NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH INC.

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N.C. CENTER SEEKS STRONGER REGULATION OF PROBLEM NURSING HOMES

The state has strengthened regulation of nursing homes in recent years but still may not be tough enough on problem homes, the N.C. Center for Public Policy Research says in a report released today. The Center identified 10 problem homes which keep getting fined year after year. These 10 homes accounted for nearly 40% of the total amount of fines assessed against 290 nursing homes in N.C. over a three-and-a-half year period. The Center also says the state may have gotten too aggressive in fining homes for minor violations that have little impact on patient care.

"One thing we came to appreciate in the course of our study is the tangle of regulations that nursing home operators face as they struggle to provide high-quality care on limited resources," says Mike McLaughlin, editor of North Carolina Insight, the Center's quarterly magazine. "Still, the one thing that stands out is that some homes just can't seem to get it right, no matter how many chances they get. The General Assembly needs to enact legislation allowing the courts to appoint a temporary manager in these few cases."

To gauge the effectiveness of rules governing North Carolina nursing homes, the Center analyzed minutes, annual reports, and other public records covering the period from January 1988 through July 1991. These records detail the work of the Penalty Review Committee in the N.C. Division of Facility Services, the state agency charged with enforcing state nursing home regulations. The Center also interviewed providers, regulators, trade association officials, and advocates for high-quality care. The intent of the Center's study was to examine how nursing home care has been monitored since sweeping legislative reforms were enacted by the 1987 General Assembly.

Findings

Among the Center's findings were:

-- 149 of the 290 nursing homes, or 51%, were fined during the period January 1988-July 1991. The remaining 141 homes operated without a single penalty.

-- The total number of fines assessed against nursing homes each year increased nearly four-fold over a three-year period, from 101 in 1988 to 383 in 1990.

-- The average amount of each fine assessed dropped during the period, from $327.82 per violation in 1988 to $175.12 per violation in 1990. But the $67,070 in penalties assessed in 1990 still totaled more than twice the amount assessed in 1988. In 1991, average fines began to increase as rules allowing higher penalties for repeat violators took effect.

-- Certain nursing homes are repeat offenders. Seven homes accounted for nearly a third of the total amount of fines, yet only two licenses were revoked during the entire three-and-a-half year period.

-- Homes owned by for-profit providers were more than twice as likely to be fined during

the period studied as their nonprofit counterparts.

-- The national profit margin of nursing homes is extremely low (1.61%), while the occupancy rates for nursing homes in N.C. was more than 91% in 1990, both combining to make the job of a nursing home administrator a tough one.

"The state has gone from a small number of big fines to a large number of small fines and back again, and yet a few homes keep breaking the rules," says McLaughlin. "That's why we came to the conclusion that the state needs the authority to seize control of problem homes and place them under court supervision until they can get their problems straightened out. It won't work in every case, but sometimes it's the only solution."

Recommendations

The Center offers four recommendations aimed at improving the regulation of North Carolina nursing homes:

(1) Licensure officials should use the discretion afforded them under state law to avoid fining a home for a minor violation if the home can show the violation did not have an impact on patient care. For example, currently a home can be cited because an aide left a pile of dirty towels in the corner of a shower room to respond to a patient emergency or for leaving certain documentation out of a personnel file.

According to state statutes, licensing officials may impose a $500 penalty for each Type B minor violation. Some state officials apparently have read "may" as "must" in the past. Lynda McDaniel, deputy director of the Division of Facility Services, says this runs counter to the current philosophy of the licensure office.

(2) The legislature should allow nursing homes to apply fines levied for minor violations toward the cost of hiring independent consultants who would help them solve their operating problems. Homes might need consultation in a wide range of areas -- from meeting the dietary needs of patients, to sorting out complex drug regimens, to developing staffing patterns that will help them to operate efficiently.

(3) The Division of Facility Services should use its existing licensing authority to bring problem homes into compliance with regulations. The state already has the authority to issue provisional licenses and even suspend admissions "where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident." Licensure officials should be quick to use this authority when patient health is at risk, the Center says.

(4) The legislature should pass a law allowing the courts to appoint a temporary manager to operate problem homes that fail to correct their problems and represent a serious threat to residents.

