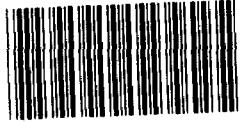


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UNITED STATES GENERAL ACCOUNTING OFFICE  
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STATEMENT OF  
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SENIOR ASSOCIATE DIRECTOR, HUMAN RESOURCES DIVISION  
FOR THE RECORD  
BEFORE THE  
SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE  
ON  
NURSING HOME STANDARDS ENFORCEMENT

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

We are pleased to discuss our preliminary views on enforcing compliance with nursing home quality of care requirements. At your request, we are reviewing enforcement policies and procedures in five states to determine whether federal and state oversight and enforcement actions are adequate to ensure that nursing homes correct identified deficiencies and comply with federal requirements for participation in Medicare and Medicaid. My comments today are based on preliminary work done primarily in Arkansas and Kansas.

Federal nursing home regulation has three main components: (1) establishing requirements that nursing homes must meet in order to participate in the federal program, (2) inspecting nursing homes to determine compliance with the requirements, and

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(3) taking enforcement action when deficiencies are identified. Our work focuses on this third component--the adequacy of enforcement actions.

In brief, our work to date indicates that neither the Health Care Financing Administration (HCFA) nor the two states we visited effectively used existing authority to achieve compliance on a continuing basis with federal nursing home requirements for patient care, health and safety. In both Arkansas and Kansas, nursing homes with a history of deficiencies that jeopardized patient health and safety and/or seriously limited their capacity to provide adequate care were able to remain in the Medicare or Medicaid program by taking corrective action that allowed them to be recertified. These homes, however, were often later found to have the same or similar deficiencies.

We believe that attempts to use "repeat deficiency" regulations (applicable when a requirement not met in the current inspection was also not met in the prior certification period) have been limited by uncertainty and lack of agreement among state and HCFA regional office personnel in interpreting and applying the provisions, such as

- what level of requirements are subject to the repeat deficiency regulations,
- whether actions to enforce the repeat deficiency regulations could withstand the appeals process, and
- whether a state has the authority to decertify a nursing home based solely on repeat deficiencies.

By clarifying policies on repeat deficiencies, placing more emphasis on nursing homes' historical records of compliance, and

enforcing the repeat deficiency regulations, HCFA and the states could better assure that nursing homes with substandard conditions comply with federal requirements on a continuing basis.

FEDERAL AND STATE RESPONSIBILITIES  
IN CERTIFYING NURSING HOMES

To participate in Medicare (a federally administered program) or Medicaid (a federally aided, state-administered program), nursing homes must be inspected and certified at least annually to be in compliance with HCFA's requirements relating to patient care, health, and safety. Facility inspections (i.e., surveys) are made by the state survey agency. As part of the certification process,

- the state survey agency inspects each nursing home and gives it a written report on requirements not met and related deficiencies;
- the nursing home prepares a written plan for correcting the deficiencies, including time frames for doing so; and
- the state evaluates the facility's current and historical deficiencies and plan of correction to determine whether continued certification is justified.

Under HCFA regulations, a nursing home may not be certified as meeting requirements for Medicare or Medicaid participation if (1) it has deficiencies that jeopardize patients' health and safety or seriously limit the home's capacity to provide adequate care (i.e., "current deficiencies") or (2) one or more of the requirements not met were also not met in the prior certification period (i.e., "repeat deficiencies") and were related to conditions the home could control. For the repeat deficiency regulation to apply, the requirement not met must be reported

at the standard level, although the state determines skilled nursing homes' compliance with three levels of requirements-- conditions of participation (highest), standards, and elements (lowest). For intermediate care facilities, there is one level--standards.

A nursing home with repeat deficiencies may be recertified for Medicare or Medicaid participation if the state documents that the home

- achieved compliance with the standard at some time during the prior certification period,
- made a good faith effort to stay in compliance, and
- again became out of compliance for reasons beyond its control.

Certification of a nursing home with deficiencies is either conditional (with automatic cancellation clauses that must be invoked if adequate, timely corrective action is not taken) or short-term (limited to periods of less than 12 months).

If the state or HCFA determines that a nursing home cannot be certified to be in compliance with federal requirements, only one federal sanction is available under current regulations-- terminating participation in Medicare or Medicaid and loss of federal funding. A 30-day extension of federal funding, beyond the effective date of the termination, may be granted in order to give the state time to find alternative care for the affected patients. Furthermore, the nursing home receives a notice of the basis for the termination and may appeal the decision to the Secretary of Health and Human Services or the state (for Medicare or Medicaid certification, respectively).

Although the states make certification decisions in the Medicaid program, HCFA reviews those decisions and can overrule them when it disagrees with the findings or determines that the states did not follow federal regulations and procedures in the inspection or certification process. This review is part of HCFA's oversight program to assure that states are adequately complying with federal policies, procedures, and requirements in making certification decisions. In addition, HCFA makes the final decision in certifying nursing homes' participation in Medicare based on state recommendations.

In fiscal year 1986, the federal government will spend about \$650 million in Medicare funds for skilled nursing home care and about \$7.2 billion in Medicaid funds for skilled and intermediate nursing home care. The federal government also reimburses the states a portion of their costs to survey and certify nursing homes. In fiscal year 1986, the federal share is estimated to be \$55 million.

