TESTIMONY OF THE
Honorable Mark Parkinson,
President & CEO
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United States Senate Committee on Finance
July 23, 2019

Chairman Grassley, Ranking Member Wyden, and distinguished members of the Senate Finance Committee (Committee), thank you for holding this important hearing. My name is Mark Parkinson, and I am proud to be the President & CEO of the American Health Care Association (AHCA), a position that I have held since 2011. On behalf of AHCA and its members, I would like to thank the Committee for the opportunity to participate in this morning's hearing, "Promoting Elder Justice: A Call for Reform." I would also like to formally thank the thousands of men and women who every day provide excellent, high quality care to nursing home residents across this great nation.

As a former nursing home owner, former governor of the great state of Kansas, and now as President & CEO of AHCA, I have and continue to commit my career to improving care for the elderly. I would like to begin my testimony by stating clearly and unequivocally that abuse and neglect have no place in the nursing home setting and no place in any health care setting.

AHCA is the nation's largest association of long term and post-acute care providers, representing nearly 10,000 of the 15,000 plus nursing homes in the country who routinely provide high quality care to nearly four million individuals each year. We represent nearly half of all not-for-profit facilities, two-thirds of proprietary skilled nursing facilities (nursing homes), and half of all government facilities.

Our mission is improving lives by delivering solutions for quality care. While there are troubling stories and reports like those that have been testified to today, it is imperative that we remember there are also countless accounts of nursing home staff providing high quality resident care for days, weeks, and even years.

The Quality Initiative and Improvements Made

In early 2012, AHCA launched a multi-year national effort to further improve the quality of care in America's skilled nursing care centers through our Quality Initiative (Initiative). The profession's ongoing efforts have improved the lives of the individuals AHCA members serve while also reducing health care costs. In 2018, we rolled out the next phase of the Initiative to include measurable three-year targets in key areas such as hospitalizations and antipsychotic usage. The effort aligns with federal mandates for quality performance and outcomes and continues to challenge providers to achieve quantitative results in four areas by March 2021. Progress is measured by the Centers for Medicare and Medicaid Services (CMS) reporting measures endorsed by the National Quality Forum. We have targeted improvements in lowering hospitalizations, increasing customer satisfaction, improved functional outcomes and continued decreases in the use of antipsychotics. AHCA provides tools and support to help providers make improvements in these areas.

I take great pride in quality improvements we have made in nursing homes across the country. In the last seven years, both the quality of care and caregiving methods used in our nursing homes have improved dramatically. Together, we must build off this success to address some of the complex challenges faced by the nursing home community.

It bears repeating from the March 2019 hearing that over the past seven years, nursing homes have demonstrated improvement in 18 of the 24 quality outcomes measured and publicly reported by CMS. Let me elaborate.

- **Fewer residents are returning to the hospital from the nursing home.** An important measure of nursing home quality is the number of residents who return to a hospital because their condition has deteriorated during their nursing home stay. Today, that indicator of quality has changed for the better. AHCA used the all-payor measure to calculate the number of residents returning to the hospital after a nursing home stay has declined *11.6 percent* since 2011.
- **Fewer residents are receiving antipsychotic medications.** Today, less than one in seven nursing home residents are receiving antipsychotic medications. This is a significant decline from 2011, when one in four residents received an antipsychotic.
- **Staff are spending more time than ever before with residents.** Prior to the Five-Star updates earlier this year, it was remarkable to see that 75 percent of nursing homes received three out of five stars or better from CMS for staffing. In fact, in 2018, three out of every four nursing homes had ***more*** registered nurses and clinical staff caring for residents than what CMS projects they should have based on the type of residents in the facility. This is a significant improvement, even compared to just two years ago when 18 percent had staff greater than what CMS expected based on the facility's residents. At the same time, as described below, we are facing serious staffing challenges.
- **Nursing homes provide more person-centered care today than ever before.** Only one in 18 nursing home residents report experiencing pain compared to one in eight in 2011. Moreover, since 2011, common ailments among nursing home residents have steadily declined. In fact, we can document a 20 percent decrease in pressure ulcers, a 61 percent decline in urinary tract infections, and a 35 percent decline in depressive symptoms.

This is good news as we continue to train staff to better understand and care for residents with dementia without medications and replace antipsychotic medications with robust activity programs, social workers, and resident councils so that residents can be mentally, physically, and socially engaged.

Senators, we need your help. The nursing home community neither fears accountability nor oversight. It does fear that those opportunities for improvement in nursing home care across the country are stymied by factors outside of its control.

Proposals Made

Today, I do not intend to defend the incidents of poor care that have occurred; they should not happen. Rather, consistent with our mission, I offer some solutions to prevent such incidents from happening in the future.

I would like to report that subsequent to the March 2019 hearing on nursing homes, AHCA prepared and submitted a detailed letter to the Committee outlining solutions that will improve the quality of care in America's nursing homes. AHCA set forth for the Committee some actionable items that can be implemented right now.

Subsequent to that letter, AHCA staff met with Committee staff members to discuss potential legislation to reform and improve the operation of nursing homes. In response to that meeting, AHCA provided Committee staff with detailed information intended to complement the Committee's interests in reducing abuse and neglect in, among other venues, nursing homes.

In other words, Senators, we are at the table, we are active, we are engaged, and most importantly, we are prepared to support reforms that will continue to improve the lives of America's elderly.

