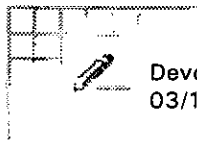


**NLWJC - Kagan**

**DPC - Box 030 - Folder 006**

**Health - Nursing Homes**



Devorah R. Adler  
03/17/99 02:38:51 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: nursing home meeting

## **NURSING HOME RESIDENT PROTECTION ACT**

### **SUMMARY OF THE PROPOSED LEGISLATION**

The proposed legislation would give DOJ three new tools to combat the failure of nursing homes and other residential health care facilities to treat residents properly. First, it creates criminal sanctions for organizations or individuals who knowingly and willfully engage in a pattern of physical or mental harm to residents. Second, it would create civil penalties that could be imposed on individuals, facility chains, or management companies if they engage in conduct that results in a pattern of physical or mental harm to residents. Third, it would authorize DOJ to seek injunctive relief against these entities or individuals whenever DOJ has reason to suspect that they are engaging in behavior that will result in harm to physical or mental harm to residents. DOJ would have to consult with HHS before invoking its injunctive authority.

### **OUTSTANDING ISSUES**

HHS is primarily concerned about the overlap in enforcement authority that these new provisions would create. As currently drafted, the only area of facility noncompliance that would not pose the problem of overlapping authority for both agencies would be those cases where violations are minimal or where the harm to residents is isolated. HHS is concerned that in situations where both agencies have an interest in initiating an enforcement action, DOJ will push HCFA to delay its enforcement action, since DOJ's need to build a solid case for conviction may not coincide with HCFA's need to act swiftly when needed. In addition, HHS is concerned that DOJ will develop its own quality standards for individual facilities and chains when deciding whether to initiate prosecution, thus requiring facilities to comply with one set of standards developed by HCFA and another set of standards developed by DOJ.

what  
are HCFA  
sanctions

DOJ feels that the overlap in enforcement authority is limited to enforcement action in individual facilities. Currently, no one has the authority to prosecute nursing home chains for repeated violations, which this statute would provide to DOJ. In addition, this policy would not preclude HHS from taking any action to protect the health and safety of residents, and DOJ is willing to codify this in an MOU.

1?

### **PROPOSED DPC POSITION**

**Modify the DOJ proposal to limit their new enforcement authority to criminal violations and require HHS to propose new legislation providing them with new authority to impose civil**

**penalties.** Under this option, the Department of Justice would be allowed to impose new criminal penalties on individuals, facility chains, and management companies who knowingly and willfully engage in a patterns of physical or mental harm to residents. HHS would propose new legislation creating civil penalties that could be imposed on individuals, facility chains, or management companies if they engage in conduct that results in a pattern of physical or mental harm to residents. This compromise provides virtually the same level of enforcement and eliminates the problematic overlap of authority created by the DOJ proposal.

Leanne A. Shimabukuro 03/23/99 12:21:55 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Christopher C. Jennings/OPD/EOP, Devorah R. Adler/OPD/EOP, Sarah A. Bianchi/OVP @ OVP

cc:  
Subject: Crime Bill -- Nursing Home Provision

FYI

----- Forwarded by Leanne A. Shimabukuro/OPD/EOP on 03/23/99 12:24 PM -----

 Ronald E. Jones 03/23/99 11:01:14 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:  
Subject: Crime Bill -- Nursing Home Provision

----- Forwarded by Ronald E. Jones/OMB/EOP on 03/23/99 10:56 AM -----

Gaylee L. Morgan 03/23/99 09:58:35 AM

Record Type: Record

To: Ronald E. Jones/OMB/EOP@EOP  
cc: See the distribution list at the bottom of this message  
Subject: Crime Bill -- Nursing Home Provision

HD staff have reviewed Section 3039 of the Crime Bill ("Nursing Home Resident Protection Act") and have the following comments:

