

FINAL REPORT
REGULATION OF LONG-TERM CARE IN IOWA HEALTH CARE FACILITIES
INTERIM STUDY COMMITTEE

January 1995

AUTHORIZATION AND APPOINTMENT

The Regulation of Long-Term Care in Iowa Health Care Facilities Study Committee was established by the Legislative Council for the 1994 Interim to "review the appropriate federal and state regulations, and the level of their enforcement, as they pertain to the health, safety, and quality of life of residents at long-term care facilities throughout the state. Particular attention should be focused on what shortcomings may exist in the regulatory framework which may result in inappropriate safeguards for the well-being of residents."

MEMBERSHIP

The members of the Study Committee were:
Senator Elaine Szymoniak, Co-chairperson
Representative Mona Martin, Co-chairperson
Senator Donald Gettings
Senator Lyle Zieman
Representative Hubert Houser
Representative William Witt

COMMITTEE PROCEEDINGS

The Legislative Council authorized one meeting day for the Study Committee which was held on November 10, 1994.

The presentations and discussions of the meeting of November 10, 1994, are summarized as follows (a list of the written presentations and other materials provided to the Committee is attached to this report as attachment 1):

Ms. Pearl Johnson, Administrator, Health Facilities Division, and Ms. Beverly Zylstra, Legislative Liaison, Department of Inspections and Appeals (DIA), provided an overview of the current health care facilities regulatory system, including the responsibilities of the Division, the differences between state and federal rules and regulations, and the survey and complaint processes for long-term care facilities.

Mr. Carl McPherson, Long-Term Care Resident's Advocate/Ombudsman, Department of Elder Affairs, reviewed some of the concerns and recommendations presented in his annual report to the General Assembly entitled, "1993 Annual Report of the State Long-Term Care Resident's Advocate Program." Mr. McPherson expressed recommendations for improvement in the long-term care system which are relative to the areas of source of payment, regulatory activity including receivership procedures, abuse, consumer choices, and program barriers. Receivership procedures allow the DIA to petition the district court to place the facility under the authority of a person appointed by the director of the DIA as receiver with responsibility to bring the operation and condition of the facility into compliance.

Mr. Paul Romans, Executive Vice President, Iowa Health Care Association, introduced Ms. Sandi Tielbur, administrator of a rural nursing facility and President, Iowa Health Care Association, who reviewed the facility survey system from the perspective of a facility. Ms. Tielbur stressed the need for quality care, consistency in inspections, adequate reimbursement, and the importance of taking action against providers who do not comply with standards.

Ms. June Wilson, President, Ms. Ann Walker, Treasurer, and Ms. Pat Welsch, member, Care Center Residents Support Council, Cedar Rapids, shared their concerns regarding lack of adequate staffing at facilities, the need for increased enforcement of rules and regulations, confusion with Medicare billings and payments, and the difficulty of finding physicians to provide care in facilities.

Ms. Susan Boesen, Executive Director, Iowa Association of Homes and Services for the Aging, and Mr. Michael Van Sickle, Administrator, Rotary Ann Home, Eagle Grove, and member of Iowa Association of Homes and Services for the Aging, presented information regarding the need for a focus on outcomes, not on the regulatory process; the need for full cost reimbursement and liability protection for facilities when providing references for former employees; and current overregulation of facilities. Ms. Boesen also expressed her support for the assisted living care option.

Ms. Betty Carlson and Ms. Jane Davis, Care Review Committee members, Newton, recommended the updating of the receivership laws, increasing reimbursement for residents who are recipients of Medicaid, the placing of a cap on private pay fees, the increasing of fines for violations, and increasing staff-to-resident ratios.

Mr. Mervin Roth, Executive Director, Iowa Protection and Advocacy Services, Inc., expressed concerns regarding the lack of staff to provide regular monitoring services for all facilities at all service levels which provide services to persons with mental illness or developmental disabilities and the need to follow the process in investigating complaints, including adequate follow-up. He recommended increased legislative and financial support for advocacy services and the strengthening of oversight of the regulatory process.

Ms. Janice Easley, Mason City, shared her experiences in finding adequate care for her husband who suffered a closed head injury in 1983.