At least 16 states and the District of Columbia have the authority to transfer control of problem homes under court order. A bill that would have provided for temporary management in North Carolina (SB 731) was introduced in the N.C. Senate during the 1991 session but stalled in committee. The Center says this bill should be enacted.

"Temporary management represents the missing piece in the regulatory puzzle," says McLaughlin. "One reason regulators are reluctant to shut down problem homes is the difficulty of locating nursing home beds and of moving frail residents. Temporary management would solve the problem by allowing the residents to stay in the home while bringing in a new management team."

Problem Homes in N.C.

The Center identified 10 problem homes that keep getting fined year after year and never seem to clean up their act. These top 10 violators accounted for nearly 40% of the total fines assessed by the state. In one instance, patient care deteriorated while the operators of a Rowan County nursing home, Jolene's, was facing Medicaid fraud charges. The home racked up $8,395 in fines from 1988 through October 1990, when the Penalty Review Committee finally pulled its license -- the third highest total in fines of the 290 homes included in the Center study. In one case, the home was cited for failing to seek medical treatment for a resident with an infected wound on her leg. The leg eventually had to be amputated.

In another much-publicized case, Hillhaven-Orange, a Durham nursing home owned by a Tacoma, Washington-based chain, was fined only $250 after allegations that maggots were found in a resident's vagina. A former administrator at the home says the state never proved its case, but the fine stood. Hillhaven-Orange ranked second among the state's nursing homes in the total amount of fines assessed during the three-and-a-half year period studied by the Center, at $8,400. Royal Crest Health Center in Gaston County ranked first in amount of fines at $8,450. The home had changed hands in 1989 after the state threatened to revoke its license while operating under the name Autumnfield.

Although 141 homes operated without a single penalty during the three-and-a-half year period studied by the Center, the problem of repeat violators is nothing new. State Auditor Ed Renfrow pointed to the same problem in a 1981 review of how nursing home regulations were enforced. The Center found that at least one home, St. James Nursing Center in Guilford County, was still having problems a decade later. Now named Americas Health, the home ranked fifth in the total amount of fines assessed during the period studied by the Center. It was sold in 1990 under threat of closure after being penalized for such violations as failing to treat bedsores and not providing patients proper nutrition.

Nursing home operators say they face a number of problems that make compliance with rules difficult. Those problems include low Medicaid reimbursement that translates into low pay for nursing home workers. Homes have difficulty competing with hospitals and other health care facilities for nurses, operators say, and the fast food industry is a major competitor for entry-level workers like orderlies and nurses' aides. A 1990 survey by the North Carolina Association of Long Term Care Facilities found a turnover rate of 242.45 percent among domiciliary (rest) home employees.

The State Regulatory Program

The state licensure office determines whether a nursing home should receive the more serious A-level penalty or a B penalty, and the agency determines the amount the home should be fined. A-level penalties are defined by statute as those creating a "substantial risk that death or physical harm to a resident will occur." A B-level penalty is defined as one "which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur." Any contested penalties and all A penalties are forwarded to the Penalty Review Committee, a nine-member citizen committee that makes non-binding recommendations on fines against homes and is required by statute to include representatives of the nursing and rest home industries, a public representative, a nurse, and a pharmacist.

Until 1987, the state's authority to fine nursing homes was limited to $10 per patient per day. The current system allows fines of up to $5,000 for a single violation. But despite constant efforts to fine-tune the system, the debate continues over the state's nursing home review process. Operators say the state is too quick to fine them for violations that do not have an impact on patient care. "Odds are, there is going to be a breakdown, and the system's got to allow for that," says Craig Souza, president of the N.C. Health Care Facilities Association, a nursing home trade group. "For some of the advocates out there, we couldn't please them if we had an RN [registered nurse] in every room."

Advocates, on the other hand, argue that the state at times puts the interests of homes ahead of the welfare of patients. "I think they bend over backwards to accommodate the facility," says Marlene Chasson, head of Friends of Residents in Long Term Care -- a statewide nursing home reform group based in Raleigh. "Compromises have resulted in residents' rights being undermined."

