



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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Grassley Urges Improvements in Quality of Care for Kidney Dialysis Patients

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, is urging the government agencies in charge of overseeing the quality of care for Medicare-covered kidney dialysis patients to do a much better job. Grassley raised the issue after a new report he requested shows poor care at a substantial number of dialysis facilities and serious lapses in government oversight of those facilities.

Following are Grassley's letter to the relevant agencies and the General Accounting Office report he requested.

November 3, 2003

The Honorable Tommy G. Thompson
Secretary
Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Mr. Thomas Scully
Administrator
Centers for Medicare & Medicaid Services
Department of Health & Human Services
200 Independence Avenue, SW Room 339G
Washington, DC 20201

Dear Secretary Thompson and Administrator Scully:

I am outraged by the lack of improvement in the quality of care being given to Medicare beneficiaries on dialysis. I am further enraged by the lapses in federal and state oversight

documented in the recent General Accounting Office (GAO) report entitled Dialysis Facilities: Problems Remain in Ensuring Compliance with Medicare Quality Standards (GAO-03-882). According to the GAO's report:

- A substantial number of dialysis facilities do not achieve minimum patient outcomes specified in clinical practice guidelines, with significant proportions of their patients receiving inadequate dialysis or treatment for anemia. More specifically, patients are not receiving treatments meeting the minimum standards recommended by the National Kidney Foundation. This lack of adequate treatment has an adverse effect on the health of patients.
- Between FY 1998 and 2002, inspections revealed that 15% of facilities surveyed had serious quality problems that, if left uncorrected, would warrant termination from the Medicare program.
- Federal monitoring of state agencies' performance of surveys and technical assistance provided is uneven across the Centers for Medicare & Medicaid Services (CMS) regions.
- CMS has not taken steps to facilitate information sharing between federally funded ESRD networks and state agencies on the performance of individual dialysis facilities.
- CMS has not offered adequate training opportunities for surveyors inspecting end stage renal disease (ESRD) facilities.
- Infrequent, poorly targeted, and inadequate inspections allow facilities' quality of care problems to go undetected or remain uncorrected.
 - Only 9 of 51 state survey agencies consistently met CMS's goal to inspect 33% of ESRD facilities annually.
 - In FY 2002, 216 out of 4,011 facilities nationwide went 9 or more years without an inspection.
 - Surveyors with little experience in assessing dialysis quality may not detect deficiencies.

In its current report, the GAO recommends that the Administrator of CMS create incentives for facilities to maintain compliance with Medicare quality standards, help surveyors identify and systematically document deficiencies, and enhance monitoring and support of state survey agencies. I strongly agree with these recommendations.

In June 2000, as chairman of the Special Committee on Aging, I conducted a hearing on these very same issues. Judging by the GAO's recent findings, quality of care and oversight has not improved. Three years have passed and not much had been done to ensure the safety of dialysis patients. This is unacceptable. Activity is not the same as progress.

As the Administrator of CMS, it is your responsibility to ensure that dialysis patients receive good quality of care. I am troubled by the GAO's findings and request your immediate attention to improving the care dialysis patients receive on a daily basis. The oversight and enforcement of this industry is stuck in the Stone Age. Nursing homes are light years ahead of dialysis facilities. The dialysis industry must be brought up to date to protect the welfare of the dialysis population.

In addition, I am very concerned with the quality of care these patients receive on a daily basis. These patients, on average, spend 3 hours a day, 3 days a week in a dialysis facility. I'm not only concerned with the patients currently on dialysis; but also with those who will be following in their footsteps in the future. This is a vulnerable population that is continuously growing. Currently, the, the ESRD population includes over 300,000 patients and costs Medicare about \$16 billion dollars. According to the United States Renal Data System, the population is estimated to be over 500,000 by the year 2010 and cost the Medicare program over \$28 billion dollars.

Further, I am concerned about the numerous complaints the Finance Committee (Committee) received from dialysis patients. My staff has been in contact with dialysis patients via e-mail and phone throughout the country. They've heard instances of facility staff not responding to alarms on dialysis machines because daytime drama television was more important. More complaints include patients not receiving their prescribed dialysis sessions, technicians not paying attention to the calls of patients, medication errors occurring which result in clotted dialysis lines, dialysis lines being hooked up backwards, and patients being infiltrated during their treatments. Infiltration of blood into tissues can occur when the needle punctures the back of the vessel wall or is partially dislodged. This causes pain and swelling in a patient. Patients should not be injured and regularly experiencing pain during their treatments. These patients go through enough and do not need anything more added to their situations.

Recently, a patient told my staff that she had to clamp off her own line because air had gotten into the dialysis tubing. This woman could have suffered an embolism and died! What worries me is the fact that this patient was apologizing for the nurse because the nurse was new and not properly trained or supervised. There should be no apologizing. If facilities cannot properly train staff, they should not be in operation. Where is the oversight to ensure properly trained people are providing the care and services to dialysis patients? A properly trained staff member could mean life or death for these patients. Dialysis patients have to put their lives into the hands of a facility's staff. The last thing these patients should be asking themselves is whether or not the person sticking them with a needle is qualified.

Most troubling is the fact that patients have repeatedly told my staff that they are "afraid" to complain about the poor care they receive in dialysis facilities. There is a fear of retaliation from, among others, dialysis facility administrators. I am very bothered by the fact that there are patients out there who need dialysis to survive and they fear for their lives. These patients have enough items of concern in their daily lives. They put their lives in the hands of dialysis centers three times a week for multiple hours. They can do without any fear of retaliation. Action must be taken to reduce the burden of filing a complaint for these patients. There must be a mechanism put into place to allow a beneficiary the ability to voice his or her concern without any fear of retribution. Currently, Medicare spends almost \$16 billion dollars on dialysis services. The American taxpayer is footing the bill for these patients. These patients also pay taxes and have the right to the best quality of care available.

Another item of concern is what patients refer to as "dumping." From patient interviews my staff conducted, I learned that patients are supposedly being dismissed from dialysis facilities

without just cause. My staff was told that patients are dismissed for among other reasons, speaking up, asking too many questions, and complaining about care. They are being left to fend for themselves and often have to drive many hours to receive dialysis treatment from another facility. Patients need dialysis to survive and these allegations merit action. I am requesting that CMS look into these allegations to determine if patients are being hung out to dry. Dialysis facilities must be held accountable for the care of this vulnerable population. To “dump” a patient from a facility for voicing an opinion is completely ludicrous. If a facility no longer wishes to care for a dialysis patient, the facility should, at the very least, be held accountable for gaining convenient dialysis treatment access for the patient. A dismissal letter received from a dialysis patient gives no recommendations on where to go to receive treatment except the Emergency Room (see Exhibit 1).

I look forward to hearing from you no later than November 24, 2003 regarding the concerns set forth in the GAO report, and some specific ideas for ways the concerns laid out in the report can be allayed. I anticipate receiving a response that includes a detailed plan, including implementation dates, of how the oversight weaknesses identified in the GAO report will be addressed. After all, CMS has jurisdiction for protecting the health and welfare of each and every beneficiary receiving dialysis services.

In closing, thank you for your attention to this important matter.

Sincerely,

Charles E. Grassley
Chairman