Ms. Geneva Partridge, Chairperson, Care Review Committee, Hillside Convalescent Center, Des Moines, presented recommendations in the areas of enforcement of laws, cost and reimbursement, staffing, activity levels in care facilities, the need for a national registry of nursing home employees, the need for more inspectors, and the establishment of one ombudsman for each of the 13 area agencies on aging.

Ms. Mary Murry, Care Review Committee member, Oskaloosa, and Ms. Barbara Ballou, The Coalition for Quality Nursing Home Care, shared the following: Ms. Murry spoke of her concerns relating to the care provided at Mahaska Manor in Oskaloosa and the lack of response from the regulatory system to concerns raised. Ms. Ballou recommended the establishment of a statewide abuse registry for employees, that each employee be required to wear a name tag, that compliance time be shortened following the finding of a violation, that fines be stiffened, and that nursing facilities be smoke-free environments. Ms. Ballou also suggested reviewing the Massachusetts receivership law when updating Iowa receivership provisions.

Ms. Betty Grandquist, Executive Director, Department of Elder Affairs, provided information regarding case management, assisted living programs, and preadmission screening and assessment. Ms. Grandquist noted the need for provision of a wide variety and level of services for elders, recommended review of the service systems of other countries with regard to elder populations, and expressed her support of diversification of service provision within the same facility.

Mr. Gary Gesaman, Bureau Chief, Program Services, Medical Assistance, Department of Human Services (DHS), presented a progress report regarding the waiver being sought from the federal government regarding relaxation of certain nursing home regulations. Mr. Gesaman expressed his hope that the program would be in place by July 1, 1995, with one year for set-up, three years for operation, and one year for evaluation.

Materials were also provided by Ms. Becky Devera, Care Review Committee member, Cedar Rapids, who was not able to make a formal presentation due to time constraints. The Co-chairpersons asked that her materials be summarized for the record. In her materials, Ms. Devera noted that her main concerns include abuse of residents (physical, mental, and verbal), the rights of residents, and the complaint investigation procedure of the DIA. Ms. Devera's materials include a listing of problems within the system and attachments which document instances of these problems.

RECOMMENDATIONS

The Committee discussed recommendations made during the presentations and in the information provided (an integrated list of these recommendations is attached to this report as attachment 2) and made the following recommendation:

That the Legislative Service Bureau (LSB) compile all of the recommendations made during the meeting and forward the recommendations to the Legislative Fiscal Bureau (LFB),

and, concurrently, submit a request to the Legislative Council for approval of a program evaluation, to be performed by the LFB, of the long-term care system in the state, including, but not limited to, a review of the various state agencies involved in the system. The Legislative Council is also requested to establish a date for completion of the program evaluation. The Department of Management shall also be informed of the recommendations made during the meeting. The findings of the evaluation and recommendations made by the LFB regarding the long-term care system shall be reported to the Legislative Council and to the General Assembly following completion of the evaluation.

The recommendation was submitted to the Studies Committee of the Legislative Council on November 29, 1994, and the Studies Committee made the following report:

That the recommendation of the Regulation of Long-Term Care in Iowa Health Care Facilities Study Committee, that the Legislative Fiscal Bureau perform a program evaluation of the long-term care system in the state, be sent back to the chairpersons of the Study Committee in order to allow the program evaluation request to be condensed and resubmitted.

