

Congress of the United States
Washington, DC 20515

March 26, 2003

The Honorable Thomas A. Scully
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Scully:

In February 2002, we wrote to you regarding an important problem involving the “Nursing Home Compare” website maintained by the Centers for Medicare and Medicaid Services (CMS). That letter was prompted by a report we released which found that the CMS website was missing information on tens of thousands of nursing home violations discovered during investigations of complaints.¹

This problem has since been rectified, and the website now includes information on violations cited during both annual inspections and complaint inspections. We want to commend you for your rapid response. The addition of the complaint violations has resulted in a significant improvement in the quality of information on the website, which we understand receives thousands of visits each month.

However, we are writing this letter because of an additional problem: the timeliness of the annual inspection and complaint violation data reported on the Nursing Home Compare website. A new investigation by the minority staff of the Government Reform Committee indicates that it often takes months for these violations to be posted on the Nursing Home Compare website, even when a life-threatening violation is involved. As a result, family members using the website to find a nursing home for a loved one are all too often relying on incomplete and out-of-date information.

Presently, CMS State Agency Performance Standards regarding the timeliness of reporting violations are ambiguous and unclear. These standards require that “the average time from the latest date of either the State Agency approval [of the nursing home Plan of Correction] or Informal Dispute Resolution to entry into OSCAR not exceed 20 calendar days.”² Because the statutory requirements for state agency approval or informal dispute resolution allow these processes to take up to 90 days, the standards effectively allow state regulatory agencies to delay reporting violations to the OSCAR system for months.

¹House Committee on Government Reform, Minority Staff, *HHS “Nursing Home Compare” Website Has Major Flaws* (Feb. 2002).

²CMS, *State Agency Performance Standards for Fiscal Year 2002 — REVISED* (Apr. 29, 2002).

These delays in reporting violations are pervasive. Thirty states and the District of Columbia take an average of over two months to report the results of annual inspections to CMS. Eight states — Minnesota, Iowa, Delaware, Wyoming, New Mexico, Pennsylvania, Maryland, and Illinois — take an average of over 90 days to report the results of annual inspections to CMS.

An analysis of individual annual inspections indicates that delays between the inspection and reporting are often longer. During the last 15-month inspection period, states conducted 16,485 nursing home inspections. Reporting dates for almost half of these inspections — 47% — exceeded 60 days. Almost 25% of inspection results were not reported to CMS within 90 days, and over 10% of inspection results were not reported within 120 days. The results of 476 annual inspections were not reported to CMS within six months of the inspection.

These long delays in reporting occur even in cases of severe violations. Analysis of CMS annual inspection data indicate that in the most recent annual inspections, states identified 699 violations that placed residents in “immediate jeopardy.” But more than one-quarter of these violations — 189 violations — were not reported to CMS within 90 days. One of every seven of these violations — 99 violations — was not reported to CMS within 120 days.

Similar delays appear to be occurring in the reporting of complaint investigation violations. According to CMS data on complaint inspections conducted during the first six months of 2002, 29 states and the District of Columbia take an average of over two months to report the results of complaint investigations to CMS. Eight states — Maryland, Alaska, Wyoming, New York, New Hampshire, New Mexico, and Virginia — and the District of Columbia take an average of over three months to report the results of complaint investigations to CMS.³ In Maryland, the average period between the time a complaint investigation identified a violation and the time the violation was reported to CMS was over six months.

As in the case of annual inspections, an analysis of individual complaint violation reports indicates that delays between the complaint investigation and reporting are often longer than the averages. In the first six months of 2002, states reported 5,082 nursing home complaint violations. Reporting dates for 41% of complaint violations exceeded 60 days, reporting dates for 21% of complaint violations exceeded 90 days, and over 10% of complaint violations were not reported within 120 days. The results of 175 complaint violations were not reported to CMS within six months of the inspection.

We understand that a certain amount of delay in reporting inspection results to CMS is inevitable. For example, once a nursing home is cited for a violation, the home has up to 45 days to file a Plan of Correction, and states cannot report the violations to CMS until either the Plan of

³Alaska and the District of Columbia each reported only three violations during this time period.

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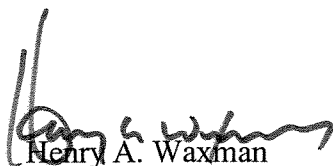
Correction has been approved or the 45 days have elapsed. However, a number of states were able to keep their average reporting delay to 45 days or less. In 10 states, the average reporting delay for annual inspection results was 45 days or less. In 15 states, the average delay for complaint investigations was 45 days or less, including several states that are averaging reporting times of less than one month.

Ensuring timely reporting by all states would significantly increase the amount of information available to families. Nationwide, nursing homes are cited for an average of 285 violations daily. Thus, reducing the national average in reporting violations by 30 days would provide families who use the Nursing Home Compare with information on over 8,500 violations that are presently unavailable. This additional information would be invaluable to family members who use Nursing Home Compare to choose a nursing home for a loved one.

We are thus requesting that you take immediate steps to ensure that states begin reporting all nursing home violations to the Nursing Home Compare database within 45 days of citation, or more rapidly as circumstances warrant. In order to allow us to track your progress in meeting this goal, please include information on reporting delays in all future biannual progress reports. In the interim, please provide us with a reply to this letter, and a plan to reduce reporting times by April 15, 2003.

If there are any questions, please feel free to contact Brian Cohen of Rep. Waxman's staff at 225-5051 or Leah Kegler of Sen. Grassley's staff at 224-7616.

Sincerely,



Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives



Charles E. Grassley
Chairman
Committee on Finance
U.S. Senate