**Inclusion in Crime Bill.** As a matter of perception, we believe there is a danger in housing a nursing home quality provision in the crime bill. Nursing home resident advocates have raised concerns that nursing home enforcement should, in general, be a quality issue, not a crime issue. **We recommend pulling the nursing home provision out of the crime bill and sending it up as a stand-alone bill.**

**Criminal Authority for DOJ.** **We concur with the provisions in the bill that would give DOJ criminal authority over both nursing home chains and individual nursing homes.**

**Referral.** The bill would give DOJ the authority to pursue nursing homes without referral from HCFA. We believe this would create significant overlap between HCFA's and DOJ's enforcement

actions and could impede HCFA's actions to improve quality. We are also concerned that, because DOJ would exercise its authority through its US Attorney's offices, there would not be a consistent application of quality standards. We recommend that DOJ have the authority to pursue nursing homes only upon referral from HCFA or with the explicit approval of HCFA. We believe these provisions should be included as part of the actual bill, rather than as an MOU.

**Chains vs. Individual Facilities.** The bill would give DOJ civil authority to pursue both nursing home chains and individual facilities. We believe HCFA should have primary civil authority in cases involving individual facilities, and we recommend removing the legislative language that gives DOJ civil authority over individual facilities. DOJ would continue to have civil authority through the False Claims Act, upon referral from HCFA. DOJ's proposal would impede HCFA's ability to enforce quality through CMPs, including the use of HCFA's new CMP per-instance CMP authority. For nursing home chains, we believe DOJ should have civil authority to pursue nursing home chains only upon referral from HCFA or with the explicit approval of HCFA.

**Protecting Enforcement of Quality.** The bill provides no assurance that HCFA will be allowed to continue quality enforcement actions even if DOJ is conducting its own investigation. We believe HCFA should be able to continue its enforcement actions even if DOJ is conducting its own investigation. We recommend including language stating that "Nothing in this Act shall be construed as depriving the Secretary of Health and Human Services of any authority, including enforcement authorities, under the Social Security Act, related to nursing homes."

As you know, negotiations among policy officials at HHS, HCFA, DOJ, OMB and DPC are ongoing. We understand that there is a tentative agreement between HCFA and DOJ that would give HCFA veto authority over injunctive relief cases brought by DOJ in exchange for giving DOJ civil authority over individual nursing homes, with required advance consultation with HCFA.

We suggest two possible alternatives:

- Accept this compromise as is, but insert language stating that "Nothing in this Act shall be construed as depriving the Secretary of Health and Human Services of any authority, including enforcement authorities, under the Social Security Act, related to nursing homes." This would protect HCFA's efforts to enforce quality even if DOJ is conducting its own investigation.
- Give all primary civil authority to HCFA, but establish a referral process in an MOU for both chains and individual facilities.

Please let us know if you have any questions.

Message Copied To:

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Message Sent To:

Health -  
nursing home

**PRESIDENT CLINTON:  
IMPROVING THE QUALITY OF NURSING HOME CARE**

July 21, 1998

*"Moving a parent to a nursing home is one of life's most difficult decisions. But with these steps, we are giving families the security of knowing that we are doing everything we can to make our nation's nursing homes safe and secure."*

President Bill Clinton  
July 21, 1998

Today, President Clinton announces tough new legislative and administrative actions to improve the quality of nursing homes and crack down on nursing homes that do not follow the rules. These actions include: ensuring swift and strong penalties for nursing homes failing to comply with standards, strengthening oversight of state enforcement mechanisms, developing a national registry to track and identify individuals with a record of abusing residents, and implementing unprecedented efforts to improve nutrition and prevent bed sores.

**THE NEED TO ENSURE QUALITY CARE IN NURSING HOMES.** There are approximately 1.6 million older Americans and people with disabilities that receive care in roughly 16,700 nursing homes nationwide. Problems like the inappropriate use of physical restraints and a shortage of hearing aids for those in need were reduced by the enactment of new regulations by the Health Care Financing Administration (HCFA) in 1995. However, HCFA's ongoing review of nursing home care, and a report being sent to Congress today by the Department of Health and Human Services (HHS), shows that tougher enforcement is needed to ensure high quality care in all nursing homes.

