveyors may have missed serious deficiencies or understated the seriousness of deficiencies found, leaving the impression that a home has few or no problems. In fact, our analysis of the results of comparative surveys revealed that they often identify deficiencies that state surveys do not, thus reinforcing the merit of HCFA's approach.

*Question.* By most accounts, it appears that States are doing a better job of staggering surveys, although more improvements still need to be made. In Wisconsin, I'm told that surveyors have been able to identify many more severe deficiencies since the staggered surveys began. This obviously works because those nursing homes cannot predict when inspectors are coming and make temporary improvements. What is the rationale for only requiring that only 10 percent of surveys be staggered and unpredictable? Doesn't it stand to reason that we should increase the number? If 10 percent is just a first step, what is an optimal goal?

Answer. HCFA's initiative to require states to initiate at least 10 percent of their surveys during "off hours" such as in evening or weekend hours helps to reduce predictability. However, it is only partially responsive to an earlier recommendation we made. Currently, states must survey each nursing home an average of every twelve months and no less than once every 15 months. In our July 1998 report on California nursing homes, we recommended that HCFA revise Federal guidance to reduce the predictability of these surveys. We noted that this could be accomplished by segmenting the state's standard survey into more than one review throughout the 12- to 15-month period, which would increase the presence of surveyors in the home and provide more opportunities for surveyors to observe problematic homes and initiate broader reviews when warranted. As we noted in today's testimony, surveys continue to be predictable in the six states we studied. In addition to initiating surveys off hours and segmenting the annual survey to reduce predictability, follow-up visits to homes with identified serious deficiencies and timely complaint investigations also help to increase the presence of surveyors in the home.

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#### MICHAEL HASH'S RESPONSES TO SENATOR KOHL'S QUESTIONS

*Question.* Can you give us in Congress guidance on what kind of annual funding would be necessary for full implementation of the Nursing Home Initiative?

Answer. During the FY 2001 budget request process, States indicated that they would need an additional \$20.1 million in long-term care funding to fully implement the Nursing Home Initiative in FY 2001. This funding would be in addition to the FY 2001 President's budget request.

*Question.* How can HCFA better prepare States for the duties they will be asked to perform?

Answer. One of the major areas of concern affecting State survey agencies and the budgets HCFA provides them for overseeing nursing homes is that the majority of States have fiscal years that do not coincide with the Federal fiscal year. This timing differential may cause problems for some States in obtaining approval from their State legislatures for the purpose of hiring State survey in order to fully utilize the Federal funds provided to survey nursing homes by year end.

HCFA has tried to address this budget obstacle by initiating discussions with HHS, OMB and Congress to gain support for the most effective spending arrangements for the State Certification program. One proposal is to move from 1-year to 2-year spending authority.

Another potential solution is to increase, from 75 percent to 90 percent, the Federal Financial Participation (FFP) match rate provided to State survey agencies for the Medicaid costs incurred in conducting surveys of Medicaid-only nursing facilities (NFs), dually participating (Title XVIII/XIX) skilled nursing facilities (SNF/NFs) and Intermediate Care Facilities for the Mentally Retarded (ICF/MR). The higher match rate should prompt States to increase survey staffing and support.

*Question.* The President included in his Budget Request funding for a National Registry and Criminal Background Check system for nursing homes. Does the Administration plan to make this a top priority during your end-of-year budget negotiations with Congress? How can we make sure this becomes law this year?

Answer. The Administration continues to believe that background checks for nursing home employees are a vital component of assuring that vulnerable nursing home residents have safe, high quality care. We look forward to continuing to work with you and your staff on this important issue.

*Question.* GAO reports that sanctions for deficiencies have been increasing since the Nursing Home Initiative began. It is my understanding that that is the case in Wisconsin as well. Your report indicates that 90 percent of facilities cited for severe deficiencies are referred for immediate sanctions. How many of those cases resulted in actual penalties being carried out? How has this changed since the Nursing Home Initiative first began?

