



**Nursing Home Conditions in Texas:  
Many Nursing Homes Fail to Meet Federal Standards for Adequate Care**

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**Prepared for Rep. Ciro D. Rodriguez  
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U.S. House of Representatives**

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## Table of Contents

Executive Summary .....	1
A.    Methodology .....	1
B.    Findings .....	2
I.    Growing Concerns about Nursing Home Conditions .....	4
A.    Conditions in Nursing Homes .....	4
B.    Purpose of this Report .....	6
II.   Methodology .....	7
A.    Determination of Compliance Status .....	7
B.    Determination of Staffing Levels .....	8
C.    Interpretation of Results .....	9
III.  Nursing Home Conditions in Texas .....	10
A.    Prevalence of Violations .....	10
B.    Violations Causing Actual Harm to Residents .....	11
C.    Potential for Underreporting of Violations .....	11
IV.   Nursing Home Staffing in Texas .....	12
A.    HHS Minimum Staffing Levels .....	12
B.    Most Nursing Homes Failed to Meet the HHS Staffing Level for Total Nursing Hours .....	14
C.    Most Nursing Homes Failed to Meet the HHS Staffing Level for Registered and Licensed Nurses .....	14
D.    The Vast Majority of the Nursing Homes Failed to Meet All Minimum Staffing Levels .....	15
E.    Texas Ranks Near the Bottom in Staffing .....	15
F.    Inadequate Staffing Is Linked to Inadequate Care .....	15
V.    Conditions Remain Poor in Texas Nursing Homes .....	16
VI.   Conclusion .....	17
Appendix .....	18

## **EXECUTIVE SUMMARY**

Many families are becoming increasingly concerned about the conditions in nursing homes. Federal law requires that nursing homes “provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.” But recent studies by the U.S. General Accounting Office and others have indicated that many nursing homes fail to meet federal health standards.

To address these growing concerns, Reps. Ciro D. Rodriguez and Gene Green asked the Special Investigations Division of the minority staff of the Committee on Government Reform to investigate the conditions in nursing homes in the state of Texas. There are 1,148 nursing homes in Texas that accept residents covered by Medicaid or Medicare. These facilities serve almost 85,000 residents. This report examines the results of state inspections to assess conditions in the nursing homes.

The report finds that there are serious deficiencies in many of the nursing homes in Texas. Eighty-six percent of Texas nursing homes violated federal health standards during recent state inspections. Over one-third of the nursing homes had violations that caused actual harm to residents or placed them at risk of death or serious injury. Moreover, over 90% of the nursing homes in Texas did not meet the recommended minimum staffing levels identified by the U.S. Department of Health and Human Services (HHS).

### **A. Methodology**

Under federal law, HHS contracts with the states to conduct annual inspections of nursing homes and to investigate nursing home complaints. These inspections assess whether facilities are meeting federal standards of care, such as preventing residents from developing pressure sores (commonly known as bed sores), providing sanitary living conditions, and protecting residents from accidents. During these inspections, the state inspectors also record the staffing levels in the nursing homes.

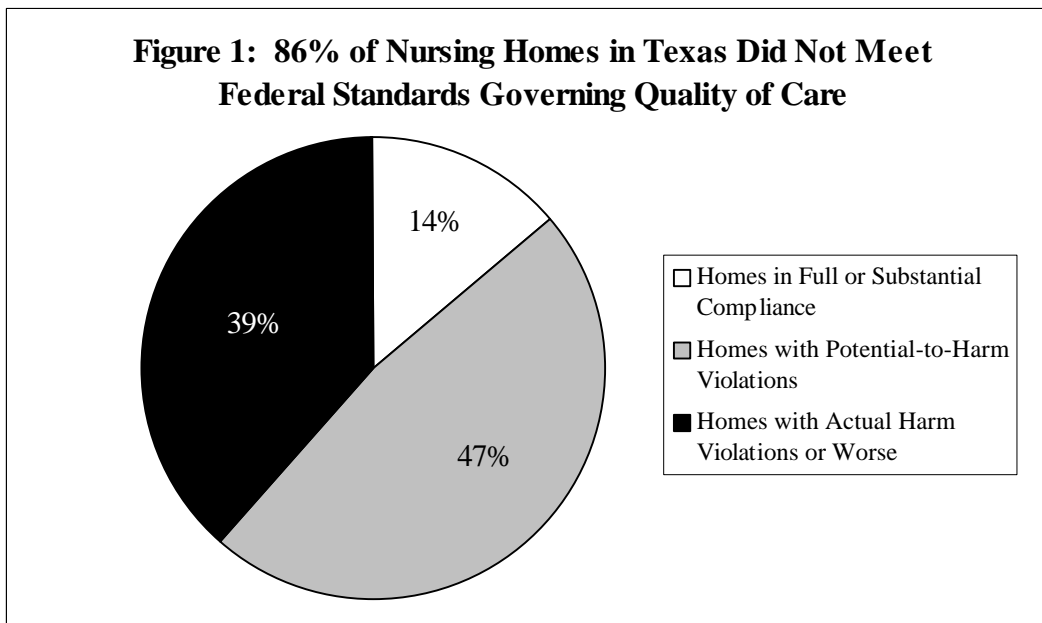
This report is based on an analysis of recent annual inspections and complaint investigations of Texas nursing homes. These inspections and investigations were conducted from March 2001 to August 2002. In addition, this report examines staffing data maintained by HHS for the period from March 2001 to August 2002.

Because this report is based on recent state inspections and investigations, the results are representative of current nursing home conditions in Texas. However, compliance records and staffing levels in individual facilities can change. New management or enforcement activities can bring rapid improvement; other changes can lead to sudden deterioration. For this reason, the report should be considered a representative “snapshot” of overall conditions in nursing homes in Texas, not an analysis of current conditions in any specific facility. Conditions could be better – or worse – at any nursing home today than when the facility was last inspected.