**Materials submitted to the Regulation of Long-Term Care In Iowa Health
Care Facilities Interim Study Committee**

1. Background memorandum prepared by staff including: an introductory memo; a listing of the health facilities inspected, licensed, and certified by the Department of Inspections and Appeals (DIA); a listing of the agencies involved in the long-term care regulatory system; a summary of the OBRA survey tasks performed by the DIA; an explanation of the OBRA survey time requirements; a flow chart describing the OBRA survey; a listing of questions and responses regarding the survey process; a comparison of the rules and regulations which govern health care facilities and the resulting survey time necessitated by the rules and regulations; a copy of the 1993 Annual Report of the state Long-Term Care Ombudsman; a description of violations, associated penalties, and the process which follows the issuance of a citation to a facility; a listing of federal and state funding for surveys and complaint investigation; a memo prepared by Betty Grandquist, Executive Director, Department of Elder Affairs, and attachments regarding case management, preadmission screening and assessment, and assisted living; a memo and executive summary provided by John Fairweather, Department of Human Services, relating to the federal waiver request for a pilot project to evaluate the possible relaxation of certain regulations in nursing homes; copies of three proposals of the Older Iowans Legislature of 1994; a copy of an article relating to long-term care published in "Governing;" a copy of chapter 135C of the Code of Iowa relating to the regulation of health care facilities; and a copy of sections 231.41-44 of the Code of Iowa which establish the office and duties of the Ombudsman and the Care Review Committees.
2. Written presentation provided by Ms. Pearl Johnson, Administrator, Health Facilities Division, Department of Inspections and Appeals.
3. Written presentation provided by Ms. Sandi Tielbur, President, Iowa Health Care Association.
4. Written presentation provided by Ms. June Wilson, President, Care Center Residents Support Council, Cedar Rapids, Iowa.
5. Written presentation provided by Ms. Ann Walker, Treasurer, Care Center Residents Support Council, Cedar Rapids, Iowa.

6. Written presentation provided by Ms. Pat Welsch, member, Care Center Residents Support Council, Cedar Rapids, Iowa.
7. Written presentation provided by Ms. Sue Boesen, Executive Director, Iowa Association of Homes and Services for the Aging, Des Moines, Iowa.
8. Written presentation provided by Mr. Michael Van Sickle, Administrator, Rotary Ann Home, Inc., Eagle Grove, and member of Iowa Association of Homes and Services for the Aging.
9. Written presentation provided by Ms. Betty Carlson, member, Care Review Committee, Newton, Iowa.
10. Written presentation provided by Ms. Jane Davis, member, Care Review Committee, Newton, Iowa.
11. Written presentation provided by Ms. Geneva Partridge, Chairperson, Care Review Committee, Hillside Convalescent Center, Des Moines.
12. Written presentation provided by Ms. Mary Murry, Care Review Committee member, Mahaska Manor, Oskaloosa, Iowa.
13. Written presentation provided by Ms. Barbara Ballou, The Coalition for Quality Nursing Home Care, Oskaloosa, Iowa.
14. Fact Sheet, Long-Term Care, provided by Ms. Betty Grandquist, Executive Director, Department of Elder Affairs.
15. Proposal for federal waiver for nursing home regulation provided by Mr. Gary Gesaman, Department of Human Services.
16. Letter and information provided by Ms. Becky Devera, Cedar Rapids, Iowa.
17. Letter submitted by Ms. Darlene Tickal, Mason City, Iowa.
18. Letter submitted by Mr. E. Duane Eldred, Urbana, Iowa.
19. Letter submitted by Ms. Connie Kamish, L.P.N., Manly, Iowa.
20. Letter submitted by Ms. Alice Ferguson, Chairperson, Care Review Committee, Oskaloosa, Iowa.
21. Letter submitted by Mr. Duane and Mrs. Rosemary Johnson, Cedar Rapids, Iowa.

22. Letter submitted by Ms. Mary Parlin, Cedar Rapids, Iowa.
23. Information submitted by Mr. Christopher Mailander, Senior Legislative Representative, Bailey and Robinson, Washington, D.C.

RECOMMENDATIONS BY PARTICIPANTS IN THE REGULATION OF LONG-TERM CARE IN IOWA HEALTH CARE FACILITIES INTERIM STUDY COMMITTEE

The following is an integrated list of the recommendations made by all participants in the Regulation of Long-Term Care in Iowa Health Care Facilities Interim Study Committee meeting held on November 10, 1994:

1. In relation to payment of costs of long-term care, all of the following recommendations are to be implemented concurrently:
 - a. Facilities which participate in any public assistance program should be certified in full with no limitations on the number of recipients accepted as residents at any one time.
 - b. A waiting list of applicants for admission should be maintained based on the order of time of application. Source of payment should not be the basis for admission or placement of a resident within the facility.
 - c. Subsequent participation of a facility in a public assistance program should be prohibited if the facility previously withdrew from the program, resulting in the involuntary relocation of public assistance recipients from that facility.
2. Full-cost reimbursement should be provided to enable facilities to accept residents on a first-come/first-served basis, with exceptions allowed based upon certain situations such as subsequent admission of the spouse of a current resident.
3. Penalty amounts levied for violations including but not limited to those levied for discrimination in admission based upon source of payment and violation of residents' rights should be increased.
4. The practice of combining or dismissing founded violations should be prohibited.

