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NURSING HOMES

Enhanced HCFA Oversight of State Programs Would Better Ensure Quality Care

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Nursing Homes: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality Care

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to participate in the Committee's hearing focusing on HCFA's regional offices and their ability to oversee state agencies they contract with to ensure that nursing homes comply with federal quality standards. Today, I will discuss our study of HCFA's implementation of two of its nursing home initiatives: one requiring enhanced federal review of state agencies' survey processes, and the other addressing remedies and sanctions to be applied when inadequate state performance is identified.

The 1.6 million elderly and disabled residents of the nation's more than 17,000 nursing homes are among the sickest and most vulnerable populations in the nation, often needing extensive assistance with basic activities of daily living such as dressing, grooming, feeding, and using the bathroom. In 1999, these nursing homes are expected to receive nearly $39 billion in federal payments from the Medicare and Medicaid programs. To help ensure that they provide proper care to their residents, state agencies, under contract with the federal government, perform detailed inspections at each of the homes. The purpose of these state agency surveys is to ensure that nursing homes comply with federal quality standards and that inadequate resident care is identified and corrected. HCFA, in turn, is statutorily required to make sure that each state agency has an effective survey process in place.

The series of hearings this Committee has held over the past 15 months has highlighted both the disturbingly high frequency of unacceptably poor care that many nursing home residents receive as well as weaknesses in federal and state programs charged with ensuring quality care. This has helped to generate a renewed commitment by HCFA and many states to improve their programs to ensure that nursing homes meet quality standards, including a broad range of about 30 initiatives that HCFA has undertaken to strengthen federal standards, oversight, and enforcement for nursing homes. In reports issued at the Committee's request since July 1998, we have documented the severity of care problems nationwide and inadequacies in the survey and enforcement process that too often leave these problems unidentified or uncorrected, and have made recommendations to strengthen HCFA's oversight of nursing homes.[1] This summer, we testified that the initial implementation of some of HCFA's

[1]A list of related GAO products is at the end of this statement.

initiatives has been uneven among the states and will require continued commitment by the Congress, HCFA, and the states.[2]

The focus of today's hearing is HCFA regional offices' oversight of state agencies that perform the surveys of nursing homes. The hearing addresses issues fundamental to ensuring that homes meet federal care standards protecting residents and ensuring that the states adhere to the new, stronger federal policies resulting from HCFA's nursing home initiatives. The information we are presenting here discusses HCFA's progress in implementing two important initiatives to improve its state oversight. In a report we are releasing today, we provide more detailed information.[3]

In brief, we found that HCFA's mechanisms for assessing state agency survey performance are limited in their scope and effectiveness and are not being applied consistently across each of HCFA's 10 regional offices. As a result, HCFA does not have sufficient, consistent, and reliable data to evaluate state agencies or to measure the success of its other nursing home initiatives. Given the wide range in the frequencies with which states identify serious deficiencies, HCFA cannot be certain whether states with lower rates of deficiencies have better quality homes or are failing to identify deficiencies that harm nursing home residents.

This uncertainty results, in part, because HCFA makes negligible use of independent inspections, known as comparative surveys, that could surface information about whether states appropriately cite deficiencies. Generally, only one to two comparative surveys per state were conducted in the more than 17,000 nursing homes over the last year. Nevertheless, two-thirds of these surveys found deficiencies that were more serious than those found by state surveyors during their reviews conducted typically 1 or 2 months earlier. About 90 percent of the inspections HCFA conducts nationwide are, instead, observational surveys. These surveys, in which HCFA surveyors accompany state survey teams, are useful in helping HCFA to provide training to state surveyors, but are limited as a method for evaluating state agencies' performance. HCFA's presence during these surveys is likely to make state surveyors more attentive to their survey tasks than they would be if they were not being observed–the Hawthorne effect. Beyond these surveys, HCFA also relies on a quality improvement program that is largely based on states' self-reported performance

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

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

measures, which do not accurately or completely reflect problems in the state's performance.

