Nursing Home Conditions in the District of Columbia: Many Nursing Homes Still Fail to Meet Federal Standards for Adequate Care

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Prepared for Congresswoman Eleanor Holmes Norton

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EXECUTIVE SUMMARY

Many families are becoming increasingly concerned about 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.

At the request of Congresswoman Eleanor Holmes Norton, the Special Investigations Division first investigated conditions in D.C. nursing homes in January 2002. The report of that investigation found serious, widespread problems in D.C. nursing homes. Congresswoman Norton requested this follow-up report to determine whether D.C. nursing home conditions have changed over the past 22 months. There are 21 nursing homes in D.C. that accept residents covered by Medicaid or Medicare. These facilities serve over 2,800 residents.

This report finds that there continue to be serious problems in many D.C. nursing homes. All but one of the 21 nursing homes in D.C. violated federal health standards during recent state inspections. Over 40% of the nursing homes had violations that caused actual harm to residents or placed them at risk of death or serious injury. Moreover, the vast majority of nursing homes fail to provide adequate staffing.

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 the inspections, the state inspectors also record the staffing levels in the nursing homes. This report is based on an analysis of the results of recent annual inspections and complaint investigations of D.C. nursing homes. These inspections and investigations were conducted between April 2002 and July 2003.

Because this report is based on recent state inspections and investigations, the results are representative of current nursing home conditions in D.C. 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 nursing home conditions, 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.

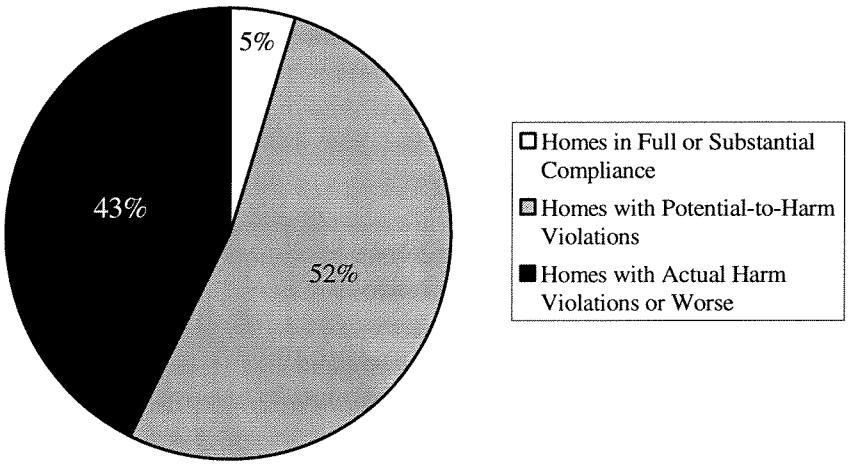
B. Findings

The vast majority of D.C. nursing homes violated federal standards governing quality of care. 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 facility to be

in "substantial compliance" with federal standards if the violations do not have the potential to cause more than minimal harm. Of the 21 nursing homes in D.C., only one facility was found to be in full or substantial compliance with the federal standards. In contrast, 20 nursing homes (95%) had at least one violation with the potential to cause more than minimal harm to residents or worse. On average, each of these 20 nursing homes had 12.4 violations of federal quality of care requirements during recent annual inspections and complaint investigations

Many D.C. nursing homes had violations that caused actual harm to residents. Of the 21 nursing homes in D.C., nine facilities – 43% 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 nine nursing homes with actual harm violations or worse serve 1,739 residents and are estimated to receive over $54 million each year in federal and state funds.

Figure 1: 95% of D.C. Nursing Homes Did Not Meet Federal Standards Governing Quality of Care



D.C. nursing homes were cited for a wide range of violations. Representatives of the nursing home industry argue that the "overwhelming majority" of nursing homes meet government standards and that many violations are actually trivial in nature. However, inspectors who visited nursing homes in D.C. uncovered many serious violations that could impact the health and safety of residents, including:

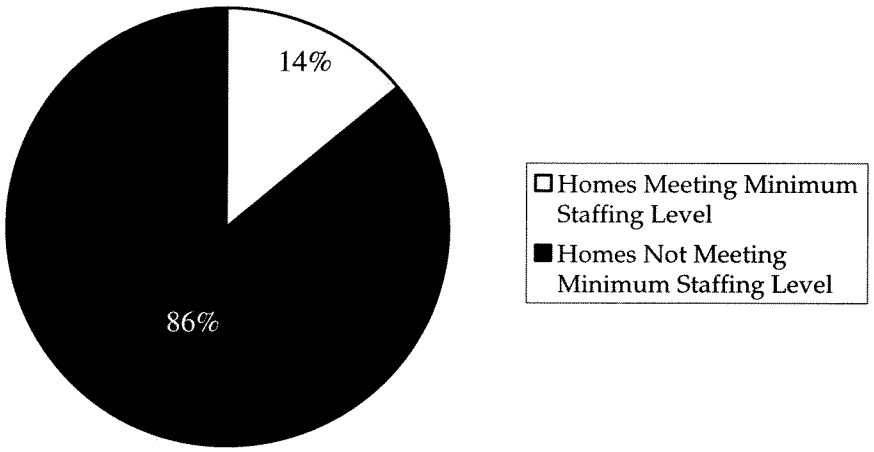
- Facilities failing to provide proper medical care, including failure to provide needed therapy; failure to properly administer medications; and failure to develop appropriate care plans for residents;

- Facilities failing to meet the nutritional needs of residents;

- Facilities failing to prevent falls and accidents, including failure to provide assistance devices and failure to remove hazards that cause accidents.

Most D.C. nursing homes did not provide adequate staffing. During their most recent annual inspections, 86% of nursing homes in D.C. – 18 of the 21 facilities for which staffing data was available – did not meet minimum staffing levels identified by HHS in a recent report to Congress (see Figure 2).

Figure 2: 86% of Nursing Homes Did Not Meet HHS Minimum Staffing Level



Nursing home conditions remain poor in D.C. In January 2002, the Special Investigations Division first assessed nursing home conditions in D.C. That report found serious problems in nursing home care, with a substantial number of nursing homes not in compliance with federal standards. This report finds that almost two years later, little progress appears to have been made. In fact, higher percentages of D.C. nursing homes are violating federal quality of care standards now than in 2002.

I. GROWING CONCERNS ABOUT NURSING HOME CONDITIONS

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.[1] That figure has now risen to 35 million Americans, or 12.4% of the population.[2] By 2030, the number of Americans aged 65 and older is expected to increase to 70.3 million, or 20% of the population.[3]

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.[4] 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.[5] By 2050, the total number of nursing home residents is expected to quadruple from the current 1.5 million to 6.6 million.[6]

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.[7]

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

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

[3]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).

[4]American Health Care Association, *Facts and Trends: The Nursing Facility Sourcebook*, vii (2001) (hereinafter "*Facts and Trends*").

[5]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).

[6]*Facts and Trends*, *supra* note 4, at vii.

[7]*Id.* at viii.

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.[8]

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 was estimated that federal, state, and local governments spent $65.9 billion on nursing home care, of which $51.5 billion came 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 were 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).[9] 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.[10] This report, coupled with national concern over substandard conditions, led Congress to pass comprehensive legislation in 1987 establishing new standards for nursing homes. This 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."[11]

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

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

[9]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).

[10]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.

[11]42 U.S.C. § 1396r(b)(2).

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.[12] 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";[13] that these incidents of actual harm "represented serious care issues . . . such as pressure sores, broken bones, severe weight loss, and death";[14] and that "[s]erious complaints alleging that nursing home residents are being harmed can remain uninvestigated for weeks or months."[15] In July 2003, GAO released a follow-up report indicating that "the proportion of nursing homes with serious quality problems remains unacceptably high."[16]

Other researchers have reached similar conclusions. In July 1998, Professor Charlene Harrington of the University of California-San Francisco, a leading nursing home expert, found that the current level of nursing home staffing is "completely inadequate to provide care and supervision."[17] In March 1999, the inspector general of HHS found an increasing number of serious deficiencies relating to the quality of resident care.[18] And in March 2002, HHS released

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[12]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).

[13]GAO, *Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards*, 3 (March 1999).

[14]GAO, *Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit*, 2 (June 1999).

[15]GAO, *Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents*, 2 (March 1999).

[16]GAO, *Nursing Home Quality: Prevalence of Serious Problems, While Declining, Reinforces Importance of Enhanced Oversight*, 3 (July 2003).

