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Oversight of Nursing Homes Is Criticized

By ROBERT PEAR Published: April 22, 2007

WASHINGTON, April 21 - Federal health officials impose only minimal penalties on nursing homes repeatedly cited for mistreatment of patients, Congressional investigators say in a new report.

As a result, they said, some nursing homes cycle in and out of compliance with federal standards and pose a continued threat to the health and safety of patients.

"Some of these homes repeatedly harmed residents over a six-year period and yet remain in the Medicare and Medicaid programs," said the report, to be issued next week by the Government Accountability Office, an investigative arm of Congress.

The Department of Health and Human Services "fails to hold homes with a long history of harming residents accountable for the poor care provided," the investigators said.

Congress established stringent standards for nursing homes in 1987. In 1998, the G.A.O. reported that "homes can repeatedly harm residents without facing sanctions." Since then, President Bill Clinton, President Bush and the nursing home industry have announced many initiatives to improve care.

But in its new report, the accountability office says that little seems to have changed at the worst-performing homes. The Bush administration rarely uses its authority to deny payment to homes with a history of compliance problems and typically imposes fines far less than the maximum of \$10,000 a day, the report said.

In Michigan, federal investigators found that a nursing home was still open even though it had repeatedly been cited for "poor quality care," poor nutrition services, medication errors and employing people who had been convicted of abusing patients.

At a nursing home in California, the report said, a patient choked to death, in part because the equipment needed to save his life, a suction machine, was broken. This home "cycled in and out of compliance four times," was cited for more than 170 serious deficiencies and was still in operation late last year, the report said.

Senator Charles E. Grassley, Republican of Iowa, said the conclusions of the study - an exhaustive review of progress over the last decade - were "very discouraging."

"After the tremendous reform effort of the last 10 years," Mr. Grassley said, "the federal agency that's supposed to coordinate regulatory efforts is taking an approach that is

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undermining the sanctions that are available to try to improve care in the most questionable nursing homes." Mr. Grassley, who requested the study, is the senior Republican on the Finance Committee, which has authority over Medicaid and Medicare.

Members of Congress are likely to use the report as a map for legislation requiring stiffer penalties for the most serious violations. Administration officials agreed that higher fines were appropriate in some cases. They said they would ask Congress for the power to collect fines more swiftly, without waiting for all appeals to be resolved.

About 1.5 million people live in the nation's 16,400 nursing homes on any given day. More than 3 million people receive nursing-home care at some point in the year. Medicaid and Medicare pay for more than two-thirds of patients.

Federal health officials accepted many findings in the report. Leslie V. Norwalk, acting administrator of the Centers for Medicare and Medicaid Services, said her agency was taking steps to strengthen enforcement.

The investigators said they had purposely focused on nursing homes with a history of compliance problems. Bruce A. Yarwood, president of the American Health Care Association, a trade group, said he believed that care at the average nursing home had improved in the last decade.

The Government Accountability Office said federal health officials hesitated to impose fines of more than \$200 a day, in part because they believed that larger penalties "could bankrupt some homes." Fines are generally so small that nursing homes view them as a "cost of doing business," with "no more effect than a slap on the wrist," the report said.

In the rare cases when federal officials try to exclude a nursing home from Medicaid and Medicare, the home often avoids the penalty by making temporary improvements and then lapsing back into noncompliance, the investigators said.

Under federal policy, the government is supposed to take immediate enforcement action against nursing homes that repeatedly cause "actual harm" to patients. But the accountability office said "immediate sanctions are often not immediate" because the Bush administration gives homes a grace period.

As a result, "the immediate sanctions policy does not appear to deter homes from harming residents in the future," the report said, and "some homes with the worst compliance histories escape immediate sanctions."

Ms. Norwalk, the official in charge of Medicaid and Medicare, said more fines "may simply not be very effective" in dealing with the worst homes. And she said patients could lose access to care if their nursing homes were denied payment under Medicaid and Medicare. Deprived of such income, a nursing home may decide to close.

Medicaid and Medicare are the largest purchasers of nursing home services, accounting for 60 percent of the \$122 billion spent on care in 2005, the most recent year for which figures are available.

The accountability office recommended closer scrutiny and more frequent inspections for nursing homes with a long record of serious violations. Ms. Norwalk agreed in principle, but said, "We must regretfully refrain" from carrying out the recommendation, and she cited budget constraints as a reason.

Federal health officials agreed that it would be helpful for consumers to know which nursing homes had been punished for providing substandard care. They promised to post such data on the Web.

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“The history of sanctions may be a good predictor of future behavior,” Ms. Norwalk said.

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