These limitations in HCFA's oversight methods are compounded by inconsistencies in how the methods are applied by its regions. For example, the regions vary in how they select nursing home surveys to review and how they choose samples of residents to review. Regions also commit differing amounts of time to conduct observational surveys, ranging on average from 27 to 71 hours, which raises questions about whether the level of effort some regions dedicate to observational surveys is sufficient to thoroughly review state surveyors' performance.

Furthermore, for state agencies whose performance has been found inadequate, HCFA has not developed a sufficient array of alternatives to encourage agencies to correct serious deficiencies in their processes. Our report includes several recommendations to assist the HCFA Administrator in improving the rigor, consistency, and effectiveness of HCFA's programs to oversee state agencies responsible for certifying that nursing homes meet federal standards for participation in Medicare and Medicaid.

Background

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 other types of reviews, including complaint investigations. The annual inspection, which must be conducted no less than every 15 months at each home, entails a team of state surveyors spending several days on-site conducting a broad review to determine whether care and services meet the assessed needs of residents. HCFA has established specific protocols for state surveyors to use in conducting these comprehensive reviews.

HCFA is statutorily required to establish an oversight program for evaluating the adequacy and effectiveness of each state's nursing home survey process, relying on its 122 surveyors in 10 regional offices to carry out these oversight responsibilities. While HCFA's Center for Medicaid and State Operations is the central HCFA division responsible for developing guidance to states embodying national policies related to nursing home oversight and enforcement, the regional officials who oversee the state survey agencies are not formally subordinated to this Center. Rather, they report to a Regional Administrator. The 10 regions are further organized into 4 regional consortia, and both the regional consortia heads and the Director of the Center for Medicaid and State Operations report directly to

HCFA's Administrator.[4] In addition to developing overall policy guidance, the Center's staff carry out their day-to-day role of coordinating regional office oversight of the states through numerous less formal interactions with regional officials, including meetings and conference calls between managers and staff from the Center and the regions. If a disagreement between the Center and a regional office cannot be informally settled at a lower level, it can only be resolved at the level of the HCFA Administrator.

The Omnibus Budget Reconciliation Act of 1987 requires HCFA's surveyors to conduct federal monitoring surveys in at least 5 percent of the nursing homes in each state each year within 2 months of the state's completion of its survey. HCFA uses a mix of two types of on-site reviews to fulfill this 5-percent mandate: (1) comparative surveys, in which a team of federal surveyors conducts a complete, independent survey of a nursing home after the state has finished its survey and compares the state's survey results with its own, and (2) observational surveys, in which federal surveyors accompany and observe the state surveyors as they perform a variety of survey tasks, give state surveyors verbal feedback, and later provide a written rating of the state surveyors' performance to state managers. HCFA introduced revisions in its federal monitoring program in October 1998 that require a minimum of 1 to 3 comparative surveys in each state each year and that also developed a standard set of procedures all regions are expected to follow in conducting an observational survey. In addition to the comparative and observational surveys, HCFA has other sources of information available for evaluating state agency performance, including a quality improvement program that requires state agencies to establish performance measures and develop action plans addressing deficiencies in the state's survey process.

If HCFA determines that a state agency's survey performance is inadequate, it can impose appropriate remedies or sanctions against the state agency. Among several remedies and sanctions HCFA can use currently are requiring the state to submit a written plan of correction explaining how it plans to eliminate the identified deficiencies; reducing federal funds for state survey and certification activities; and ultimately, terminating HCFA's contract with the state.

To assess HCFA's oversight activities, we obtained data about federal monitoring surveys and other oversight efforts from HCFA and each of its

[4]The regional consortia play an important role in administering HCFA policies in other HCFA functions, such as oversight of the Peer Review Organization program and Medicare+Choice plans. In these areas, most functions have been consolidated into one of the two or three regional offices in the consortium. However, each of the 10 regional offices carries out the full range of functions relating to oversight of state agencies' implementation of HCFA's guidance relating to nursing homes.

10 regions, interviewed officials at HCFA headquarters and 3 of its regions, and met with state surveyors from four states (Florida, Missouri, Tennessee, and Washington).