**B. Findings**

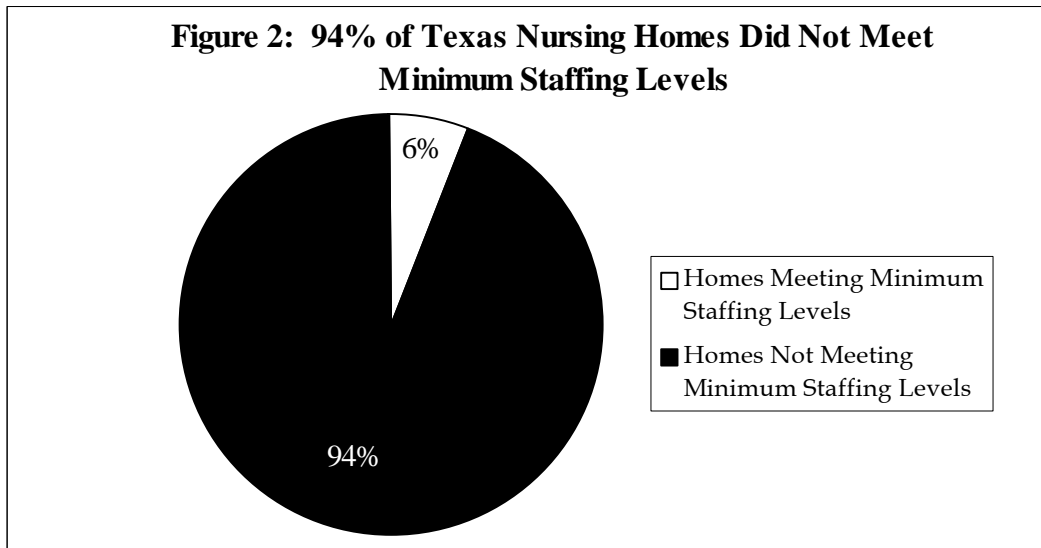
**The vast majority of nursing homes in Texas violated federal standards governing quality of care.** State inspectors consider a nursing home to be in full compliance with federal health standards if no violations are detected during the inspection. They will consider a home to be in “substantial compliance” with federal standards if the violations at the home do not have the potential to cause more than minimal harm. Of the 1,148 nursing homes in Texas, only 161 facilities (14%) were found to be in full or substantial compliance with the federal standards. In contrast, 987 nursing homes (86%) had at least one violation with the potential to cause more than minimal harm to residents or worse. On average, each of these 987 nursing homes had 9.8 violations of federal quality of care requirements.

**Many nursing homes in Texas had violations that caused actual harm to residents.** Of the 1,148 nursing homes in Texas, 443 facilities – 39% of all facilities – had a violation that caused actual harm to nursing home residents or placed them at risk of death or serious injury (see Figure 1). The 443 nursing homes with actual harm violations or worse serve 37,417 residents and are estimated to receive over \$440 million each year in federal and state funds.



**Most nursing homes in Texas did not provide adequate staffing.** During their most recent annual inspections, the vast majority of nursing homes in Texas – 1,060 of the 1,124 facilities for which staffing data was available (94%) – did not meet minimum staffing levels identified by HHS in a recent report to Congress (see Figure 2). Compared to other states, Texas nursing homes rank 43<sup>rd</sup> in the nation in hours of nursing care provided to residents each day. Texas nursing homes that failed to meet the minimum staffing levels were over three times as

likely to have violations that caused actual harm to residents compared to nursing homes that met all minimum staffing levels.



**Nursing home conditions remain poor in Texas.** Two years ago, in October 2000, the Special Investigations Division assessed nursing home conditions in Texas for Rep. Ciro D. Rodriguez. That report found serious problems in Texas nursing homes, with 84% of the facilities in the state violating federal health standards. Over the past two years, little has changed.

## I. GROWING CONCERNS ABOUT NURSING HOME CONDITIONS

### A. Conditions in Nursing Homes

Increasingly, Americans are facing difficult decisions about nursing homes. The decision to move a loved one into a nursing home raises very real questions about how the resident will be treated at the nursing home. Will the resident receive proper food and medical treatment? Will the resident be assisted by staff with basic daily activities, such as bathing and dressing? Will the resident be able to live out his or her life with dignity and compassion? These are all legitimate concerns – and they are becoming more common as America ages.

In 1966, there were 19 million Americans 65 years of age and older.<sup>1</sup> That figure has now risen to 35 million Americans, or 12.4% of the population.<sup>2</sup> By 2030, the number of Americans aged 65 and older is expected to increase to 70.3 million, or 20% of the population.<sup>3</sup>

This aging population will increase demands for long-term care. In 2000, there were 1.5 million people living in more than 17,000 nursing homes in the United States.<sup>4</sup> The Department of Health and Human Services (HHS) has estimated that 43% of all 65 year olds will use a nursing home at some point during their lives. Of those who do need the services of a nursing home, more than half will require stays of over one year, and over 20% will be in a nursing home for more than five years.<sup>5</sup> By 2050, the total number of nursing home residents is expected to quadruple from the current 1.5 million to 6.6 million.<sup>6</sup>

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<sup>1</sup>Health Care Financing Administration, *Medicare Enrollment Trends, 1966 - 1999* (available at <http://www.hcfa.gov/stats/enrltrnd.htm>).

<sup>2</sup>U.S. Census Bureau, *Profiles of General Demographic Characteristics: 2000 Census of Population and Housing, United States* (May 2001).

<sup>3</sup>U.S. Census Bureau, *Projections of the Total Resident Population by 5-Year Age Groups, and Sex with Special Age Categories: Middle Series, 2025 to 2045* (December 1999).