Answer. The section of HCFA's Quality report that you are referring to deals with a small group of facilities that are not given the opportunity to correct deficiencies before remedies are imposed. For this report, we looked at a subset of 56 facilities that had very severe deficiencies in two subsequent surveys. Wisconsin had no facilities in the category for calendar years 1999 and 2000 (through April). Our report found that 53 of those facilities, or more than 90 percent, had been properly referred to the HCFA regional offices for follow-up enforcement sanctions. Also, we do not believe information for this category would be related to GAO's finding that sanctions have been increasing since the Nursing Home Initiative began.



We do not, however, have data at this time on the specific enforcement remedies imposed on the facilities. We are currently implementing an enforcement tracking system that we hope will provide these data in the next six months.

*Question.* You also indicated that HCFA is considering whether to recommend that additional sanction options be made available. What options are you considering?

*Answer.* The only sanction option not being used currently that we are presently considering is assessing civil monetary penalties against nursing home chains where there are a number of facilities in the chain that appear to have serious deficiencies. A growing number of nursing homes in the U.S. are part of corporate chain organizations, rather than operating as independent, free standing facilities. Corporate management of nursing home chains and/or the management companies they sometimes employ typically establish various policies and funding decisions for individual homes in their chains. Such decisions can be helpful where they support and encourage high quality care. However, sometimes such decisions limit resources and management actions in individual homes to such a degree that it is difficult for the homes to maintain compliance with Medicare and Medicaid conditions of participation and to correct deficiencies when they arise. In order to address such situations effectively, it may be necessary to have Federal and State authority to impose sanctions upon the chain management making those decisions as well as upon the individual homes operating within chains. Such action against chains has not been attempted before and there may be resistance to imposing sanctions on chains. If we decide action along these lines is warranted, it may be best to seek amendments to the Social Security Act explicitly authorizing such civil money penalties.

*Question.* In Wisconsin, Federal surveyors did a comparative survey in a facility with a seven-year track record of the highest quality care—a facility that has been recognized as a model for improving staffing. The Federal surveyors were only able to fine one low-level deficiency. Have you considered how we can better target these comparative surveys to problem facilities?

*Answer.* We initially selected facilities for comparative surveys that were deficiency free or in substantial compliance with the Conditions for Participation (CoP), because by comparing State and Federal findings we can determine how effectively each State is performing its certification function and reduce variability across States. Recently in Oklahoma, for example, we identified a number of facilities where the State surveyors had reported zero deficiencies, but Federal surveyors found serious problems. We would like to expand use of comparative surveys to more facilities, including those with serious problems identified by States.

*Question.* What is the rationale for only requiring that only 10 percent of surveys be staggered and unpredictable? Doesn't it stand to reason that we should increase that number? If 10 percent is just a first step, what is an optimal goal?

*Answer.* HCFA had not previously prescribed a specific target level at which States were expected to conduct surveys scheduled at "off hours" and we did not know what to expect. Hence we picked 10 percent as a reasonable starting point. We believe the current level for staggered surveys continues to be reasonable and we plan to retain the 10 percent level until we have gained additional experience with this approach. If we determine the number of staggered surveys needs to be increased, we are prepared to consider that change.

## Problems Facing Nursing Homes Today

By

Denise Graham RNC

The nursing home industry is becoming one of the most troubled businesses in the medical profession. There are three main areas that cause concern for an aging population.

The first area, is quality of care. There should be a daily monitoring process at the local level to gauge how well each facility is doing. This monitoring process would be equivalent to a daily survey in the facilities.

Rounds should be performed daily and geared toward the survey process. Staff needs to monitor the residents. The staff needs to be asking questions. Are the residents eating at least fifty percent of their food at meals? Are the residents happy? Do the residents have skin breakdown or decubitus? Have the residents had their rights violated? Have the residents seen their doctor as required by law or as needed? Have the residents had their pain addressed? Do the residents attend activities? Rounds should also monitor restraint use issues, environmental issues and laundry needs. If care is monitored daily, facilities are survey ready at all times. Mock surveys should be performed every six months. Monitoring care will lead to fewer fines, less bankruptcies, and will promote happy families, resulting in fewer lawsuits.

