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Grassley continues efforts to improve safety for nursing home residents

WASHINGTON — Sen. Chuck Grassley has asked the federal government agency that's responsible for helping to safeguard nursing home residents to report on its efforts to improve fire safety at facilities nationwide.

Grassley said the independent Government Accountability Office made specific recommendations in the wake of fatal nursing home fires three years ago and that the Centers for Medicare and Medicaid Services last year decided that all nursing homes must be retrofit with sprinkler systems. In a letter to the Acting Administrator, Grassley asked about implementation of this sprinkler initiative, including information about any waivers to the requirement, and for an update on the effort to improve detection of fire risks through the survey and certification of nursing homes that is overseen by the federal government.

The text of Grassley's letter follows here.

August 21, 2007

Herb B. Kuhn  
Acting Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Acting Administrator Kuhn:

The United States Senate Committee (Committee) on Finance has exclusive jurisdiction over the Medicare and Medicaid programs. Accordingly, the Committee has a responsibility to protect the safety and well-being of the more than 80 million Americans who receive health care coverage under the Medicare and Medicaid, as well as a responsibility to all Americans to ensure that program funds are spent properly. In recent years, a series of highly publicized fires in Medicare and Medicaid-certified nursing homes have occurred, leading to questions of the

adequacy of current oversight mechanisms by the Centers for Medicare and Medicaid Services (CMS).

In 2003, the nursing home industry and the federal government were confronted with serious and far-reaching questions concerning fire safety, including: (1) were current regulations governing nursing home fire safety sufficient to detect and prevent fires, and (2) was federal and state oversight adequate to ensure that residents in Medicare and Medicaid-certified nursing homes are adequately protected during a fire? Unfortunately, it took two catastrophic fires in 2003 to elevate these questions into the national health care dialog.

The first of these tragic events occurred at a nursing home in Hartford, Connecticut. Of the 148 patients being cared for at the facility, there were 16 fatalities and more than a dozen injured. The second fire occurred later that year and resulted in 15 fatalities. While both of these events were heartbreaking, they also highlighted silent but significant problems within the system.

In response to these tragedies, former Senator Bill Frist and I asked the Government Accountability Office (GAO) to conduct a thorough review of oversight activities related to the prevention of fires at Medicare and Medicaid-certified nursing homes. Specifically, we asked the GAO to report on: (1) the rationale for not requiring all nursing homes to have sprinklers; (2) the adequacy of federal fire safety standards for, and their application to, nursing homes that lack automatic sprinkler systems; and (3) the effectiveness of state and federal oversight of nursing home fire safety. In their report to us in 2004, they reported the existence of three major deficiencies:

1. The potential cost to retrofit existing nursing homes, which has been a barrier to CMS requiring them for homes nationwide;
2. The federal standards relating to fire prevention and detection in nursing homes were weak; and
3. State and federal oversight of nursing home compliance with fire safety standards was inadequate.

The GAO report shed light on two of the most tragic nursing home fires in our nation's history. While these events are tragic, nursing home fires are more common than most people suspect. There is not a week that goes by without my staff receiving reports of a nursing home fire. Below is a short list of fires that occurred in just the last year:

- July 24, 2007 - A fire broke out in the Five Oaks Manor nursing home in Concord, NC. This fire was the result of the improper use of smoking materials.
- November 9, 2006 - A fire broke out in a resident's room at the Providence Retirement Home in New Albany, IN. The fire appeared to be the result of a lampshade that caught fire.

- July 2, 2006 - A fire broke out in a linen room at the Tonganoxie Nursing Center in Tonganoxie, KS. No injuries were reported although the home suffered heavy smoke damage.

## Unsprinklered Nursing Homes

One of the most challenging dilemmas facing the federal government and industry has been the cost of installing sprinkler systems into existing facilities. Cost has always been the major impediment to installing sprinkler systems into all existing facilities, despite the fact that there has never been a reported case of a multi-death fire in a home fitted with sprinklers. While this issue was debated between nursing home and fire safety organizations, industry representatives, and state and federal regulators at great length, there was a failure to come to a compromise.