<sup>4</sup>American Health Care Association, *Facts and Trends: The Nursing Facility Sourcebook*, vii (2001) (hereinafter “*Facts and Trends*”).

<sup>5</sup>HCFA Report to Congress, *Study of Private Accreditation (Deeming) of Nursing Homes, Regulatory Incentives and Non-Regulatory Initiatives, and Effectiveness of the Survey and Certification System*, §1.1 (July 21, 1998).

<sup>6</sup>*Facts and Trends*, *supra* note 4, at vii.

Most nursing homes are run by private, for-profit companies. Of the 17,023 nursing homes in the United States in 2000, over 11,000 (65%) were operated by for-profit companies.<sup>7</sup> During the 1990s, the nursing home industry witnessed a trend toward consolidation as large national chains bought up smaller chains and independent homes. As of December 2000, the six largest nursing home chains in the United States operated 2,163 facilities with almost 260,000 beds.<sup>8</sup>

Through the Medicaid and Medicare programs, the federal government is the largest payer of nursing home care. Under the Medicaid program, a federal-state health care program for the needy, all nursing home and related expenses are covered for qualified individuals. Under the Medicare program, a federal program for the elderly and certain disabled persons, skilled nursing services are partially covered for up to 100 days. In 2002, it is projected that federal, state, and local governments will spend \$65.9 billion on nursing home care, of which \$51.5 billion will come from Medicaid payments (\$32.8 billion from the federal government and \$18.7 billion from state governments) and \$12 billion from federal Medicare payments. Private expenditures for nursing home care are estimated to be \$37.8 billion (\$26 billion from residents and their families, \$7.7 billion from private insurance policies, and \$4.1 billion from other private funds).<sup>9</sup> The overwhelming majority of nursing homes in the United States receive funding through either the Medicaid program or the Medicare program, or both.

Under federal law, nursing homes that receive Medicaid or Medicare funds must meet federal standards of care. Prior to 1987, these standards were relatively weak: they focused on a facility's ability to provide adequate care, rather than on the level of care actually provided. In 1986, a landmark report by the Institute of Medicine found widespread abuses in nursing homes.<sup>10</sup> This report, coupled with national concern over substandard conditions, led Congress to pass comprehensive legislation in 1987 establishing new standards for nursing homes. This

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<sup>7</sup>*Id.* at viii.

<sup>8</sup>Aventis Pharmaceuticals, *Managed Care Digest Series 2001* (available at <http://www.managedcaredigest.com/edigests/is2001/is2001.shtml>).

<sup>9</sup>All cost projections come from: HCFA, *Nursing Home Care Expenditures Aggregate and per Capita Amounts, Percent Distribution and Average Annual Percent Change by Source of Funds: Selected Calendar Years 1980 - 2011* (available at <http://www.hcfa.gov/stats/nhe%2Dproj/proj2001/tables/t14.htm>).

<sup>10</sup>Committee on Nursing Home Regulation, Institute of Medicine, *Improving the Quality of Care in Nursing Homes* (1986). The IOM report concluded: “[I]ndividuals who are admitted receive very inadequate – sometimes shockingly deficient – care that is likely to hasten the deterioration of their physical, mental, and emotional health. They are also likely to have their rights ignored or violated, and may even be subject to physical abuse.” *Id.* at 2-3.

law requires nursing homes to “provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.”<sup>11</sup>

Implementing regulations were promulgated by HHS in 1990 and 1995. The 1987 law and the implementing regulations limit the use of physical and chemical restraints on nursing home residents. They require nursing homes to prevent pressure sores, which are painful wounds or bruises, caused by pressure or friction, that can become infected. They also establish other health standards for nursing homes, such as requiring that residents are properly cleaned and bathed, receive appropriate medical care, and are supervised to prevent falls and accidents. The regulatory requirements are codified at 42 C.F.R. Part 483.

Recently, investigators have begun to examine whether nursing homes are meeting the requirements of the 1987 law and its implementing regulations. The results have not been encouraging. Certain abusive practices documented by the Institute of Medicine in 1986, such as the improper use of physical restraints and antipsychotic drugs, have been reduced.<sup>12</sup> But health violations appear to be widespread. In a series of 1999 reports, the U.S. General Accounting Office (GAO), an investigative arm of Congress, found that “more than one-fourth of the homes had deficiencies that caused actual harm to residents or placed them at risk of death or serious injury”;<sup>13</sup> that these incidents of actual harm “represented serious care issues . . . such as pressure sores, broken bones, severe weight loss, and death”;<sup>14</sup> and that “[s]erious complaints alleging that nursing home residents are being harmed can remain uninvestigated for weeks or months.”<sup>15</sup>

## **B. Purpose of this Report**

In light of the growing concern about nursing home conditions, Reps. Ciro D. Rodriguez and Gene Green asked the Special Investigations Division of the minority staff of the Government Reform Committee to investigate the prevalence of health violations in nursing

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<sup>11</sup>42 U.S.C. §1396r(b)(2).

<sup>12</sup>The percent of residents in physical restraints dropped from 38% in 1987 to 15% in 1998; the percent of residents being administered anti-psychotic drugs dropped from 33% to 16% during the same time period. Testimony of Michael Hash, Deputy Administrator of HCFA, before the Senate Special Committee on Aging (July 28, 1998).

<sup>13</sup>GAO, *Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards*, 3 (March 1999) (hereinafter “*Additional Steps Needed*”).

<sup>14</sup>GAO, *Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit*, 2 (June 1999).