**A PRESIDENTIAL PLAN TO IMPROVE NURSING HOME CARE.** This week, the President is sending Congress tough new legislation that calls for:

- **Nursing Homes To Conduct Criminal Background Checks On All Potential Employees;**
- **The Establishment Of A National Abuse Registry To Keep Track Of Those Convicted Of Abusing Residents;**
- **Improving Nutrition and Hydration Therapy By Allowing More Categories Of Nursing Home Employees To Perform These Functions**
- **Reauthorization Of The Nursing Home Ombudsman Program Run By The Administration On Aging.**

**NEW ADMINISTRATIVE ACTIONS TO IMPROVE THE QUALITY OF NURSING HOMES.** Today, the President is also announcing the implementation of new penalties, inspections, and tougher oversight of nursing homes by the HCFA, including:

- Immediate Civil Monetary Penalties Against Nursing Homes That Violate Federal Standards;
- Tougher Nursing Home Inspections, including: (1) Staggered survey times to prevent inadequate nursing homes from preparing for inspections; (2) Targeting nursing home chains with bad records; (3) Cooperative efforts with the HHS Office of the Inspector General and the Department of Justice to refer severe violations of quality care standards for criminal investigation and prosecution where appropriate;
- Stronger Federal Enforcement Of State Nursing Home Oversight and tougher actions against those states that are failing to enforce standards. The HCFA will: (1) Terminate federal nursing home inspection funding to states with consistently poor records; (2) Increase oversight of state inspections; (3) Ensure that nursing homes are in compliance with standards before lifting sanctions;
- Publishing Nursing Home Survey Results On The Internet;
- Preventing Bed Sores, Dehydration, and Malnutrition by requiring state surveyors to monitor actions taken by nursing homes to prevent these ailments;
- Implementing New Efforts To Measure And Monitor Nursing Home Quality. This month, the HCFA began collecting information on resident care through a national automated data system that will be analyzed to identify potential areas of inadequate care in nursing homes and to assess performance in critical areas.

THE WHITE HOUSE  
WASHINGTON

July 20, 1998

NURSING HOME ANNOUNCEMENT

**DATE:** July 21, 1998  
**LOCATION:** Oval Office  
**BRIEFING TIME:** 2:30 pm  
**EVENT TIME:** 3:00 pm  
**FROM:** Bruce Reed/Chris Jennings

**I. PURPOSE**

To highlight your commitment to improve the quality of nursing homes by announcing tough new legislative and administrative actions.

**II. BACKGROUND**

There are approximately 16,800 nursing homes in the United States, serving 1.6 million people. Since HCFA put new regulations in place in 1995, the health and safety of nursing homes has improved. But Senator Grassley will unveil a report next week on the shortcomings in nursing home care, and HCFA will transmit a report to Congress tomorrow concluding that tougher enforcement is needed to ensure high quality in all nursing homes. You will respond to both of these reports with a tough new initiative to crack down on bad apple nursing homes and ensure high quality care.

**New Legislation to Improve the Quality of Nursing Homes.**

You will announce that you are transmitting legislation to the Hill this week that calls for:

- **New Criminal Background Checks.** An important way to improve the quality of nursing homes is to prevent inadequate personnel from entering the system in the first place. The legislation you will propose would require nursing homes to conduct criminal background checks on all potential personnel.
- **National Abuse Registry.** Once inadequate personnel have been identified, they should be kept out of the system. The new legislation will ask Congress to establish a national registry of nursing home employees convicted of abusing residents.
- **Nutrition and Hydration Therapy.** Currently, too few nursing home staff are available to help feed residents. To improve nutrition in nursing homes, you will

- ask Congress to allow more categories of nursing home employees to perform crucial nutrition and hydration functions.
- **Reauthorization of the Nursing Home Ombudsman Program.** You also will call on Congress to reauthorize the nursing home ombudsman program run by the Administration on Aging, which provides consumers with critical information on poor-quality nursing homes, including records of abuse and neglect.