[17]Testimony of Charlene Harrington before the Senate Special Committee on Aging (July 28, 1998).

[18]HHS Office of Inspector General, *Nursing Home Survey and Certification: Deficiency Trends* (Mar. 1999).

a study that found that over 90% of nursing homes have staffing levels that are too low to provide adequate care.[19]

In light of the growing concern about nursing home conditions, Congresswoman Eleanor Holmes Norton asked the Special Investigations Division of the minority staff of the Government Reform Committee to conduct a follow-up investigation of health violations in D.C. nursing homes. This report is a follow-up to a congressional report released by Congresswoman Norton in January 2002.[20]

II. METHODOLOGY

To assess the compliance records and staffing levels of D.C. nursing homes, this report analyzed two sets of data: (1) the Online Survey, Certification, and Reporting (OSCAR) database maintained by HHS, which compiles the results of state 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 D.C. nursing homes 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.[21] 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.[22]

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[19]HHS Report to Congress, *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes Phase II Final Report*, 1-6 (Winter 2001).

[20]House Committee on Government Reform, Minority Staff, *Nursing Home Conditions in the District of Columbia: Many Homes Fail to Meet Federal Standards for Adequate Care* (Jan. 7, 2002).

[21]Prior to 2001, CMS was known as the Health Care Financing Administration (HCFA).

[22]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.

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 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		
	Isolated	*Pattern of Harm*	*Widespread Harm*
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 D.C. nursing homes, 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 April 2002 and July 2003. 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 D.C. nursing homes also comes from the OSCAR database. During the annual inspections, the nursing homes provide 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.[23] The staffing data used in

[23]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 state inspection, 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

this report is the data gathered during the most recent annual inspections of D.C. nursing homes. The report compared these staffing levels to the minimum staffing levels necessary to provide adequate care as identified by HHS.[24]

C. Interpretation of Results

The results presented in this report are representative of current conditions in D.C. nursing homes 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.[25] 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 D.C. nursing home conditions. 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 D.C. nursing homes with violation rates in other jurisdictions. Data regarding violation rates comes from state inspections that can vary considerably from state to state in their thoroughness and ability to detect violations. According to GAO, "[c]onsiderable inter-state variation still exists in the citation of serious deficiencies."[26]

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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. 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).

[24]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*").

[25]*Additional Steps Needed*, *supra* note 13, at 12-14.

[26]GAO, *Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives*, 16 (September 2000).

III. CONDITIONS IN D.C. NURSING HOMES

There are 21 nursing homes in D.C. that accept residents whose care is paid for by Medicaid or Medicare. These nursing homes have 3,114 beds that were occupied by 2,845 residents during the most recent round of inspections. The majority of these residents, 2,304, rely on Medicaid to pay for their nursing home care. Medicare pays the cost of care for 252 residents.

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.

A. Prevalence of Violations

Only one nursing home in D.C. was found by the inspectors to be in full or substantial compliance with federal health requirements. The remaining 20 nursing homes – 95% of the facilities – 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: D.C. Nursing Homes 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)	0	0%	0
Substantial Compliance (Risk of Minimal Harm)	1	5%	49
Potential for More than Minimal Harm	11	52%	1,057
Actual Harm to Residents	7	33%	1,587
Actual or Potential Death/Serious Injury	2	10%	152

Many nursing homes had multiple violations. State inspectors found a total of 248 violations in facilities that were not in complete or substantial compliance with federal requirements, an average of 12.4 violations per noncompliant home.

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, seven nursing homes were cited for violations that caused actual harm to residents, and two nursing homes were cited for violations had the potential to cause death or serious injury. In total, nine nursing homes in D.C. – 43% of all facilities – had these types of serious violations. These nine nursing homes serve 1,739 residents and are estimated to receive over $54 million in federal and state funds each year.

C. Types of Violations Cited in Nursing Homes

Inspectors who visited D.C. nursing homes uncovered many serious violations that could impact the health and safety of residents. Some of the more common violations cited by inspectors included:

- Facilities failing to provide proper medical care, including failure to provide needed therapy; failure to properly administer medications; and failure to develop appropriate care plans (121 violations);

- Facilities failing to meet the nutritional needs of residents (25 violations);

- Facilities failing to prevent falls and accidents, including failure to provide assistance devices and failure to remove hazards that cause accidents (21 violations); and

- Facilities failing to take measures to prevent infections from spreading, including failure to properly clean towels and linen and failure to deal with rodent and insect infestation (21 violations).