Our May 7, 2019 letter to the Committee details AHCA's recommendations to improve quality care in America's nursing homes.

First, AHCA specifically noted that it is imperative for follow-up surveys conducted by CMS, which investigates abuse allegations and conducts inspections to confirm the existence or non-existence of abuse allegations, to be completed more quickly. This is good common sense. Indeed, if there is abuse, CMS should want to capture it quickly rather than allow a situation to fester. The nursing home community agrees.

Next, it is AHCA's position that one of the root causes for many of the incidents cited by CMS for neglect frequently lies in part with a nursing home's ability to hire, engage, and retain skilled, talented, and suitable staff to care for this frail and vulnerable population. Unfortunately, and as AHCA testified earlier, there is a national workforce shortage, which is even worse in the rural areas. We need your help; we cannot solve this problem alone. We are thinking creatively about solutions, such as a loan forgiveness program. At the same time, and as reported by the Medicare Payment Advisory Commission in 2018, nursing homes have no extra room to increase costs compared to the reimbursements they receive from Medicaid and Medicare – which cover three-fourths of residents in nursing homes.

We are also in desperate need of a stronger process to prevent people who are at risk of inflicting abuse or neglect from working in nursing homes. We have asked repeatedly for facilities to have access to the National Practitioner Data Bank so that we can better vet individuals before hiring them. No one – not you, not I, not anyone – wants sexual predators or those with tendencies to injure the frail to be employed by any nursing facility.

AHCA also continues to strongly support a mechanism for public reporting on resident and family satisfaction. Nursing homes are the only sector without a CMS reporting requirement on satisfaction. Making consumer satisfaction information available to families and future residents will go a long way towards enhancing transparency regarding the operation of a nursing home.

Now, I would like to briefly address the June 2019 Office of Inspector's General Report (OIG). The OIG prepared a series of reports addressing the identification, reporting, and investigation of incidents of potential abuse. First, in its report entitled "Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated," (Report) the OIG determined that among Medicare beneficiaries sent to the emergency room (ER) from the nursing home "one in five high-risk hospital ER Medicare claims for treatment provided in calendar year 2016 were the result of abuse or neglect, injury of unknown source, of beneficiaries residing in a SNF." The OIG report then went on to say that nursing homes failed to report many of these and that survey agencies themselves also frequently failed to report findings of abuse to local law enforcement. Of the 51 ER claims reviewed, the state agency was not aware of 43. This by reference means that neither the nursing home nor the hospital ER or physicians reported these cases. Lastly, the OIG found that CMS itself "does not require all incidents of potential abuse or neglect and related referrals made to law enforcement and other agencies to be recorded and tracked in" the appropriate tracking system the agency maintains.

The OIG also looked at all ER visits with suspected abuse and neglect. It found that of the 34,664 claims associated with incidents of potential abuse or neglect, 7.4 percent were allegedly perpetrated by a health care worker, 9.6 percent were related to incidents that occurred in a medical facility, and 27 percent were related to incidents not reported to law enforcement. In most of the cases (64 of 94), the abuse occurred in the Medicare beneficiary's home, while 16 cases occurred in other peoples' homes or public settings. Furthermore, 12 occurred in a medical facility; and of those, only seven occurred in a nursing home.

One of the most important aspects of this report is the fact that the OIG highlighted a matter of critical importance to the nursing home community and one that has been a topic of discussion for quite some time. Specifically, the report on page 12 noted that the nursing homes, interviewed in response to why some incidents were not reported, stated that "CMS guidance was ***not clear*** and therefore, the SNFs interpreted it inconsistently." They did not try to hide these cases; instead, they did not believe the cases met the CMS definition so they did not need to report them. It was not due to lack of awareness that education will correct but confusion as to the CMS definition and reporting requirements. Interestingly, the OIG report goes on to state that even the survey agency officials across states have different interpretations of the term "suspicious." Ultimately, the OIG concludes that, "***The lack of clear guidance from CMS results in incidents going unreported by the SNFs."***

We can take this lack of clarity one step further. The definition of abuse as outlined in the Elder Justice Act (Act) differs from that in nursing home regulations. The Act also mandated timely reporting by nursing homes of suspected abuse but not in other settings; this causes confusion. The Elder Justice Act needs to require that CMS and other agencies use the same definition of abuse and neglect, separate them in enforcement and tracking, and standardize the reporting guidelines (including time to report) for all health care settings to be consistent.

Members of the Committee, I implore you again, on behalf of AHCA, that CMS be directed to clarify once and for all the definition of abuse and neglect and ensure that those same definitions and reporting standards are consistent across all health care settings. Otherwise, we cannot effectively tackle this problem.

Because AHCA was not privy to the contents of the report issued by the U.S. Government Accountability Office (GAO) prior to preparation of this statement I will, with the Committee's permission, augment my written testimony later to ensure that there is a complete record.

Conclusion

AHCA remains committed in its efforts to strive for complete elimination of all instances of abuse and neglect. We will continue working with this Committee and others to achieve that goal. But again, we need your help to implement changes that will help prevent and perhaps even one day eliminate incidents of abuse and neglect.

Members of the Committee: our passion, our commitment, and our goal are to challenge ourselves to improve and enhance quality for all residents in both the short and long term.

The entire nursing home profession stands ready to continue working with Congress, members of this Committee, CMS, and other health care providers to enhance its mission to improve lives by delivering solutions for quality care. Thank you for the opportunity to testify today, and I look forward to answering your questions.