<sup>15</sup>GAO, *Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents*, 2 (March 1999).



homes in Texas. Reps. Rodriguez and Green also requested that the report examine whether facilities in Texas have enough staff to care for their residents. The report is a follow-up to a congressional report released by Rep. Rodriguez in October 2000.<sup>16</sup>

## II. METHODOLOGY

To assess the compliance records and staffing levels of nursing homes in Texas, this report analyzed two sets of data: (1) the Online Survey, Certification, and Reporting (OSCAR) database maintained by HHS, which compiles the results of nursing home inspections and staffing information reported by facilities; and (2) the nursing home complaint database maintained by HHS, which contains the results of state complaint investigations.

### A. Determination of Compliance Status

Data on the compliance status of nursing homes in Texas comes from the OSCAR database and the complaint database. These databases are compiled by the Centers for Medicare and Medicaid Services (CMS), a division of HHS.<sup>17</sup> CMS contracts with states to conduct annual inspections of nursing homes and to respond to nursing home complaints. During these inspections and investigations, the inspection team interviews a sample of residents, staff members, and family members. The inspection team also reviews a sample of clinical records. Violations of federal standards observed by the inspectors are cited by the inspection team, reported by the states to CMS, and compiled in the OSCAR and complaint databases.<sup>18</sup>

The OSCAR and complaint databases use a ranking system in order to identify the violations that pose the greatest risk to residents. The rankings are based on the severity (degree of actual harm to residents) and the scope (the number of residents affected) of the violation. As shown in Table 1, each violation is given a letter rank, A to L, with A being the least serious (an isolated violation that poses minimal risks to residents) and L being the most serious (a widespread violation that causes or has the potential to cause death or serious injury). Homes

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<sup>16</sup>Minority Staff, Special Investigations Division, House Committee on Government Reform, *Nursing Home Conditions in Texas: Many Homes Fail to Meet Federal Standards for Adequate Care* (October 2000) (hereinafter “*October 2000 Report*”).

<sup>17</sup>Prior to 2001, CMS was known as the Health Care Financing Administration (HCFA).

<sup>18</sup>In addition to tracking the violations at each facility, the OSCAR database compiles the following information about each nursing home: the number of residents and beds; the type of ownership (*e.g.*, for-profit or nonprofit); whether the facility accepts residents on Medicare and/or Medicaid; and the characteristics of the resident population (*e.g.*, number of incontinent residents, number of residents in restraints). To provide public access to this information, CMS maintains a website (<http://www.medicare.gov/nhcompare/home.asp>) where the public can obtain data about individual nursing homes.

with violations in categories A, B, or C are considered to be in “substantial compliance” with the law. Homes with violations in categories D, E, or F have the potential to cause “more than minimal harm” to residents. Homes with violations in categories G, H, or I are causing “actual harm” to residents. And homes with violations in categories J, K, or L are causing (or have the potential to cause) death or serious injury to residents.

**Table 1: CMS’s Scope and Severity Grid for Nursing Home Violations**

Severity of Deficiency	Scope of Deficiency		
	<i>Isolated</i>	<i>Pattern of Harm</i>	<i>Widespread Harm</i>
Potential for Minimal Harm	A	B	C
Potential for More Than Minimal Harm	D	E	F
Actual Harm	G	H	I
Actual or Potential for Death/Serious Injury	J	K	L

To assess the compliance status of nursing homes in Texas, this report analyzed the OSCAR database to determine the results of the most recent annual inspections of each nursing home. These inspections were conducted between March 2001 and August 2002. In addition, the report analyzed the complaint database to determine the results of any nursing home complaint investigations that were conducted during this same time period. Following the approach used by GAO in its reports on nursing home conditions, this report focused primarily on violations ranked in category G or above. These are the violations that cause actual harm to residents or have the potential to cause death or serious injury.

**B. Determination of Staffing Levels**

Data on the staffing levels in nursing homes in Texas also comes from the OSCAR database. During the annual inspections, the nursing homes provide the state inspectors with data on their staffing levels for the two weeks prior to the inspections. This information on staffing levels is then reported by the states to CMS and entered into the OSCAR database.<sup>19</sup>

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<sup>19</sup>According to some experts, this data may overestimate the number of staff involved in resident care. Researchers have suggested that nursing homes may increase their staff during the period around the survey, meaning that reported staffing levels would be higher than the staffing levels found at the nursing homes during most periods of the year. Charlene Harrington, et al., *Nursing Home Staffing and Its Relationship to Deficiencies*, 17 (August 1999). HHS research also suggests that the OSCAR data may overestimate actual staffing levels in some instances. HHS compared the staffing data in the OSCAR database with the staffing data contained in “Medicare Cost Reports,” which are audited cost statements that are prepared by nursing homes in order to receive Medicare payments. Although the HHS analysis found that in the aggregate average staffing levels in the OSCAR database and in the Medicare Cost Reports were similar, the analysis also found that for homes with lower staffing levels, the staffing levels reported in the OSCAR database were higher than the staffing levels reported in the Medicare Cost Reports.

The staffing data used in this report is the data gathered during the most recent annual inspections of nursing homes in Texas. These inspections were conducted between March 2001 and August 2002. Prior to analyzing the data, the Special Investigations Division removed reported data that was erroneous or inconsistent or did not otherwise meet standards of accuracy. The report compared these staffing levels to the minimum staffing levels necessary to provide adequate care identified by HHS.<sup>20</sup>

### **C. Interpretation of Results**

The results presented in this report are representative of current conditions in nursing homes in the state of Texas as a whole. In the case of any individual facility, however, current conditions may differ from those documented in the most recent inspection report, especially if the report is more than a few months old. Nursing home conditions can change over time. New management or enforcement activities can rapidly improve conditions; other changes can lead to sudden deterioration. According to GAO, many nursing homes with serious deficiencies exhibit a “yo-yo pattern” of noncompliance and compliance: after a facility is cited for deficiencies, it briefly comes into compliance to avoid fines or other sanctions, only to slip into noncompliance after the threat of sanctions is removed.<sup>21</sup> Furthermore, staffing turnover in nursing homes is high, and the addition or subtraction of individual staff or individual residents could change staff hours and staff-to-resident ratios in a short time.