D. Potential for Underreporting of Violations

The report's analysis of the prevalence of nursing home violations was based in large part on the data reported to CMS in the OSCAR database. According to GAO, even though this database is "generally recognize[d] . . . as reliable," it may "understate the extent of deficiencies."[27] 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 normal operations."[28] Recently, GAO found that one-third of state inspections occurred on a predictable schedule, "allowing homes to conceal problems if they chose to do so."[29]

A second problem is that state inspectors often miss significant violations. In September 2000, GAO found that when federal inspectors inspect nursing homes after state inspectors, the federal inspectors uncovered more serious care problems than the state inspectors in 70% of the nursing homes. The federal inspectors also uncovered many more violations of federal health standards.[30] This year, GAO examined 76 inspection reports from nursing homes which had a history of problems but were not cited for actual harm violations during their most recent inspections. In 30 of the 76 inspection reports, GAO found violations that had in fact caused

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[27] *Nursing Homes: Additional Steps Needed*, *supra* note 13, at 30.

[28] GAO, *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight*, 4 (July 1998).

[29] *Prevalence of Serious Problems*, *supra* note 16, at 4.

[30] *Nursing Homes: Sustained Efforts Are Essential*, *supra* note 26, at 43.

actual harm to residents but were inaccurately cited by state inspectors as causing a lesser harm.[31] Consequently, the prevalence of violations causing potential or actual harm may be higher than what is reported in this study.

IV. STAFFING IN D.C. NURSING HOMES

The vast majority of the 21 nursing homes in the District of Columbia – 81% – fail to provide adequate staffing 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.[32] Under the 1987 law, all nursing homes must have a registered nurse on duty for at least eight hours per day.[33] 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 in basic bedside nursing in order to provide care under the supervision of a registered nurse.[34] Under the 1987 law, nursing homes must have a licensed nurse on duty 24 hours a day.[35] 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.

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[31] *Prevalence of Serious Problems*, *supra* note 16, at 4.

[32] Institute of Medicine, *Nursing Staff in Hospitals and Nursing Homes: Is It Adequate?*, 69, 74-75 (1996) (hereinafter "IOM Report").

[33] 42 U.S.C. § 1396r(b)(4)(c)(i).

[34] IOM Report, *supra* note 32, at 76.

[35] 42 U.S.C. § 1396r(b)(4)(c)(i).

- Nursing assistants provide the majority of care in most facilities. Federal law requires that nursing assistants receive a minimal amount of special training.[36] 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.[37] 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 1.3 hours of individual care by registered or licensed nurses, of which at least 0.75 hours of care must be provided by registered nurses.[38] According to the HHS report, nursing homes that fail to meet these staffing levels can have "markedly increased quality problems."[39]

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[36]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 32, at 157.

[37]*Phase II Final Report*, *supra* note 24.

[38]*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.*

[39]*Id.* at 2-22.

B. Most Nursing Homes Failed to Meet Staffing Levels Recommended by HHS for Total Nursing Hours

The minimum staffing level identified by HHS for total nursing homes recommends that each nursing home resident receive at least 4.1 hours of daily nursing care. Most D.C. nursing homes, however, did not meet this recommended level of care in the most recent annual inspection. In total, 14 of the 21 D.C. nursing homes (67%) failed to provide the recommended 4.1 hours of care to residents each day.

Most nursing homes also failed to meet the minimum staffing level of 1.3 hours of daily care for each resident by registered or licensed nurses, of which at least 0.75 hours of care must be provided by registered nurses. In total, 15 of the 21 D.C. nursing homes (71%) failed to provide the recommended amount of registered and licensed nurse hours.

Full compliance with both of these HHS recommended staffing levels would require a nursing home to provide at least 4.1 hours of daily nursing care, of which at least 1.3 hours must be provided by registered or licensed nurses (0.75 hours of care must be provided by registered nurses). Only three nursing homes in D.C. met this standard. In total, 18 nursing homes (86%) violated one or both of the HHS recommended staffing levels.

C. Inadequate Staffing Was Linked to Inadequate Care

There was a 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 seven D.C. nursing homes that provided at least 4.1 hours of direct care to residents each day. None of these facilities were cited for violations causing actual harm or worse to residents. In contrast, 9 of the 14 nursing homes (64%) that failed to provide 4.1 hours of direct care were cited for violations causing actual harm or worse to residents.