HCFA Makes Negligible Use of Comparative Surveys to Assess State Agencies' Performance

An effective HCFA program for assessing state agencies' performance in certifying that nursing homes meet federal standards for quality care is especially important given concerns that some state agencies miss serious care problems. Our work in California found that surveyors missed some problems that affect the health and safety of residents. In addition, HCFA data show significant variations in the extent to which state surveyors identify serious deficiencies. For example, state survey agencies in Washington, Idaho, North Dakota, and Kansas identified serious deficiencies resulting in harm to residents in more than half their surveys–more than 4 times the rate of serious deficiencies found by survey agencies in Maine, Colorado, Tennessee, and Oklahoma. With such a range, HCFA needs to know to what extent such data accurately portray the quality of care provided or the adequacy of state performance in the survey process.

However, HCFA makes negligible use of comparative surveys–independent re-surveys of homes–which are its most effective technique for determining whether state surveyors miss deficiencies. HCFA requires that only 1 or 2 of these surveys be completed each year in most of the states. Yet, more than two-thirds of the 64 comparative surveys HCFA conducted between October 1998 and August 1999 identified more serious deficiencies than the state identified.

For example, in one of its comparative surveys, surveyors from HCFA's Kansas City region found 24 deficiencies in a Missouri nursing home that state surveyors did not identify during their survey conducted about 6 weeks earlier. One of these deficiencies identified six residents whose nutritional status was not being adequately assessed by the nursing home, resulting in significant weight loss in several cases. One resident lost 19 percent of his weight between June and October 1998. His weight at the time of HCFA's survey was 93 pounds, which HCFA indicated was significantly below the resident's minimally acceptable body weight of 108 pounds. Fewer than 4 months after his admission to the nursing home, this resident also had developed two moderately severe pressure sores, which the home was inappropriately treating with a cream the manufacturer stated was not intended to heal pressure sores but rather to prevent irritation to the skin. According to HCFA surveyors, these deficiencies affecting multiple residents should have been evident at the time of the state's survey, but the state surveyors did not cite them.

Because of the time that typically elapses between a state's survey and HCFA's comparative survey, HCFA often cannot be certain whether HCFA-identified deficiencies are the result of poor state agency performance, such as state surveyors' failure to identify deficiencies, or to changed conditions in the nursing home following the state survey. Typically, these surveys occur 1 month after the state completes its survey but sometimes occur as much as 2 months later. In August 1999, HCFA instructed its regions to start comparative surveys within 2 to 4 weeks after the state's survey, but even this delay could result in problems comparing results. State and federal surveyors told us that comparative surveys are more effective and reliable in assessing state performance if they start immediately after the state has completed its survey, even as soon as the day after the state's exit from the home.

Rather than making more extensive use of comparative surveys, HCFA instead conducts 90 percent of its surveys as "observational" surveys, in which its regional surveyors accompany and observe state surveyors as they conduct all or a portion of their survey. These observational surveys may help HCFA to identify state agency training needs, but several problems inhibit their ability to give a clear and accurate picture of a state's survey capability. Perhaps most importantly, HCFA's presence may make state surveyors more attentive to their survey tasks than they would be if they were not being observed. This is an example of the Hawthorne effect, in which individuals tend to improve their performance when they are aware they are being studied. As a result, observational surveys do not necessarily provide a valid assessment of typical state surveyor performance.

Another HCFA oversight mechanism, which predates HCFA's recent nursing home initiatives, also has significant shortcomings. Under the State Agency Quality Improvement Program, each state does a yearly self-assessment and informs HCFA as to whether it is in compliance with seven survey requirements, such as investigating complaints effectively. As an oversight program, its effectiveness is limited because HCFA does not validate the information included in the states' self-assessment as was required under this program's predecessor, and thus has no assurance that the states surface all serious problems or that they correct all the problems they have identified. For instance, in our prior work we found that some states were not promptly reviewing complaints filed against nursing homes, yet they had not identified this problem to HCFA as part of their quality improvement program.[5] In addition, HCFA has no policy regarding consequences for states that do not provide accurate

[5]GAO/HEHS-99-80, Mar. 22, 1999.

information through this program. Furthermore, although the program also addresses some state agency performance standards that must be reviewed by HCFA's staff, these standards do not include some important aspects of a state agency's performance, such as determining whether the timing of a state agency's surveys can be predicted by the nursing homes.