For these reasons, this report should be considered a representative “snapshot” of nursing home conditions in Texas. It is not intended to be – and should not be interpreted as – an analysis of current conditions in any individual nursing home. Conditions could be better or worse, and staff-to-resident ratios could be higher or lower, at any individual nursing home today than when the most recent annual inspection was conducted and the most recent staffing data was reported.

The report also should not be used to compare violation rates in nursing homes in Texas with violation rates in other states. Data regarding violation rates comes from state inspections that can vary considerably from state to state in their thoroughness and ability to detect

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This indicates that for homes with lower staffing levels, the OSCAR database could overestimate actual staffing levels. See HHS, *Report to Congress: Appropriateness of Minimum Nursing Staffing Ratios in Nursing Homes*, 8-7-8-8 (Spring 2000).

<sup>20</sup>HHS, *Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II Final Report*, 1-6 (December 2001) (hereinafter “*Phase II Final Report*”).

<sup>21</sup>*Additional Steps Needed*, *supra* note 13, at 12-14.

violations. According to GAO, “[c]onsiderable inter-state variation still exists in the citation of serious deficiencies.”<sup>22</sup>

### III. NURSING HOME CONDITIONS IN TEXAS

There are 1,148 nursing homes in Texas that accept residents whose care is paid for by Medicaid or Medicare. These nursing homes have 121,187 beds that were occupied by 84,859 residents during the most recent round of inspections. The majority of these residents, 60,809, rely on Medicaid to pay for their nursing home care. Medicare pays the cost of care for 8,097 residents. Eighty-two percent of the 1,148 nursing homes in Texas are private, for-profit facilities.

The results of this investigation indicate that the conditions in these nursing homes fall below federal standards. Many residents are not receiving the care that their families expect and that federal law requires. This report also finds that the vast majority of the nursing homes do not meet the minimum staffing levels identified by HHS as necessary for adequate care.

#### A. Prevalence of Violations

Only 161 of the nursing homes in Texas were found by the state inspectors to be in full or substantial compliance with federal health requirements. The remaining 987 nursing homes – 86% of all facilities in Texas – had at least one violation that had the potential to cause more than minimal harm to their residents or worse. Table 2 summarizes these results.

**Table 2: Nursing Homes in Texas Had Numerous Violations that Placed Residents at Risk**

Most Severe Violation Cited by Inspectors	Number of Homes	Percent of Homes	Number of Residents
Complete Compliance (No Violations)	75	7%	3,075
Substantial Compliance (Risk of Minimal Harm)	86	7%	5,263
Potential for More than Minimal Harm	544	47%	39,104
Actual Harm to Residents	364	32%	30,840
Actual or Potential Death/Serious Injury	79	7%	6,577

Many nursing homes had multiple violations. State inspectors found a total of 9,624 violations in facilities that were not in complete or substantial compliance with federal requirements, an average of 9.8 violations per noncompliant home.

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<sup>22</sup>GAO, *Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives*, 16 (September 2000) (hereinafter “*Sustained Efforts Are Essential*”).

## **B. Violations Causing Actual Harm to Residents**

According to GAO, some of the greatest safety concerns are posed by nursing homes with violations that cause actual harm to residents or have the potential to cause death or serious injury. As shown in Table 2, 79 nursing homes were cited for violations that caused or had the potential to cause death or serious injury. An additional 364 nursing homes were cited for violations that caused actual harm to residents. In total, 443 nursing homes in Texas – 39% of all facilities – had serious violations that caused actual harm to residents or had the potential to cause death or serious injury. These 443 nursing homes serve 37,417 residents and are estimated to receive over \$440 million in federal and state funds each year.

Many of these facilities had multiple, actual harm violations. The 443 facilities had 1,160 violations that caused actual harm to residents or had the potential to cause death or serious injury. Over half of the nursing homes – 238 of 443 facilities – had two or more actual harm or worse violations. Fifty-eight facilities had five or more such violations.

Some of the most common actual harm violations included:

- Failing to prevent physical or sexual abuse of residents or other forms of mistreatment and neglect (209 violations);
- Failing to prevent or properly treat pressure sores (156 violations);
- Failing to prevent falls and accidents, such as failing to provide proper supervision or assistance devices to residents (155 violations);
- Improper or inadequate medical care, such as failing to provide proper treatments or drugs to residents (136 violations); and
- Failing to provide adequate nutrition and hydration to residents (111 violations).

## **C. Potential for Underreporting of Violations**

The report’s analysis of the prevalence of nursing home violations was based on the data from state inspections reported to CMS. According to GAO, even though this data is “generally recognize[d] . . . as reliable,” it may “understate the extent of deficiencies.”<sup>23</sup> One problem, according to GAO, is that “homes could generally predict when their annual on-site reviews would occur and, if inclined, could take steps to mask problems otherwise observable during

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<sup>23</sup>*Additional Steps Needed*, *supra* note 13, at 30.

normal operations.”<sup>24</sup> A second problem is that state inspectors often miss significant violations. A recent GAO report found that when federal inspectors examine nursing homes after state inspectors have inspected the facilities, the federal inspectors find more serious care problems than the state inspectors in 70% of the nursing homes. The federal inspectors also find many more violations of federal health standards.<sup>25</sup> Consequently, the prevalence of violations causing potential or actual harm may be higher than what is reported in this study.