Similarly, three D.C. nursing homes met all of the minimum staffing levels identified by HHS. Of these facilities, none were cited for violations causing actual harm or worse to residents. In contrast, 9 of the 18 nursing homes (50%) that failed to meet all of the HHS-identified staffing levels were cited for violations causing actual harm or worse to residents.

Nursing homes that provided adequate staffing were also cited for fewer numbers of violations. Seven nursing homes provided at least 4.1 hours of direct care to residents each day. These facilities were cited for an average of 9.3 violations. In contrast, the 14 nursing homes that did not provide 4.1 hours of direct care to residents were cited for 13.1 violations, or 41% more violations than those facilities with adequate staffing.

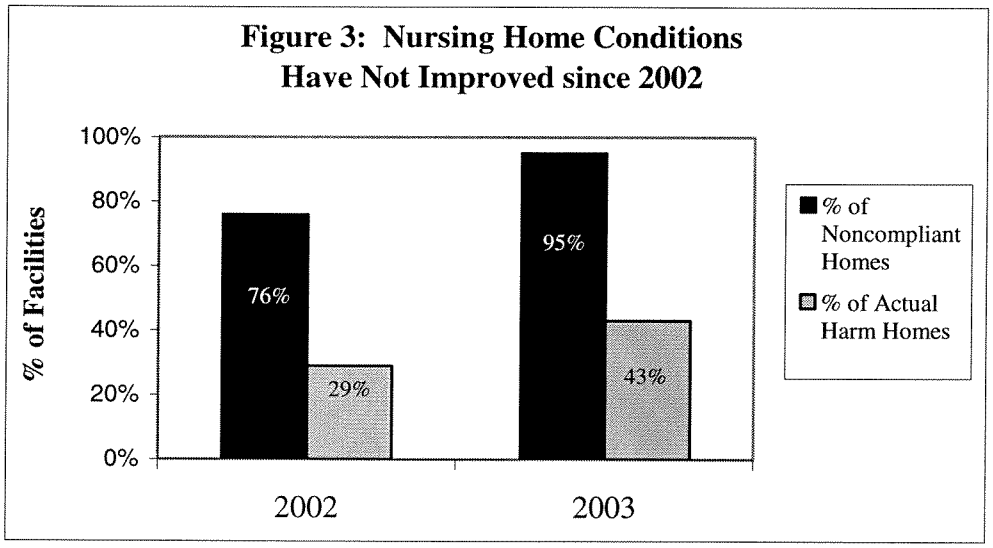
V. CONDITIONS REMAIN POOR IN D.C. NURSING HOMES

In January 2002, the Special Investigations Division first assessed nursing home conditions in the District of Columbia for Congresswoman Norton. That report analyzed the results of the annual inspections conducted from June 2000 and July 2001. It found widespread, serious deficiencies in many D.C. nursing homes. Based on an analysis of violations cited during state inspections, there appears to have been little change in nursing home conditions over the past 22 months.

The January 2002 report found that 76% of D.C. nursing homes were not in full or substantial compliance with federal standards during annual inspections or complaint investigations. This current report finds that 95% of nursing homes were not in full or substantial compliance with federal standards during annual inspections or complaint investigations. This represents a 25% increase in the percentage of noncompliant facilities (see Figure 3). This report cannot assess whether this increase in the percentage of facilities with violations is due to a deterioration in conditions or increased enforcement efforts.

There has been an increase in the percentage of nursing homes cited for actual harm violations or worse. In the January 2002 report, 29% of D.C. nursing homes were cited for actual harm violations or worse. In this report, the percentage of nursing homes cited for actual harm violations or worse increased to 43% (see Figure 3).

Figure 3: Nursing Home Conditions Have Not Improved since 2002



The average number of violations cited during annual inspections has also increased over the past 22 months. In the January 2002 report, D.C. inspectors found an average of 10.7 violations in noncompliant facilities. In this report, inspectors found an average of 12.4 violations in noncompliant facilities.

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 D.C. nursing homes remains poor. This report reviewed the OSCAR and complaint databases and found that many nursing homes in D.C. are still failing to provide the care that the law requires and that families expect.