HCFA Regions Are Inconsistent in How They Conduct Oversight Activities

In addition to these weaknesses in its oversight mechanisms, HCFA regions are uneven in the way they implement them, resulting in limited assurance that states are being held equally accountable to federal standards, including the recent initiatives. Although HCFA established the current federal monitoring surveys to develop a uniform national approach for regions to follow, the regions use different methods for selecting surveys to review and for conducting reviews. Examples follow:

- Some regions comply with HCFA guidance on comparative surveys by selecting homes with no established pattern of deficiencies, while other regions focus on homes that the state has already identified as having serious deficiencies. By doing the latter, HCFA is unlikely to identify situations in which state surveyors underreport serious deficiencies. Furthermore, HCFA's broad guidance for selecting observational surveys does not ensure that its reviews assess as many state surveyors as possible to maximize the training effect.

- In conducting comparative surveys, the regions vary in how they select resident samples, with some regions selecting a sample that includes some overlap with the state's sample and other regions making no attempt to do so.

- The regions also, on average, spend very different amounts of time to conduct an observational survey. While the average time spent on these surveys is 52 hours, the regions range from an average of 27 hours to 71 hours to conduct these surveys, thus raising questions about the level of effort some regions devote to gauging state performance. Table 1 provides additional detail on the variation in regional resources available and in the time spent to complete observational surveys.

Table 1: Variation in Resources Available and in Time to Complete Observational Surveys

Region	Ratio of state to federal surveyors	Ratio of observational surveys required in 1999 to federal surveyors	Average no. of hours per observational survey (Oct. 1998 - July 1999)
Boston	14 to 1	5 to 1	27
New York	33 to 1	7 to 1	31
Philadelphia	16 to 1	6 to 1	49
Atlanta	33 to 1	7 to 1	61
Chicago	31 to 1	8 to 1	71
Dallas	60 to 1	10 to 1	38
Kansas City	30 to 1	6 to 1	51
Denver	18 to 1	4 to 1	59
San Francisco	27 to 1	8 to 1	54
Seattle	16 to 1	3 to 1	52
Nationwide	28 to 1	7 to 1	52

In addition, HCFA regional officials make different use of the State Agency Quality Improvement Program for overseeing state agency performance. Some regions supplement information provided by the states through the quality improvement program by extensively analyzing available survey performance data, while other regions do not believe there is a need to use these supplemental data to assess state survey performance. For example, HCFA's Atlanta region recently started a program to conduct in-depth analyses of each state agency in its region using available survey data. Through these analyses, the region determined that the annual state surveys of nursing homes in four of its eight states are highly predictable, contrary to HCFA policy. It also found that in four of the six states where it has completed reviews, more than half of the time state surveyors did not conduct revisits of nursing homes, to determine whether identified deficiencies had been corrected, within the 55 days recommended by HCFA.

In testimony before your Committee this summer, we also noted that the HCFA regions do not consistently monitor state implementation of new, stronger policies resulting from HCFA's nursing home initiatives. When we asked the regional offices how they were monitoring states' implementation of these initiatives, their responses ranged from no monitoring of most of the implemented initiatives to requiring states to submit special monthly reports on how they were implementing several of the initiatives. These uneven monitoring practices, combined with the limitations we found in HCFA's more formalized monitoring approaches,

result in HCFA not being sufficiently informed about what the states are doing to implement these initiatives.

HCFA's Options for Addressing Poorly Performing State Agencies Are Inadequate

Even if HCFA identifies inadequate state agency performance, it currently does not have an adequate array of effective remedies or sanctions to ensure corrections. Most commonly, HCFA provides training to surveyors or survey teams. HCFA may also require the state to submit a plan of correction, provide technical assistance, and assume responsibility for developing the state's survey schedule. If these remedies fail, HCFA has two sanctions available that it may then apply–reducing a state's survey and certification funding or terminating its survey contract. Because of the extreme nature of these sanctions, HCFA has only once reduced state funding and has never terminated a state's contract.