#### **IV. NURSING HOME STAFFING IN TEXAS**

There are 1,148 nursing homes in Texas that receive Medicaid or Medicare payments. For 1,124 of these facilities (98%), there is sufficient data in the OSCAR database to evaluate staffing levels. The vast majority of these nursing homes – over 90% – fail to provide adequate staffing to residents. Compared to other states, Texas ranks 43<sup>rd</sup> in the median number of daily hours of nursing care provided to residents.

##### **A. HHS Minimum Staffing Levels**

Nursing homes cannot provide a high level of care unless they have enough well-trained staff to care for their residents. However, the staffing requirements under the 1987 federal nursing home law are minimal. In general, the law allows each nursing home to decide for itself how many hours of nursing care to provide to residents each day.

The 1987 federal law recognizes three types of nursing staff: registered nurses; licensed nurses; and nursing assistants. Different standards apply for each type of nursing staff:

- Registered nurses, who are often in a supervisory position, are nurses who have gone through two to four years of nursing education.<sup>26</sup> Under the 1987 law, all nursing homes must have a registered nurse on duty for at least eight hours per day.<sup>27</sup> This standard applies regardless of the size of the nursing home or the number of residents. The law does not specify a minimum registered nurse-to-resident ratio.
- Licensed professional nurses provide a level of care between the nursing assistant and the registered nurse. Licensed nurses generally undergo a 12 to 18 month period of training

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<sup>24</sup>GAO, *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight*, 4 (July 1998).

<sup>25</sup>*Sustained Efforts Are Essential*, *supra* note 22, at 43.

<sup>26</sup>Institute of Medicine, *Nursing Staff in Hospitals and Nursing Homes: Is It Adequate?*, 69, 74-75 (1996) (hereinafter “IOM Report”).

<sup>27</sup>42 U.S.C. § 1396r(b)(4)(c)(i).

in basic bedside nursing in order to provide care under the supervision of a registered nurse.<sup>28</sup> Under the 1987 law, nursing homes must have a licensed nurse on duty 24 hours a day.<sup>29</sup> Again, this standard applies regardless of the size of the nursing home or the number of residents and does not specify a minimum licensed nurse-to-resident ratio.

- Nursing assistants provide the majority of care in most facilities. Federal law requires that nursing assistants receive a minimal amount of special training.<sup>30</sup> The law does not, however, contain any requirements regarding the level of staffing by nursing assistants. Rather, each nursing home is permitted to determine for itself how many hours of nursing assistant care it will provide residents each day.

There is a widespread consensus among nursing home experts that current federal staffing requirements need to be improved. To assess the need for new staffing standards, HHS released the final results of a ten-year study, entitled *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes*, in April 2002.<sup>31</sup> In order to determine whether minimum nursing home staffing ratios could be identified, researchers analyzed detailed staffing and resident data from over 5,000 nursing homes. The analysis examined the ratio of nursing assistants, licensed nurses, and registered nurses to nursing home residents, and assessed whether staffing ratios affected resident outcomes, such as the risk of hospitalization or the risk of developing pressure sores.

The report found that there are minimum staffing levels below which nursing homes are at substantially greater risk for quality of care problems. The report found that facilities that fell below these standards were significantly more likely to have high numbers of residents with problems such as urinary tract infections, respiratory infections, pressure sores, and unexpected weight loss.

Based on these findings, the HHS report identified minimum staffing levels necessary to provide adequate care for residents. For nursing homes that predominantly housed residents with long-term stays of 90 days or more, the staffing levels identified by HHS would require that each resident receive at least 4.1 hours of individual care per day, including at least 2.8 hours of individual care by nursing assistants and 1.3 hours of individual care by registered or licensed

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<sup>28</sup>IOM Report, *supra* note 26, at 76.

<sup>29</sup>42 U.S.C. § 1396r(b)(4)(c)(i).

<sup>30</sup>The 1987 federal nursing home law requires that nursing assistants receive 75 hours of training and testing for competency within four months of employment. Nursing assistants must also receive 12 hours of additional training annually. IOM Report, *supra* note 26, at 157.

<sup>31</sup>*Phase II Final Report*, *supra* note 20.

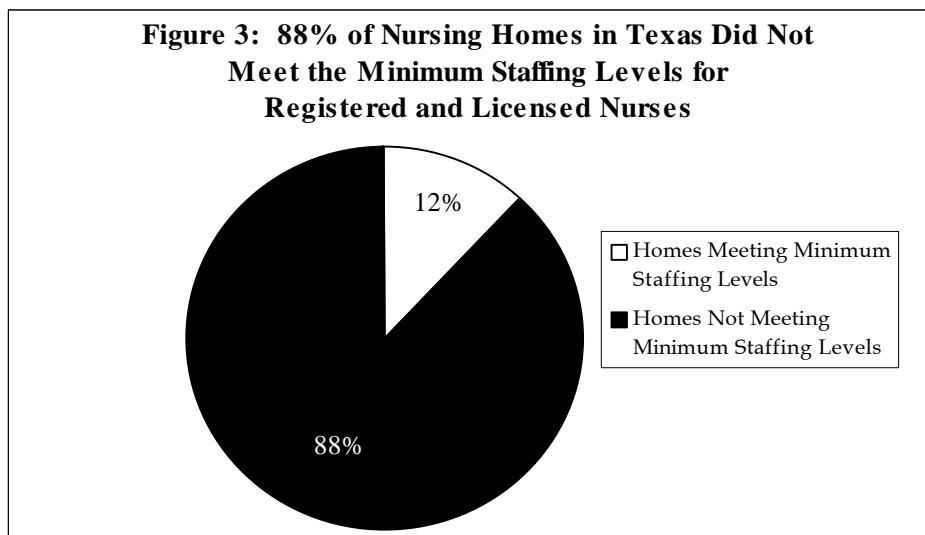
nurses, with at least 0.75 hours of care by registered nurses.<sup>32</sup> According to the HHS report, nursing homes that fail to meet these staffing levels for short- and long-term residents can have “markedly increased quality problems.”<sup>33</sup>

**B. Most Nursing Homes Failed to Meet the HHS Staffing Level for Total Nursing Hours**

The minimum staffing levels identified by HHS recommend that each nursing home resident receive a minimum of 4.1 hours of daily nursing care. In total, 917 of the 1,124 nursing homes (82%) failed to provide the recommended 4.1 hours of care to residents each day. These nursing homes provided care for over 74,000 residents. Moreover, over one-third of the facilities – 412 of 1,124 – provided less than 3.0 hours of nursing care per resident per day.

