

Statement for the Record
Subcommittee Hearing on
“Examining Long-Term Care in America: The Impact of the Coronavirus in Nursing Homes
September 21, 2022
Elder Justice Committee of Metro Justice

I am writing to you on behalf of the 100 members of Elder Justice Committee of Metro Justice, grassroots, volunteer advocacy organization. The majority of our members have or have had relatives in Nursing Homes or they experienced life in Nursing Homes by working or volunteering as Ombudsmen in in Nursing Homes. All have experienced the need to improve the care provided by Nursing Homes. Nursing Homes were unprepared for COVID-19. COVID-19 in the nursing homes was described as a “Fire in dry grass.” We assert that the “dry grass” was history of poor infection control, poor staffing levels and systemic lax oversight that caused nursing homes to be ill prepared for COVID-19 and thus its rapid spread and significant loss of life in its wake.

Nursing Homes agree to care for their residents humanely and provide for their health, safety and wellbeing and adhere to federal and state regulations. When nursing homes are reimbursed for care provided to residents through the Medicare and/or Medicaid programs they are required to meet the minimum Federal standards as per the federal Nursing Home Reform Law and the federal regulations implementing that law. * Despite the law and regulatory standards, serious problems continue to be evident in far too many nursing homes. Care standards have been found to be inadequately enforced by the state and federal agencies responsible for nursing home oversight.

The Centers for Medicare & Medicaid Services (CMS), the federal agency responsible for overseeing nursing home care, contract with states to monitor and provide oversight of nursing homes and ensure compliance with federal standards of care through monitoring and oversight. The state Survey Agencies provides oversight by surveying (inspecting) facilities, responding to complaints about care, and responding to facility-reported incidents to evaluate performance and effectiveness in rendering safe and acceptable quality of care. The State Survey Agencies are responsible for assuring that:

1. Providers remain in substantial continual compliance with Medicare/Medicaid program requirements as well as state law
2. Residents will receive the care and services they need to meet their highest practicable level of functioning
3. Nursing Homes will receive standard in-person surveys (inspections) at least once every 12-15 months **
4. Deficiencies found are addressed promptly to bring about compliance quickly
5. Consequences for noncompliance and deficiencies are imposed such as civil money penalties, temporary managers, directed plans of correction, in-service training, denial of payment for new admissions, and state monitoring.
6. Complaints received and assessed in timely and meaningful manner ***

As Surveys are the principal mechanism through which nursing home quality is assessed and compliance with standards is determined, it is imperative that surveys provide an accurate picture and that when deficiencies are found the consequences are appropriate and meaningful. However, many states have had

a poor history of assuring nursing homes are held accountable for poor and inadequate care. They do not adequately rate deficiencies, fine and collect fines; effectively giving poor care “a pass.”

The Centers for Medicare and Medicaid must see to it that the Survey Agencies are made to be effective in assuring the health, safety and wellbeing of vulnerable nursing home residents by:

1. Performing more frequent and unannounced inspections of nursing homes as to their adherence to federal and state regulations
2. Increasing and boldly citing infractions as “Harm to Residents” when relevant and true
3. Enforcing regulations by establishing penalties and collecting meaningful fines from nursing homes found not in compliance with laws and regulations
4. Assuring that nursing homes that continually fail to deliver sufficient resident safety and quality of life receive more frequent inspections and if necessary, be put into receivership or have license to operate revoked
5. Addressing complaints regarding nursing homes in a timely, effective manner including subsequent communication with the complainants

During the Trump administration the regulation and oversight of Nursing Homes was regarded as burdensome to the nursing home industry and greatly diminished. As Nursing Homes accept public monies for the care of residents and agree they must be accountable for the money they receive and the care they provide. We ask that this committee recommends that more effective oversight occurs as soon as possible. If not nursing homes will continue to be unprepared for catastrophic events such as COVID-19.

Sincerely,

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NOTES

* Nursing Home Reform Law, 42 U.S.C. §§1395i-3(a)-(h), 1396r(a)-(h) (Medicare and Medicaid, respectively) (December 1987). The Reform Law’s text is available at: <https://www.ecfr.gov/current/title-42/chapterIV/subchapter-G/part-483>

All nursing homes that contract to provide Medicaid and/or Medicare services are required to meet federal standards of care for all residents in their facilities (whether or not the individual is a beneficiary of one of those programs). These standards are founded in the 1987 Omnibus Budget Reconciliation Act (aka “OBRA ‘87”), which contains the Nursing Home Reform Law. 1 The Reform Law requires all skilled nursing facilities that receive federal

funding to conform to specific standards of care, including that nursing staff help residents attain and maintain their “highest practicable physical, mental, and psychosocial well-being,” based on their individual needs and personal goals. The emphasis on individualized, resident-centered care was intended to reduce widespread problems in long-term care facilities, including abuse and neglect, and improve quality of life.

** Survey Scheduling [SOM §7205, see also §§2008F, 2700B]

Scheduling and Conducting Surveys [SOM §7205.2] States must complete standard surveys no later than 15 months after the previous standard survey. Facilities with excellent histories of compliance may be surveyed less frequently to determine compliance, but no less frequently than every 15 months and the state-wide standard survey average must not exceed 12 months.

Changes that may prompt a survey include: a change of ownership, management firm, administrator, or director of nursing. Facilities with poor histories of compliance may be surveyed more frequently to ensure residents are receiving quality care. “Because of the strong emphasis on resident rights, the psychosocial model of care, and rehabilitative aspects of care in the regulations and the survey process, the team should include social workers, registered dietitians, pharmacists, activity professionals, or rehabilitation specialists, when possible.” A Guide to Nursing Home Oversight & Enforcement

The state may conduct surveys as frequently as necessary to determine if a facility complies with the participation requirements as well as to determine if the facility has corrected any previously cited deficiencies.