Why This Is Important: A Growing Elderly Population and Heavy State Medicaid Investment

North Carolina's elderly population is increasing, which likely will mean increased demand for nursing home beds in the future. When the Center conducted its research in the summer of 1991, there were 290 North Carolina nursing homes. Currently, the number exceeds 310. Increased demand for nursing home care also increases the need for careful monitoring of nursing home performance. One massive study by the federal government found the state's nursing homes below the national average on six of 32 performance indicators.

The state has a high percentage of elderly poor because of the number of its residents working in agriculture and low-wage manufacturing jobs. That means more dependence on Medicaid for nursing home residents. Currently, about 75 percent of the state's nursing home residents are Medicaid patients, compared to a national average of some 60 percent. North Carolina nursing homes are heavily dependent on Medicaid reimbursement. The average daily Medicaid reimbursement rate for skilled care in a nursing home for the 1991-92 fiscal year is $78.66, with a maximum of $84.64. For intermediate care, the rate averages $59.60 a day, with a cap of $63.84. Profit margins are extremely tight. An analysis of 1989 Medicare and Medicaid cost reports found median profit margins nationwide of 1.61 percent.

The N.C. Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to study public policy issues facing North Carolina and evaluate state government programs. This research project was supported by grants from the A. J. Fletcher Foundation in Raleigh and the Kathleen Price and Joseph M. Bryan Family Foundation in Greensboro. The Center also receives general operating support from the Z. Smith Reynolds and Mary Reynolds Babcock Foundations, 120 corporate contributors, and about 750 individual and organizational members. In addition to publishing North Carolina Insight magazine, the Center has conducted studies on disparities in funding between rich and poor school districts in North Carolina, access to health care, and ways to increase voter participation.

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Copies of the issue of Insight magazine containing the research on North Carolina nursing home regulation can be obtained from the Center for $6.36 plus $1.50 for postage and handling. To order, call (919) 832-2839, or write the N.C. Center, P.O. Box 430, Raleigh, N.C. 27602.

For more information, call Mike McLaughlin at the Center at (919) 832-2839.

Table 3. Nursing Homes in North Carolina Receiving the Highest Dollar Amount in Fines, Jan. 1988–July 1991*

Nursing Home	County	Rank by $	Total Penalized	Number of Fines	Avg. Fine
Royal Crest Health Center (formerly Autumnfield)	Gaston	1	$8,450	16	$528.12
Hillhaven-Orange	Orange	2	8,400	29	289.65
Jolene's Nursing (now Brightmoor)	Rowan	3	8,395	27	310.92
Americas Health Care	Cumberland	4	8,365	23	363.69
St. James Nursing (now Americas Health)	Guilford	5	8,000	29	275.86
Louisburg Nursing Center	Franklin	6	7,830	34	230.29
High Point Care Center	Forsyth	7	7,700	17	452.94
Autumnfield of Lowell (now Royal Crest Health Care Center)	Gaston	8	5,200	7	742.85
Medical Park Nursing	Guilford	9	4,765	19	250.78
Blue Ridge Manor	Wake	10	4,700	16	293.75
Total			**$71,805****	**217**	

*Includes fines assessed by the Licensure Office and recommended by Penalty Review Committee through July 1991. Figures are not adjusted for results of any appeals because of the difficulty of tracking the results of individual cases.

**This figure represents 39.3 percent of all fines recommended against the 290 homes for the three-and-a-half year period analyzed by the Center.

Table by Paul Barringer, Center intern.

Table 1. Fines Recommended Against Nursing Homes by Penalty Review Committee, Jan. 1988–July 1991*

Year	Number of Fines	Average Fine	Total
1988	101	$327.82	$ 33,110
1989	174	273.05	47,510
1990	383	175.12	67,070
1991 (1/2)	107	328.69	35,170
Total	765	239.03	182,860

*Includes fines assessed by the Licensure Office and recommended by Penalty Review Committee through July 1991. Figures are not adjusted for results of any appeals because of the difficulty of tracking the results of more than 760 cases. Total includes multiple violations against individual homes.

Table by Paul Barringer, N.C. Center intern