When daily monitoring shows deficiencies, this is a good time for a facility to take accountability and fix the problems. Each department needs to be included in the daily monitoring so accountability and follow-through does not slip through the cracks of the organization. Administrators, directors, and charge nurses can not do rounds sitting behind their desks. They need to get out on the units and see what care the resident is actually receiving.

The second problem that should be addressed is staffing. How can a facility provide quality care with an incompetent staff? The elderly deserve to be cared for by competent staff. Facilities often hire out of need rather than hiring those who are qualified. Background check results are slow. Wages and benefits are low. Loyal staff are overworked and stressed. There are no incentives for new graduates to go into geriatrics. Nursing colleges do not promote geriatric rotations in their curriculum.

Colleges should offer incentives for students to go into geriatrics. Nursing assistants should be competent and better educated. Prospective students should be required to pass a proficiency test prior to admission into a nursing assistant program. The certification program needs to increase the number of hours of clinical and theory. This program could be patterned after the diploma-nursing program only on a scaled down version. Facilities should receive tax breaks for using better qualified nursing assistants. Staff who are loyal and give quality care are a valuable asset for the facility. However pay raises, incentives, and advancement within the facility are often unavailable as federal reimbursement for Medicare and Medicaid programs are often inadequate to provide these benefits. HCFA, ombudsmen and the department of health services should institute an advertising campaign that promotes working in a nursing home as an honorable profession. Only qualified staff can give qualified care.

The third problem facing facilities is the state survey process. Many surveyors are not qualified to pass judgement on how well facilities are operating. They are slow to revisit complaints but are quick to implement fines. HCFA regulations are well written. The problem is interpretation of the regulations by unqualified surveyors. Many times surveyors have never been in the long-term care arena or bring preconceived ideas about nursing homes and they never reward good facilities for operating properly. Consumers reading survey results are often left confused and angry. They see nursing homes as a place where people go to die and be mistreated.

Surveyors should have a least two years of long-term care experience. This experience would be a program modeled after the Administrator in Training Programs. Surveyors should also complete a preceptorship of at least six months. Certifications of surveyors are a must. Surveyors could be more valuable, more qualified and more valuable to the system. Facilities that operate properly should be rewarded with a tax incentive.

Judging a facility by the number of deficiencies is not a true indicator of quality of care. Just because a facility received deficiencies does not make it a bad facility. Deficiencies don't mean that the survey process needs more rule, regulations and surveyors. Being too critical in areas that are not important can give an incorrect picture of how a facility is operating. Many times, deficiencies are paper deficiencies not quality care deficiencies. The survey process often seems to be more concerned with forms over resident care issues. Facilities seem to get more rewards for completed paper work than it does for quality of care.

Resident outcomes are the real issue. Surveyors need to examine the resident and how they are treated and how care is delivered and how the resident responds to that care. A facility might receive twenty paper deficiencies but look great in regards to quality of care. I can guarantee that the facility is operating properly.

In conclusion, changes are needed in the care of the elderly. These changes need to start with quality of care, staffing and the survey process. When one of these processes change, the others will too. The most important thing to remember is, treat the elderly with respect and dignity and deliver the competent care they deserve.

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## DOES POSITIVE REINFORCEMENT REALLY WORK?

by: Eileen B. Hollywood

It was with some trepidation I returned as administrator of a 105 bed extended care facility after a 3 year hiatus. I had cut my teeth as an administrator in that building and my drive for perfection had left me physically and mentally exhausted. It was obvious that much had been done to improve the look of the facility. However, I was concerned that the building had been through five administrators in three years. The building had a reputation for being the place dreams came to die. For that reason I agreed to take the job for only 90 days until the management company had time to find a permanent replacement.

I felt I brought an interesting perspective to the position. I had been there before and knew firsthand

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what the bad days really were. I could appreciate how far the building had come and where the skeletons were hidden. I was able to look at continuing problems with humor - as I said halfway in jest, the same I&O sheets were still hanging on the bathroom doors as were there when I left 3 years before and they were still incomplete.