#### QUALITY OF CARE PROBLEMS

To determine the significance of reported deficiencies, we reviewed inspection reports and related documents for 10 nursing homes in Arkansas and Kansas that were repeatedly out of compliance with important quality of care requirements. We selected nursing homes that repeatedly did not meet more than one such requirement by (1) reviewing the inspection results contained in HCFA's Medicare/Medicaid Automated Certification System (MMACS)

as of November 1985 for all nursing homes participating in Medicare or Medicaid in the two states<sup>1</sup> and (2) asking state or HCFA regional officials to identify problem homes. Because of the method we used to select nursing homes, the 10 homes may not be representative of all nursing homes in Arkansas and Kansas.

Preliminary results from our analysis of inspection reports showed that all 10 nursing homes had recurring quality of care and facility problems. Some deficiencies reflected poor patient care practices. Others, such as inadequate documentation and poorly maintained facilities, affected patients more indirectly. For example, as of November 1985, inspection reports for these homes showed that, in at least two consecutive certification periods,

- patients' feeding or drainage tubes were not properly installed and/or maintained (3 nursing homes);
- unqualified personnel, such as medication aides, installed feeding or drainage tubes (2 homes);
- bedfast patients were not turned or positioned to prevent bedsores (2 homes);
- patients with bladder or bowel control problems were not kept clean and dry (2 homes);
- patient restraints were not periodically released and/or patients were not properly exercised (5 homes);
- patients did not receive needed assistance in eating in a timely manner (3 homes);

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<sup>1</sup>MMACS contains the results of at least the last four inspections for each nursing home.

--patient records did not show that medications, treatments, or services were provided as ordered (10 homes); and

--homes did not consistently record information on patients, such as vital signs, food and fluid intake, skin conditions, and diagnostic test results (8 homes).

In addition, the inspections revealed cases of

--improper food storage (6 nursing homes),

--inadequate pest control (4 homes), and

--poor facility maintenance, including inoperative patient call lights, malfunctioning plumbing, broken windows, and damaged floors, ceilings, and walls (10 homes).

All these deficiencies related to requirements that were among those that representatives of organizations involved in nursing home care--including nursing home operators, health professionals, patient advocates, and state licensing officials--told us were most important in ensuring patient care, health, and safety.

LIMITED USE IS MADE OF THE  
REPEAT DEFICIENCY REGULATION

We also used inspection reports and related documents for these 10 nursing homes to assess the adequacy of federal and state enforcement actions. We found that Arkansas and Kansas generally used the "current deficiencies" provision of the HCFA regulation to take action against the homes when serious deficiencies were identified in an inspection. For example, 3 of the 10 nursing homes were excluded from Medicare or Medicaid for short periods (28 to 76 days) because the identified deficiencies jeopardized patient health and safety and/or seriously

limited the homes' capacity to provide adequate care. Each of the homes was later readmitted to the program after corrective actions were taken. The states initiated actions to exclude four other nursing homes under the current deficiencies regulation, but recertified the homes after sufficient actions were taken to correct the deficiencies.

A limitation of the current deficiencies regulation is that a nursing home can comply with federal requirements just long enough to be recertified and then revert to prior substandard conditions until the next inspection. For example, as of November 1985, six of the seven homes discussed above had been inspected since their readmission or recertification. All six homes were found to again be out of compliance with some of the same requirements that had prompted earlier enforcement actions.

Based on our work to date, we believe that special determinations required by repeat deficiency regulations should have been made in conjunction with certification decisions for all 10 nursing homes, in one or more periods. As discussed above, these regulations require a state to determine whether a nursing home that does not meet a requirement at the standard level that was also not met in the prior certification period had achieved compliance with the standard at some point during the prior period, made a good faith effort to stay in compliance, and again became out of compliance for reasons beyond its control before allowing the nursing home to



remain in the Medicare or Medicaid program. Of the 10 nursing homes, the determinations were not made for six homes and were not adequate for the remainder.

Our work to date has provided indications of uncertainty and lack of agreement among state and HCFA regional personnel in applying the repeat deficiency regulations. For example, there are differing interpretations as to whether all of the requirements for intermediate care facilities are classified as standards and therefore subject to the repeat deficiency regulations. In addition, an official in Kansas doubted that a facility could be successfully decertified based on repeat deficiencies alone. In his opinion, the state must be able to demonstrate that current deficiencies jeopardize health and safety or seriously limit the facility's capacity to provide adequate care in order to have a case strong enough to withstand appeals. An official in Arkansas believed that only HCFA had the authority to decertify a facility based solely on repeat deficiencies. Officials in both states told us that HCFA had not informed them that their agencies were not complying with the repeat deficiency regulations.

HCFA regional office officials told us that repeat deficiency regulations generally are not being applied by states or by HCFA. While these officials were uncertain as to why these regulations generally are not being applied, they indicated

- it is difficult to make the required determinations,
- decertification actions based on repeat deficiencies alone may not hold up in the appeals process, and
- states are reluctant to use the regulations in instances where there is no significant impact on patient care, health, or safety.

Based on our work to date, it appears that HCFA needs to more clearly enunciate agency policy regarding repeat deficiencies and provide additional guidance and assistance to the states and HCFA regions in interpreting and applying the repeat deficiency regulations.

In conclusion, we believe that it is important to consider nursing homes' historical compliance records in making certification decisions and to take action against homes that have demonstrated an inability or unwillingness to comply with Medicare and Medicaid requirements, especially when there are associated quality of care problems.