**New Administrative Actions To Improve the Quality of Nursing Homes.**

You will announce new administrative actions that HCFA will implement immediately, including:

- **Immediate Civil Monetary Penalties in Nursing Homes That Violate Federal Standards.** To crack down on inadequate providers, HCFA will direct enforcement authorities to impose civil monetary penalties immediately upon finding a serious or chronic violation. Under current practice, enforcement officials often give nursing homes a second chance to come into compliance, rather than impose immediate sanctions.
- **Tougher Nursing Home Inspections.** Starting today, HCFA will take several steps to strengthen states' inspection of nursing homes, such as:
  - Staggering survey times: The report that HCFA is transmitting to Congress finds that nursing home inspections are too predictable, allowing inadequate homes to prepare for inspections. Enforcement officials will now stagger survey times and conduct some surveys on weekends and evenings.
  - Targeting chains with bad records: Federal and State officials will target nursing home chains that have a poor record of compliance with the Federal regulations for additional inspections.
  - Increasing criminal investigations: HCFA also will work with the HHS Office of Inspector General and Department of Justice to refer egregious violations of quality of care standards for criminal investigation and prosecution when appropriate.
- **Stronger Federal Oversight of State Inspections.** HCFA will increase its oversight of state surveyors, review and monitor nursing homes with greater consistency, and take new tough actions against those states that are failing to adequately enforce standards. It will:
  - Terminate Federal nursing home inspection funding to states with continual poor records. The report being released by HCFA finds that some states have cited few or no nursing homes for substandard care. In



states where oversight is clearly inadequate, HCFA will terminate state contracts and contract with other entities to conduct Federally-approved inspections.

- Increase oversight of state inspections. HCFA will increase its review of the surveys conducted by the states to ensure thorough oversight, as well as provide additional training and other assistance to state-enforcement officials.
- Ensure that nursing homes are in compliance with standards before lifting sanctions. HCFA will increase oversight of state enforcement officials to ensure that they will not lift sanctions until after an on-site visit has verified compliance.

- **Preventing Bed Sores, Dehydration, and Malnutrition.** HCFA will implement new oversight to ensure that nursing homes take actions to prevent bed sores, dehydration, and malnutrition. State surveyors will be required to monitor these activities, and sanction nursing homes with patterns of violations. HCFA also will work with the Administration on Aging, the American Dieticians Association, clinicians, consumers, and nursing homes to develop best practice guidelines to prevent malnutrition and dehydration.
- **Publishing Survey Results on the Internet.** To increase accountability and flag repeat offenders for families and the public, HCFA will, for the first time, post individual nursing home survey results on the Internet.
- **Implementing New Efforts to Measure and Monitor Nursing Home Quality.** In June 1998, HCFA began collecting information on resident care through a national automated data system, known as Minimum Data Sets. This information will be analyzed to identify potential areas of inadequate care in nursing homes and to assess performance in critical areas, such as nutrition, avoidable bed sores, loss of mobility, and use of restraints. This assessment will help HCFA and state surveyors to identify nursing homes for immediate on-site inspections and to detect and correct problems earlier.

### III. PARTICIPANTS

#### Briefing Participants:

Secretary Shalala  
Bruce Reed  
Chris Jennings

#### Participants:

Secretary Shalala  
Members of senior citizen organizations

**IV. PRESS PLAN**

Pool Press.

**V. SEQUENCE OF EVENTS**

- Secretary Shalala will make remarks and introduce **YOU**.
- **YOU** will deliver a statement.
- **YOU** may answer questions from the pool, and then depart.

**VI. REMARKS**

Remarks Provided by Speechwriting.