It was abundantly clear that in spite of numerous programs, the nursing care was poor. No one knew who was losing weight. There were 17 pressure ulcers. The QA program was without meaning. Many people were spending hours doing collection with no results or thresholds of success. Aide charting was virtually non-existent as was meal percentage charting. Nurses failed to complete monthly summaries and chart HS snacks. Psychotropic tracking sheets were blank. Even med sheets had as many omissions as completions.

Nursing staff and activity staff proceeded with their own agendas. If it was time for medication pass or showers, participation at activities was minimal. Recreation staff were frustrated at being abandoned with a large group of residents. Resident charts were so thick it was nearly impossible to find a lab result

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or assessment. I joked that the charts outweighed some of our residents.

In my first two weeks I received daily reports from the DON and ADON of all the things the aides were not doing and who had been reprimanded. There was no thought of solutions, only problems.

I quickly realized that I could not get the commitment I wanted and needed from staff if they felt they were going to have another new administrator within 3 months. When I announced my decision to stay, many faces fell to the floor. In short, an entirely new, honed down management team was created.

Luckily I was able to recruit my former Director of Nursing, Denise Graham, who had worked with me before. While we had considered ourselves a dynamic team, we were both novices to the long term care industry. It was my first administrator job and Denise's first DON job. While our hearts were in the right place, we took everything personally, worked 15 hour days and felt responsible for everything that went wrong while believing that anything that might go right was a fluke. We had dreams of how we felt working in long term care could be fun! Now life seemed to be

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offering us a second chance.

We launched into our 'new' assignment with considerably more maturity and intelligence. Over the years we had come to appreciate that the hands on care providers in long term care facilities are generally women, many times single moms, and often working hand to mouth. Our goal was to make their time at work fun and rewarding. In addition we wanted the residents and the facility to look as good when we weren't there as when we were. And we wanted to use the element of peer pressure to replace the old 'tattle tale' method of getting things done.

Our first order of business was setting a clear expectation. We created the S\*T\*A\*R Program and launched it at a S\*T\*A\*R party, formerly called a staff meeting.

#### WHAT IS A S\*T\*A\*R?

SUPERB INDIVIDUAL PERFORMER

TEAM PLAYER

ATTENDANCE PERFECTION

RESPONSIBILITY

To be a S\*T\*A\*R, one must go above and beyond the call of duty. Making beds, dressing residents in clean



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and matching clothes with faces shaven, hair combed and nails clean does not make you a S\*T\*A\*R. Cooking lunch and serving hot/hot and cold/cold does not make you a S\*T\*A\*R. Completing your assigned cleaning routine does not make you a S\*T\*A\*R.

To become a S\*T\*A\*R one must go the extra mile. Take the resident on a walk, plant a flower, sing a song, write a letter, read a book, share a lunch, do an activity, mend a resident's clothes, visit with family, provide a special snack, deep clean a room, clean the windows, make a special treat, pick the weeds and anything else beyond the basics.

Each week one staff member (not just nursing) would be named a S\*T\*A\*R. The staff were told that they had to become their own cheerleaders. If they did a great job they were told to tell someone. We wanted them to take pride in what they were doing and stop focusing on who was not doing a good job. Every S\*T\*A\*R of the week was eligible to become S\*T\*A\*R of the month. Every S\*T\*A\*R of the month was eligible to be the S\*T\*A\*R of the year. Anyone who had an unexcused absence was ineligible for S\*T\*A\*R status.

Why would anyone want to be a star?

Each S\*T\*A\*R received 1 S\*T\*A\*R Dollar when they were identified by a peer, supervisor, resident or family member. As the administrator I was the banker of the S\*T\*A\*R dollar which was play money bought at the local teaching supply store.

S\*T\*A\*R of the week received 5 S\*T\*A\*R Dollars.

S\*T\*A\*R of the month received a reserved parking spot, jeweled Employee of the Month pin, certificate of appreciation, \$20.00 gift certificate to a local shopping center, 5 S\*T\*A\*R Dollars and their picture mounted on the front desk.

S\*T\*A\*R of the year received a \$300.00 gift certificate to a local shopping center, an engraved plaque, a jeweled Employee of the Year pin, a certificate of appreciation, 20 S\*T\*A\*R Dollars and their picture mounted on the front desk.