To support reducing the state's survey and certification funding, HCFA requires evidence showing a pattern of inadequate state performance, which its current oversight structure does not effectively provide. In essence, HCFA must show that a state agency demonstrates a pattern of failing to identify serious deficiencies. However, because HCFA conducts so few comparative surveys, and observational surveys are not intended to identify all missed deficiencies, it is not currently possible for HCFA to establish that a state consistently fails to identify serious deficiencies.

As part of its nursing home initiatives, HCFA established a task force in late 1998 to expand and clarify the definition of inadequate state survey performance and to suggest additional remedies and sanctions for state agencies that perform poorly. The task force has preliminarily proposed two additional sanctions for HCFA's use: (1) placing a state agency on notice that it is not in compliance with its Medicaid plan regarding nursing home survey performance and (2) requiring HCFA officials to meet with the governor and other high-level state officials. Although HCFA refers to these two proposed actions as sanctions, they are not as severe as what are normally thought of as sanctions and may not be forceful enough to compel a state to improve its performance. Regarding placing the state agency on notice, we were told that it means that HCFA expects its regions to work collaboratively with state agencies to urge compliance with the requirements in their state Medicaid plans. Furthermore, although the proposed sanction requiring HCFA officials to meet with the governor or other state officials can raise problems to a higher level in state government and possibly secure greater state support to improve performance, it is not clear what effect this sanction would have in compelling a state agency to improve its performance. HCFA intends to have these two new sanctions in place by the end of 1999. HCFA also plans

to issue additional state survey agency performance standards and measures, and indicated that over the next 18 months it will determine whether the expanded remedies and sanctions have been effective in improving state agency performance. At that time, HCFA will determine whether additional remedies or sanctions should be developed.

HCFA Should Strengthen Its Oversight of State Programs

HCFA has taken many positive steps–including 30 wide-ranging initiatives–that demonstrate its commitment to improving the quality of care that nursing home residents receive. These steps include a major effort to enhance its oversight of state agencies, but the limited scope and rigor of its various state performance monitoring mechanisms, and their uneven application across the regions, do not give HCFA a systematic, consistent means of assessing state survey performance. Specifically, the negligible use of comparative surveys, combined with delays in starting them, does not provide HCFA with sufficient evidence to determine whether states are appropriately assessing nursing homes' compliance with federal standards. Furthermore, inconsistencies among the regional offices in their oversight of state agency performance hamper HCFA's ability to ensure that all state agencies are being held equally accountable for their performance. Even though HCFA is strengthening its oversight mechanisms to be able to establish a pattern of unacceptable state survey performance, it has not developed effective alternatives for ensuring that states meet federal standards.

Our report issued today contains several specific recommendations to HCFA to strengthen its oversight of state survey agencies' activities. These recommendations are intended to help HCFA ensure that states meet federal standards for certifying that nursing homes provide adequate care and consistently implement the more stringent standards required by HCFA's recent initiatives. Our recommendations include that the HCFA Administrator

- **Improve the scope and rigor of HCFA's oversight process** by increasing the use of comparative surveys and ensuring that they are initiated more promptly after states' surveys.
- **Improve the consistency of HCFA oversight across regional offices** by standardizing procedures for selecting and conducting federal monitoring surveys.
- **Further explore the feasibility of appropriate, alternative remedies or sanctions** for those states that prove unable or unwilling to meet HCFA's performance standards.

In reviewing a draft of our report, HCFA reaffirmed that enhanced oversight of state programs is critical to improving the quality of care in nursing homes and generally agreed with our recommendations. Although HCFA indicated that it needs to further evaluate the appropriate course of action, it is clear that HCFA's continued efforts and initiatives, in concert with the Committee's ongoing oversight, have the potential to make a decided difference in the quality of care for the nation's nursing home residents.

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

GAO Contacts and Acknowledgments

For further contacts regarding this testimony, please call William J. Scanlon or Kathryn G. Allen at (202) 512-7114. Individuals making key contributions to this testimony included John Dicken, Jack Brennan, and Mary Ann Curran.

Related GAO Products

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: 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).

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