**C. Most Nursing Homes Failed to Meet the HHS Staffing Level for Registered and Licensed Nurses**

HHS identified a minimum staffing level of 1.3 hours of daily care for each resident by registered and licensed nurses, with at least 0.75 hours of this care provided by registered nurses. In total, 992 of the 1,124 nursing homes (88%) failed to meet this minimum staffing level (see Figure 3). These 992 nursing homes provide care for over 80,000 residents.



<sup>32</sup>*Id.* at 1-6. The HHS report also identified minimum staffing levels for a nursing home with a mix of residents that are predominantly in the facility for short-term stays. The HHS report found that these nursing homes must have sufficient staff to provide each short-term resident at least 3.55 hours of individual care per day, including at least 1.15 hours of individual care by registered or licensed nurses, and at least 0.55 hours of care by registered nurses, in order to meet the minimum staffing level. *Id.*

<sup>33</sup>*Id.* at 2-22.



**D. The Vast Majority of the Nursing Homes Failed to Meet All Minimum Staffing Levels**

Only 6% of the nursing homes in Texas – 64 out of 1,124 facilities – met all of the minimum hourly nursing staff levels identified by HHS. A total of 1,060 nursing homes (94%) did not meet at least one of the minimum staffing levels. These 1,060 facilities serve over 82,000 residents. Table 3 summarizes the results.

**Table 3: Most Nursing Homes in Texas Did Not Provide Sufficient Staff to Meet Minimum Staffing Levels Identified by HHS**

Status of Nursing Home	Number of Homes	Percent of Homes	Number of Residents
Met All Minimum Staffing Levels	64	6%	1,481
Failed to Meet Minimum Staffing Level for Total Daily Care	917	82%	74,623
Failed to Meet Minimum Staffing Levels for Registered and Licensed Nurses	992	88%	80,515
Failed to Meet at Least One Minimum Staffing Level	1,060	94%	82,553

**E. Texas Ranks Near the Bottom in Staffing**

It is difficult to compare rates of violations of health standards among states because the thoroughness of state inspections can vary considerably from state to state. In the case of nursing home staffing, however, state comparisons are feasible because all nursing homes report hours of daily nursing care using the same criteria. Such a comparison shows that Texas ranks near the bottom of the 50 states in nursing home staffing.

The median nursing home in Texas provided just 3.19 hours of daily nursing care per resident. This figure ranks 43<sup>rd</sup> in the nation in the number of hours of daily nursing care per resident (see Appendix).

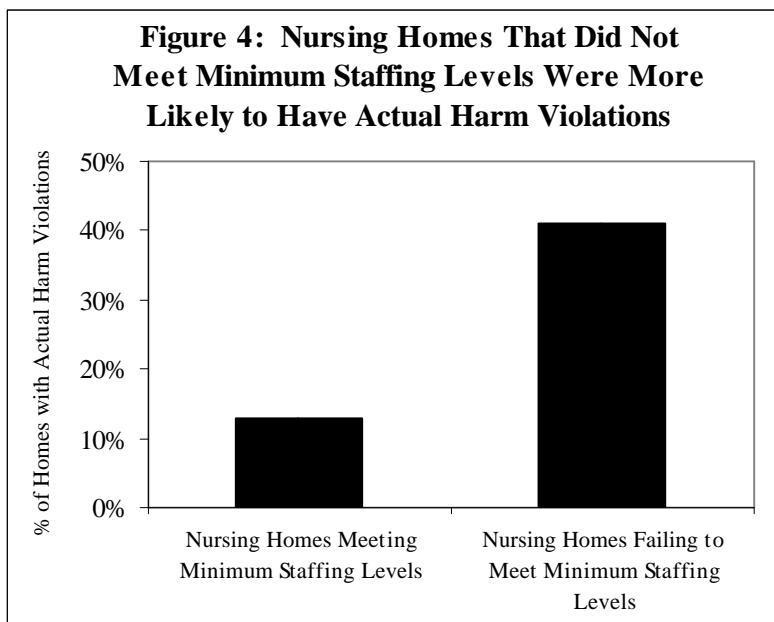
The median nursing home in Texas provided just 21 minutes of daily care by registered nurses for each resident – less than half of the HHS minimum. This ranks 46<sup>th</sup> in the nation (see Appendix).

**F. Inadequate Staffing Is Linked to Inadequate Care**

There was a direct correlation between inadequate staffing and inadequate care. The nursing homes that did not meet the minimum staffing levels identified by HHS were more likely to have serious violations of federal health standards than nursing homes that met the minimum staffing levels.

There are 64 nursing homes in Texas that met all of the minimum staffing levels identified by HHS. Only eight of these facilities that met the minimum staffing levels (13%)

were cited during annual inspections or complaint investigations for a violation that caused actual harm to residents. In contrast, 430 of the 1,060 facilities (41%) that failed to meet at least one of the minimum staffing levels were cited for a violation that caused actual harm to residents. Thus, nursing homes that failed to meet at least one of the minimum staffing levels were over three times as likely to have violations that caused actual harm to residents (see Figure 4).