Employees could win S\*T\*A\*R dollars by attending inservices, recruiting new employees and by being recognized as a S\*T\*A\*R by a resident, family, or staff member. When a new employee was hired, they received a S\*T\*A\*R dollar. Birthdays were celebrated at staff meetings and S\*T\*A\*R dollars were awarded. Employees

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received graduated amounts of S\*T\*A\*R dollars on their hiring anniversary dates starting at 3 months, then 6 and 9 months and then every year after that.

The S\*T\*A\*R dollars could be used to 'buy' things such as stethoscopes, scrubs, jackets, t-shirts, bus passes, gift certificates, movie tickets, mugs, and bags.

So how did they become S\*T\*A\*Rs?

We identified the most critical problems in the facility: documentation, resident appearance, cleanliness and teamwork.

The facility was geographically broken down into 4 units so we divided them accordingly. Rounds were conducted daily by myself and Denise and the units received points based on the following criteria:

**Environment**

- \*equipment (wheelchairs, pumps, walkers) clean
- \*tidy shower room
- \*linen cart covered
- \*all rooms tidy
- \*nurse's station tidy

**Appearance of residents**

- \*nails trimmed and cleaned
- \*clean, mended, matching clothes with shoes AND socks
- \*odor free
- \*properly positioned
- \*mouth and hair clean

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**Documentation**

- \*meal percentage charted
- \*CNA charting complete for previous day
- \*monthly summary done by nurse
- \*HS snack charted and verified by resident
- \*skin care sheets done

**Appearance of staff**

- \*name tag
- \*proper and clean uniform
- \*hair off of face
- \*positive attitude observed during shift (helps team mates)
- \*knows assignment

**Involvement in Activities**

- \*the posted activity is being done
- \*all unit residents are ACTIVELY involved in an activity of their choice

We made our rounds at different times of the day and night, always unannounced, and recorded our scores as well as comments for "Great Job" or "Needs Improvement." Scores were posted and announced over the loud speaker daily. The highest total score received a 1st place ribbon each Friday. All employees were listed on a poster and members of the winning team received stars beside their names. Five stars earned the employee 1 S\*T\*A\*R dollar.

Within two weeks the S\*T\*A\*R program turned into a wild competition with residents and staff waiting with baited breath for the point totals each day and cheering loudly when their unit won. If they missed a point for dirty equipment or omitted charting they

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applied pressure to the staff member who had dropped the ball. Units proudly displayed their 1st place ribbons or "Most Improved" ribbons.

Initially the program was focused on the direct patient care staff, that is, nursing, activities and housekeeping. Within the first month we had to develop separate programs for dietary and medical records so they could start earning stars. Three months into the program we ~~actually~~ had to move into Phase II because each unit was achieving perfect scores on a daily basis. At that point we allowed the staff to determine what areas they felt should be reviewed on a daily basis and these included lost charges, and an even higher standard of resident appearance.

The time commitment to make this program a success is large. Initially it took my DON and me at least an hour apiece each day to review the paperwork and the residents. We felt the need to hold onto control so that staff knew we were committed to the program and their success. It also gave us an opportunity to really get to know the staff and residents in such a positive light. As things improved rounds were reduced to less than 30 minutes a day. The facility looked

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clean and smelled clean. Documentation was in 100% compliance with our standard. Employee turnover was virtually nil. Staff meetings were wild and fun parties. Staff developed their own education posters and modules to earn more points. They recruited their friends to join the team. They took great pride in showing off their stars. We generally ended up with multiple S\*T\*A\*Rs of the month. Our offices were festooned with pictures of S\*T\*A\*R performers and certificates of appreciation. Skin breakdown and weight loss disappeared. Meal presentation and temperature problems vanished. Aides are actively engaged in resident activities. The teams have truly become teams. If the garbage needs to be emptied, whoever sees it takes care of it. No one wants to risk having an overflowing trash can when rounds might suddenly be done. If one day we felt we were too busy to do rounds, the staff would cry foul, and off we would go to recognize their outstanding performance.

So I would have to say, yes, positive reinforcement really does work. Save yourself time and trouble and try it.