I was pleased to learn that late last year, CMS made a decision to require all unsprinklered nursing homes to be retrofitted with a sprinkler system. This action, along with a March 2005 decision to require all patient rooms and public areas in nursing homes to have battery-operated smoke detectors, is a positive step toward ensuring that tragedies like those in Hartford and Nashville are prevented in the future.

In light of these improvements, I am interested in learning how CMS has progressed since the GAO report. Please address the following questions and comments:

1. Please provide a detailed response outlining how CMS is implementing the requirement that all existing Medicare and Medicaid-certified nursing homes to install sprinkler systems. In responding to this request, please be sure to include:
  - The number of existing facilities that will be retrofitted with sprinkler systems;
  - The estimated cost to retrofit all facilities; and
  - A timeline of when all unsprinklered facilities will be retrofitted with sprinkler systems.

The implementation of CMS's sprinkler initiative will no doubt take considerable time and resources. In the interim, there should be concerted effort to further ensure the safety of residents in facilities currently awaiting installation of a sprinkler system. Before CMS announced that it would retrofit all unsprinklered homes, one way for a facility to reach compliance was to obtain a waiver from CMS. Waivers were granted for certain deficiencies if a home could demonstrate that compensating features offer an equivalent level of fire safety. While this method was criticized by many safety experts, it was accepted as a reasonable alternative for compliance for homes which had not been retrofitted with sprinkler systems. Accordingly, please advise me of the following:

2. What efforts is CMS taking to ensure that unsprinklered homes possess an adequate level of fire detection and prevention in the interim until such a home is retrofitted with a sprinkler system?

3. For unsprinklered homes, has CMS reviewed all waivers and Fire Safety Evaluation System assessments to ensure the appropriateness for such waivers and assessments? What basis is used to determine appropriateness?
4. How many nursing homes have received these waivers since 2004? Please list which specific facilities received waivers, when the waiver was received and why.

### Federal Fire Safety Standards

The GAO also highlighted weaknesses with federal fire standards and state surveyors' ability to detect and remedy such infractions. These weaknesses ranged from the granting of inappropriate waivers to lax standards for including fire safety violations on state survey and certification reports. One of the more disturbing allegations resulting from the 2003 fires was that deficiencies in the Hartford and Nashville nursing homes existed but were not detected. CMS must ensure that the regulations governing fire safety in nursing home are adequate and that they are being followed.

5. Since the GAO report, please specifically outline the actions taken by CMS to address and review all regulations with respect to fire safety in nursing homes.
6. Has CMS been actively working with the National Fire Protection Association (NFPA) to modify existing regulations? If so, please elaborate.
7. Has CMS worked with the NFPA to adopt new regulations that will better address the deficiencies identified in the report? If so, please elaborate.

### CMS Oversight

The survey and certification process is on the front lines to detect nursing home abuse. I do, however, hear complaints that the survey and certification process often misses deficiencies. The GAO report cited this problem with respect to fire safety. Specifically, the GAO noted that CMS: (1) lacks basic data to assess the appropriateness of uncorrected deficiencies; (2) infrequently reviews state trends in citing fire safety deficiencies; and (3) provides insufficient oversight of deficiencies that are waived or that homes do not correct because of asserted compensating fire safety features. In light of this, please respond to the following questions:

8. What efforts has CMS taken to incorporate fire safety into survey and certification reviews?
9. Is the fire safety portion of the survey and certification process conducted by state officials or contracted out to local fire department personnel? Please provide a listing, by state, for how the fire safety portion of the survey and certification process is conducted.

Although eliminating fires completely from nursing homes is a desirable goal, we recognize that accidents do happen. Our goal should be to ensure that our nation's most vulnerable citizens can be protected when in fact a fire does occur at their nursing residence. I

am glad to see that CMS has started several initiatives to ensure that this population is protected and that they receive the protection and safety that they rightfully deserve.

Accordingly, I would appreciate an update on all CMS efforts to address this important issue through the questions set forth above. In responding to this request, please restate each enumerated request followed by a response.

Sincerely,

Charles E. Grassley  
United States Senator  
Ranking Member, Committee on Finance