As discussed above, 917 nursing homes in Texas did not provide the recommended 4.1 hours of daily nursing care per resident. Forty-two percent of these nursing homes – 384 of 917 – were cited during recent annual inspections or complaint investigations for a violation that caused actual harm to residents. In contrast, of the 207 facilities that met the minimum staffing level of 4.1 hours, 54 facilities (26%) had violations that caused actual harm to residents. Thus, nursing homes that did not meet the minimum hourly staffing level were over 60% more likely to have violations that caused actual harm to residents.

## V. CONDITIONS REMAIN POOR IN TEXAS NURSING HOMES

In October 2000, the Special Investigations Division assessed nursing home conditions in Texas for Rep. Rodriguez.<sup>34</sup> The earlier report for Rep. Rodriguez analyzed the results of the annual inspections and complaint investigations conducted from March 1998 to August 2000. It found widespread, serious deficiencies in many nursing homes in Texas.

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<sup>34</sup>*October 2000 Report, supra* note 16.

There appears to have been little change in nursing home conditions since October 2000. Since the release of the October 2000 report, there has been a slight increase in the percentage of Texas nursing homes violating federal health standards (from 84% in the October 2000 report to 86% in this report) and a slight decrease in the percentage of nursing homes cited for violations that caused or had the potential to cause death or serious injury (from 8% in the October 2000 report to 7% in this report).

Staffing levels have also not changed measurably between reports. The October 2000 report found that Texas ranked 40<sup>th</sup> among the 50 states in the median number of daily hours of nursing care provided to residents; the current report finds that Texas ranks 43<sup>rd</sup>. In terms of the number of hours of daily nursing care provided to individual residents, the median nursing home in Texas in the October 2000 report provided 3.14 hours of care, compared to 3.19 hours in this report. Thus, over the past two years, Texas facilities have added only three minutes to the amount of daily nursing care provided to residents. Moreover, there has been a 5% decrease in the number of hours of care by registered nurses provided by nursing homes in Texas from the October 2000 report to this report.

In one area, however, there has been a more significant change. The percentage of nursing homes cited for violations that caused actual harm to residents dropped from 47% in the October 2000 report to 32% in this report.

## **VI. CONCLUSION**

The 1987 nursing home law was intended to stop abuses in nursing homes by establishing stringent federal standards of care. Although the law and its implementing regulations require appropriate standards of care, compliance by the nursing homes in Texas has been poor. This report reviewed the OSCAR and complaint databases and found that many nursing homes in Texas are failing to provide the care that the law requires and that families expect. Furthermore, this report found that most nursing homes in Texas did not meet the minimum staffing levels identified by HHS as necessary to provide adequate care to residents.

## Appendix: State by State Rankings of Nursing Home Staffing Levels

### State Rankings by Total Hours of Nursing Care

Ranking	State	Median Total Daily Hours of Nursing Care
1	Alaska	5.33
2	Maine	4.15
3	Idaho	4.09
4	Hawaii	4.04
5	Alabama	3.88
6	Vermont	3.87
7	Washington	3.83
8	North Dakota	3.76
9	Kentucky	3.75
10	Florida	3.70
11	Ohio	3.69
12	Massachusetts	3.64
13	Maryland	3.63
14	Montana	3.62
15	Delaware	3.61
16	North Carolina	3.60
17	New Hampshire	3.58
17	Wyoming	3.58
17	California	3.58
20	Pennsylvania	3.57
21	Oregon	3.54
22	Connecticut	3.52
23	South Carolina	3.51
24	Colorado	3.48
25	Michigan	3.47
26	New York	3.45
27	Arizona	3.42
28	Nevada	3.40
29	Mississippi	3.39
29	New Jersey	3.39
31	Utah	3.38
32	Wisconsin	3.34
33	Rhode Island	3.33
34	Arkansas	3.32
35	Nebraska	3.31
35	Missouri	3.31
37	West Virginia	3.27
38	Virginia	3.26
39	New Mexico	3.25
40	Minnesota	3.22
41	Oklahoma	3.21
42	Georgia	3.20
43	Texas	3.19
43	Kansas	3.19
45	Tennessee	3.14
46	Indiana	3.11
46	South Dakota	3.11
48	Louisiana	2.93
49	Iowa	2.88
50	Illinois	2.80

### State Rankings by Daily Hours of Care by Registered Nurses

Ranking	State	Median Daily Hours of Care by Registered Nurses
1	Alaska	1.17
2	Maine	0.81
2	New Hampshire	0.81
4	Hawaii	0.76
5	Montana	0.74
6	Washington	0.73
6	Wyoming	0.73
8	Massachusetts	0.72
8	Delaware	0.72
10	Connecticut	0.70
10	Vermont	0.70
12	South Dakota	0.69
13	Pennsylvania	0.67
13	Rhode Island	0.67
15	Idaho	0.66
16	Oregon	0.65
16	Colorado	0.65
18	Wisconsin	0.62
19	Ohio	0.61
20	New Jersey	0.60
20	Nevada	0.60
22	North Dakota	0.58
22	Maryland	0.58
24	Michigan	0.57
25	Utah	0.56
25	Arizona	0.56
27	New York	0.55
28	Illinois	0.54
28	New Mexico	0.54
28	Kentucky	0.54
31	Iowa	0.53
31	North Carolina	0.53
33	Florida	0.52
33	Nebraska	0.52
35	Kansas	0.51
36	California	0.50
37	Indiana	0.48
38	Minnesota	0.47
39	Virginia	0.43
39	South Carolina	0.43
41	Alabama	0.42
42	Mississippi	0.41
43	West Virginia	0.40
44	Missouri	0.38
45	Tennessee	0.37
46	Texas	0.35
47	Georgia	0.30
48	Oklahoma	0.28
49	Arkansas	0.27
50	Louisiana	0.22