-END-



**ADVOCATES FOR NURSING HOME REFORM**

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September 26, 2000

Senator Charles Grassley, Chair  
Special Committee on Aging  
Washington, DC

VIA FAX: 202-224-8660

RE: Staffing Standards, plus Quality care

Dear Senator Grassley:

Since the 1987 Nursing Home Reform Law stated only that "sufficient" staffing to meet the needs of the residents; We feel that the crucial time for staffing standards to be passed into law should occur now. We have adopted NCCNHR's staffing standards but would add one thing to go along with those standards and that would be: ID cards for every nursing home employee, not just the nurses aides, but every employee who may have access to the nursing home residents. The card would be one which could be run through each state's computer system and then on to the FBI, to screen for criminals who often as not, work in our Nation's nursing homes. The card must have a picture of the employee, with their name plus left & right thumb print. The reason I don't include soc. Sec. #'s, is they can often be fake, hiding true identity but thumb prints do NOT lie!!

We are extremely weary of all of the so called "attempts" by Congress, Presidents, state Legislators who say a lot but in the long run, do nothing to create better environments in our nation's nursing homes.

**WE therefore do not want any further BLANK CHECKS paid to the nursing home industry!!!** Any monies "dished out" to them must be tied to quality care and adequate staffing. Since they have chosen to deny adequate staffing to our nursing home residents, we are asking you to tell congress to pee or get off the pot!!!!!! You'll pardon my blunt words, but it is time to have NCCNHR's staffing standards placed into law.

"sufficient" didn't help any. The industry has fought to keep this from occurring, (staffing standards, I mean), because then, they would be held accountable. Well, we want them to be held accountable for their actions NOW!! THEY are responsible for the abuse & neglect of our nursing home residents, they are responsible for the severe understaffing of their nurses and nurses aides, and they are responsible for the lack of training of the same. We want CNAs to become trained in accredited schools of nursing, rather than in those facilities who "pretend" to train but in reality, just pocket the money as profit!!



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We implore you to tell President Clinton that asking Congress to approve \$1 billion in grants "to boost chronic understaffing in nursing homes" won't get the job done. The industry must **NOT** receive any more money or grants without it being tied to **quality care and staffing standards**. Without numbered staffing standards, by that I mean ratios of CNAs to residents and nurses to residents. NCCNHR has the answers for you, as we do. Let us not be deceived by an industry who has built up it's wealth into a multi-billion dollar business at the expense of our nursing home residents, who suffered from lack of care, food, water, baths, and oral hygiene, to mention a few. The malnutrition, dehydration and neglect that we have witnessed, causes many illnesses, including decubiti (pressure sores, or bed sores).

**The nursing home industry only has itself to blame, for all of the law suits!!**

**Families do NOT file frivolous law suits, but law suits showing & proving neglect and abuse, and even death as a result of the industry's greed!!!!**

It's a proven fact, that when a loved one enters a facility to recuperate, they often wind up **dead, instead**, due to severe understaffing and not enough training of the CNAs. Take the case of the 78 year old woman in Lockhart, Texas, who went into nursing home care with a broken wrist? **Two & one half months later, she was dead!!** Again, a case of **neglect & allowing the poor woman to dehydrate to the point of getting decubiti (bed sores)**. Sooooo, once again, I say, the nursing home industry is at fault and the law suits are **NOT** frivolous. Now, what does Congress intend to do about it??

We do so much appreciate all that you and your staff do, Senator, to improve nursing home care and we are asking, (truly pleading) with you to **Tell Congress**, they must act **NOW**. A lot of years have passed since 1987 and the nursing home reform law and the reason that it hasn't worked is that: staffing standards were not placed into that reform law. **So, shame on Congress and President Clinton!** (I recall that Beverly Enterprises paid into President Clinton's campaign fund approximately, \$1.6 million dollars. Beverly's home base is in Little Rock, Arkansas. Need I say more?????

Please, help our Nation's nursing home residents? This is truly : **America's shame...**  
**Make the industry STOP the abuse NOW?? No more blank checks!!!!!!**

Sincerely,

Marie B. Wisdom, President