

## ENFORCEMENT OF QUALITY STANDARDS IN NURSING HOMES

### BACKGROUND

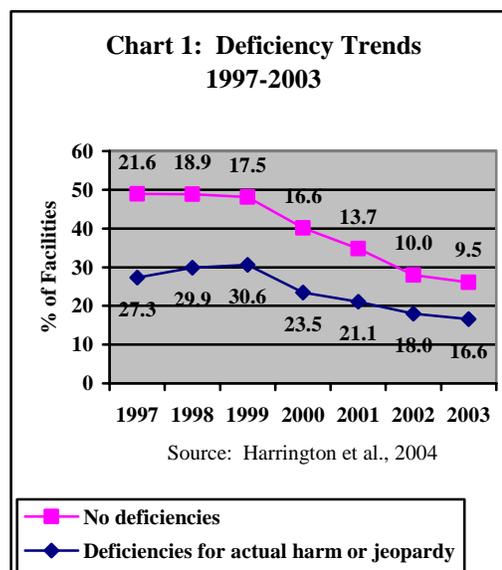
The 1987 Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987, established quality standards for nursing homes nationwide and defined the state survey and certification process to enforce the standards (see PPI Fact Sheet: “The Nursing Home Reform Act of 1987”).

Since 1998, however, a series of federal studies and Senate hearings has called attention to weaknesses in federal and state monitoring and enforcement activities and serious quality problems in many nursing homes.

### MONITORING AND ENFORCEMENT

Between 1997 and 2003, the proportion of homes with no deficiencies declined from 21.6% to 9.5% (see Chart 1), and the average number of deficiencies per home increased from 4.9 to 6.9.<sup>1</sup> The proportion of homes cited for deficiencies that caused actual harm or immediate jeopardy to residents, however, has sharply declined, suggesting that homes are being cited for less serious deficiencies (see Chart 1).

Recent studies have found evidence of state surveyors understating quality problems. Between June 2000 and February 2002, federal surveyors found actual harm or higher-level deficiencies in 22% of homes where state surveyors had documented no such deficiencies.<sup>2</sup> Moreover, in a 2003 study, the U.S. General Accountability Office found understated actual harm or higher-level deficiencies in 39% of the 76 surveys the agency reviewed. A 2003 study by the Office of the Inspector General (OIG) found that states varied widely in the average number of deficiencies cited per home and in which specific deficiency(ies) they would cite for the same problem.<sup>3</sup>



Factors contributing to the understatement of quality problems included:<sup>4</sup>

- poor investigation and documentation of deficiencies;
- lack of a common review process for draft survey reports;
- inconsistency in whether the surveys had a consultative or enforcement focus (the stated functions of the survey are to ensure compliance and to provide “nonconsultative information”);
- unclear federal guidelines on which deficiencies to cite for specific problems;
- high surveyor turnover and a large number of inexperienced surveyors; and
- predictable timing of the surveys.

During a 2004 review of the state survey process by staff of Senator Charles Grassley, chair of the Senate Committee on Finance, surveyors frequently said that their superiors instructed them to overlook or understate deficiencies.<sup>5</sup> Some surveyors said that they were told to rewrite survey findings to make facilities look better than they really were.

Enforcement actions have also declined in recent years. Between 2000 and 2003<sup>6</sup>:

- The number of homes penalized for any violations declined by 18%, from 2,622 to 2,146.
- The number of civil monetary penalties declined 12%, from 2,242 to 1,979.
- The number of nursing homes denied Medicare or Medicaid payment for new admissions fell 47%, from 1,312 to 698.

A 2005 OIG study on the use of civil monetary penalties found several areas in need of improvement.<sup>7</sup> Most fines were imposed at the low end of their allowable range, and they took an average of six months to collect for cases not appealed and an average of 14 months for appealed cases. Of the \$81.7 million in penalties imposed in 2000 and 2001, less than half (42%) had been paid by December 2002.

### FEDERAL QUALITY INITIATIVES

In 2002, the U.S. Department of Health and Human Services announced the Nursing Home Quality Initiative, which includes four components<sup>8</sup>: (1) strengthened enforcement of quality standards; (2) consumer information about nursing homes at [www.medicare.gov](http://www.medicare.gov); (3) consultants to help nursing homes improve care—participation by nursing homes is voluntary; and (4) partnerships among Centers for Medicare and Medicaid Services (CMS) and state survey agencies, nursing homes, residents and their family members, and staff members to improve nursing home care.

The initiative has had mixed results thus far.<sup>9</sup> The prevalence of chronic pain and the use of restraints declined between 2002 and 2004, and the 2,400 nursing homes that volunteered for help from consultants started out worse and improved more than other nursing homes did. For example, at homes that worked with consultants, the proportion of residents with chronic pain fell from 11.6% to 6.1%, while at other homes it fell

from 10.5% to 6.9%. However, facilities did not significantly improve on other quality indicators. In December 2004, CMS announced plans to expand the initiative to focus more on helping homes provide care based on residents' schedules and desires; increasing staff satisfaction and autonomy; and reducing pressure sores, restraints, and depression.<sup>10</sup> CMS will also begin a pilot program of background checks for direct care workers in seven states.

### CONCLUSION

Inadequate enforcement has seriously limited the effectiveness of the 1987 Nursing Home Reform Act. Although quality has improved in some areas, more work needs to be done to improve quality of both care and life in nursing homes.

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<sup>1</sup> Harrington, C., H. Carrillo, and C. S. Crawford. *Nursing Facilities, Staffing, Residents, and Facility Deficiencies, 1997 through 2003*, Aug. 2004.

<sup>2</sup> GAO. *Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight*, July 2003.

<sup>3</sup> OIG. *Nursing Home Deficiency Trends and Survey and Certification Process Consistency*, March 2003.

<sup>4</sup> GAO, 2003; OIG, 2003.

<sup>5</sup> Sen. Charles Grassley. Letter to CMS, July 7, 2004, <http://www.canhr.org/news/GrassleyLetter.html>.

<sup>6</sup> Dunbar, D., and J. Sandlin. "Barriers to Effective Nursing Home Enforcement." Presented at CMS Leadership Summit, April 19–22, 2004; Pear, R. "Penalties for Nursing Homes Show a Drop in Last 4 Years," *New York Times*, Aug. 6, 2004.

<sup>7</sup> OIG. *Nursing Home Enforcement: The Use of Civil Money Penalties*, April 2005.

<sup>8</sup> HHS. "Nursing Home Care Improving in Many Areas New CMS Data Show, New Steps Initiated." Press release, Dec. 22, 2004.

<sup>9</sup> Dembner, A., and B. Dedman. "Nursing Homes Show Uneven Gains: National effort at grading has mixed results." *Boston Globe*, Dec. 13, 2004; Dembner, A. "US to push for better nursing home care: Bush administration seeks expansion of 2-year-old program." *Boston Globe*, Dec. 23, 2004.

<sup>10</sup> HHS, 2004; Dembner, 2004.