5. Information relating to a complaint should be gathered from all known complainants, witnesses, and victims, and all pertinent records should also be checked. Follow-up with all parties involved should be provided following investigation of a complaint.
6. All long-term care facilities should be inspected, at least annually, regardless of the level of care provided by the facility. Adequate financing and staffing should be provided to maintain an efficient and effective regulatory system.
7. Spousal impoverishment laws for Medicaid coverage should be adjusted to reflect the needs of the spouse remaining at home when the other spouse enters a nursing facility.
8. Residents whose income exceeds 300 percent of the federal Supplemental Security Income (SSI) allowable income standard, but whose income is insufficient to cover the cost of care in a nursing facility, should be eligible to receive support under the Medical Assistance (Medicaid) program.
9. The approval/renewal of the certification/licensure of an owner/licensee/administrator should be contingent upon the facility's compliance with standards, rules, and regulations and the record of the owner/licensee/administrator should subsequently follow the individual and be considered in any subsequent application for licensure/certification.
10. Long-term care staff who are dismissed based upon a violation of a resident's rights, abuse, or any other founded violation should not receive unemployment compensation. A staff member with a record of founded abuse should lose certification/licensure.
11. Clauses in facility contracts which absolve the facility of all responsibility for the personal property of residents should be prohibited. A facility should establish a fund to reimburse residents for lost or stolen property.
12. Penalties should be levied for illegal involuntary discharges/transfers of residents.
13. A local resident's advocate/ombudsman program should be established in each of the 13 area agency on aging locations throughout the state.
14. Regulators should review facilities at the corporate level, not only at the individual facility level, and the corporation, not the individual facility, should be held accountable for repeated violations.
15. Regulators should be consistent in enforcement regardless of the size of or type of ownership of a facility.

16. Receivership should be utilized more frequently and the moneys collected from the levying of fines should be used to pay for the expenses associated with receivership.
17. The regulatory system should focus on the real social and human needs of the residents and family members and on outcomes, not only on the process, compliance, clinical procedures and recordkeeping, and should not encourage the "gotcha" system (an adversarial system). Emphasis should be placed upon addressing repeat offenders and not on providers who consistently comply. Facilities with records of repeated violations should be subject to increased fines and to revocation of licensure. The period allowed to bring a facility into compliance should be shortened.
18. The long-term care system should provide for quality care, consistent and expedient enforcement, and adequate reimbursement. Government reimbursement should reflect actual cost of care to discourage an increase in private pay rates to compensate for existing low government reimbursement rates.
19. The staff to resident ratio should be increased. The number of registered nurses on duty in a facility at any one time should be increased and at least two people capable of rendering nursing care should be available in a facility at all times. No floor in a facility should ever be left unattended. Nursing staff should be prohibited from working double shifts.
20. Clarity in and simplification of the billing and payment practices relative to long-term care including Medicare, Medicaid, and insurance coverage should be provided.
21. Concentration should be placed on improving enforcement of existing standards/rules/regulations and not on increased duplicative enforcement mechanisms.
22. Proper training should be provided for providers and regulators in maintaining a quality system.
23. Health care providers should receive protection from liability when they provide reference checks on former employees.
24. Life-threatening situations should be referred to proper authorities.
25. Facility owners should meet with the state survey team and with the facility's care review committee at least twice annually.

26. Facility staff should always wear identification badges with the name, position, and picture of the staff member and the name of the shift charge nurse should be posted.
27. Training requirements for nurse aides should be enhanced.
28. Both statewide and nationwide tracking systems should be established to perform criminal and abuse records checks of potential and existing facility employees.
29. Nursing facilities should be smoke-free environments.
30. Activity programs and care plans of residents should be regularly reviewed and should reflect the needs and abilities of the residents.
31. Regulations should be revamped to provide for a variety of levels of care and additional care choices within the same facility, including the option of assisted living.
32. Rules should be adopted to address verbal abuse.