

IN-BRIEF

Termination and Closure of Poor Quality Nursing Homes: What Are the Options?

This *In-Brief* summarizes the findings and implications of the AARP Public Policy Institute Issue Paper, *Termination and Closure of Poor Quality Nursing Homes: What Are the Options?* by Erica F. Wood, Esquire, of the American Bar Association Commission on Legal Problems of the Elderly.¹

Recent studies by the General Accounting Office have reported some troubling findings about nursing home care, including understaffing, persistent violations of federal law, and abuse of residents. One of the most serious sanctions against nursing homes that harm residents is involuntary termination from participation in Medicare and Medicaid programs. Since federal funds often account for a major portion of operating monies, termination inherently jeopardizes the continued operation of these nursing homes.

Nursing homes can be terminated from participation in Medicaid and Medicare when they pose the risk of “immediate jeopardy” to residents or when they have been out of substantial compliance with federal nursing home regulations for six months. This paper looks at terminations and at other remedies for poor quality nursing homes. It includes case studies of seven nursing homes.

Key findings of the study show that:

- There is no consistent and readily available central source of data on termination of federal funding, nursing home closures, and use of intermediate sanctions.
- The “six-month rule,” (providing for termination when a facility fails to achieve substantial compliance within six months) is the most frequent reason for termination.
- Temporary managers and receivers are not often used. Barriers to their use include lack of clarity about their use and lack of time, experience, funds, qualified candidates, and judicial understanding.
- Several states have developed plans for the orderly closure of nursing facilities and transfer of the residents. Some gerontological studies suggest that careful planning can mitigate the harm associated with transferring residents.

Study Recommendations

- **Strengthen data on enforcement and public access to this data.** To obtain the most accurate picture, examinations of nursing home closures, terminations, and use of intermediate sanctions should be based on timely, uniform data that is readily available from the CMS central office.

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- **Study effectiveness of intermediate sanctions.** The civil monetary penalties, bans on admissions, directed plans of correction, and other intermediate sanctions imposed on the facilities profiled in this project were of little avail. An empirical study of intermediate sanctions would help to guide state and federal regulators making front-line decisions about enforcement and policymakers considering how to strengthen the system.
- **Initiate a temporary management demonstration project, develop a protocol for use of temporary management, and develop a model receivership statute.** CMS should initiate discussions with regional offices and state regulatory agencies about barriers to greater use of temporary management, promising practices, and provide guidance and consistency on when and how temporary management should best be used, including development of a model statute.
- **Develop a national database of temporary managers.** CMS should develop a national database of companies that meet minimum qualifications and encourage states to develop, update, or maintain lists of temporary managers who can mobilize quickly and are familiar with local resources.
- **Couple limited flexibility in the six-month rule with temporary management.** CMS has interpreted federal law to allow no discretion in termination of federal funds if a facility is not in substantial compliance after six months. An amendment that provides or clarifies that CMS such discretion where temporary managers are in place might allow for a more thoughtful weighing of risks and benefits to residents.
- **Strengthen state long-term care receivership laws and encourage judicial education on temporary management and receivership.**
- **Provide funds for the operation of temporary management and receivership, and for resident relocation when necessary.** Facilities in need of temporary management or receivership may lack resources needed immediately to cover the costs of salary, bond, staffing, supplies, and limited capital improvements.
- **Provide guidance and promote best practices on resident relocation and develop a uniform protocol for tacking residents after relocation.** CMS should provide guidance and promote consistency on establishment of a relocation team, adequate notice, resident assessments, and involvement of the long-term care ombudsman program and family councils. CMS and the states should designate a point of coordination for collecting resident information and a uniform report format.

Convene roundtable on nursing home termination and closure. A roundtable bringing all stakeholders together should set out findings, provide a format for structured discussion, and make broad-based recommendations for action.

¹ AARP Public Policy Institute Issue paper # 2002 - 05 (March 2002)