

Senate Finance Committee

Promoting Elder Justice: A Call for Reform

July 23, 2019

10:15 AM, 215 Dirksen

Purpose

The purpose of the hearing was to examine proposed reforms to reduce neglect and abuse in nursing homes and the need to reauthorize key provisions of the Elder Justice Act.

Members Present

Chairman Grassley, Ranking Member Wyden, Senators Lankford, Stabenow, Daines, Menendez, Carper, Cardin, Warner, Casey, Brown, Cortez Masto, and Hassan

Panel I Witnesses

Ms. Megan Tinker, Senior Advisor for Legal Review, Office of Counsel to the Inspector General, United States Department of Health and Human Services (HHS)

Mr. John Dicken, Director, Health Care, United States Government Accountability Office (GAO)

Panel II Witnesses

Mr. Robert Blancato, National Coordinator, Elder Justice Coalition

Mr. Mark Parkinson, President and Chief Executive Officer, American Health Care Association

Ms. Lori Smetanka, Executive Director, the National Consumer Voice for Quality Long-Term Care

Opening Statements

Chairman Grassley said that Congress has a key role to play in ensuring the protection of America's seniors. It is critical that senior care facilities follow the law and provide the type of care that people deserve. GAO and HHS have recently released reports that show that up to a third of nursing home residents have experienced harm, and that half of this harm was preventable. Last Congress, he led passage of a bill which took many steps to protect seniors and strengthen enforcement of safety laws. But the work isn't done. Congress needs to update the key programs that were authorized as part of the Elder Justice Act and take action to prevent the growing trend of elder abuse via social media websites.

Ranking Member Wyden said that there is an opportunity for very significant bipartisan reforms to nursing home oversight. There are two key issues for the committee to confront. First, instances of physical, sexual, mental, and emotional abuse in nursing homes appear to be on the rise. Second, the federal nursing home rating system does not accurately reflect the prevalence of abuse. There are bad nursing homes and good nursing homes, and the government is failing to help consumers determine which is which. A recent investigation also revealed that the state of Oregon went 15 years without reporting incidents of abuse and neglect to the government. The government rating system must be useful and accurate.

Panel I Testimony

Ms. Tinker said that far too often, abuse and neglect is not properly identified, reported, and addressed. When lapses occur, the results can be devastating for beneficiaries and their families. We know that most providers are delivering good care. But HHS' work has revealed an alarming rate and range of potential abuse and neglect. Fundamental safeguards are lacking. First, data is not being used effectively. Second, potential abuse and neglect is not always being reported to law enforcement and state agencies. Finally, state agencies are not ensuring that identified problems are corrected. Agencies need to better use data, close the gaps in their reporting practices, and ensure that problems are quickly and effectively addressed. HHS has released a guide to help the Centers for Medicare and Medicaid Services (CMS), states, and providers to better use data to identify abuse and neglect.

Mr. Dicken said that GAO has released a report that shows a concerning trend of elder abuse. While abuse and neglect cases are rare across the country, they are growing. The increased frequency and severity of abuse is disturbing, as is the fact that much abuse remains unreported. GAO found that nursing home staff are the perpetrators in the majority of cases, and physical abuse is the most common type, followed by verbal abuse. GAO recommends that CMS require state agencies to report abuse perpetrator and type and systematically assess these trends. Second, they recommend that CMS develop guidance on information nursing homes should report to states when incidents occur. Third, GAO recommends that all state survey agencies investigate abuse allegations and share the results with CMS. Finally, CMS should require state agencies to immediately refer cases to law enforcement.

Panel I Questions and Answers

Chairman Grassley asked if it is common for nursing home residents to be denied lifesaving medication. **Ms. Tinker** said HHS has heard of a number of cases. **Chairman Grassley** asked how nursing homes and group homes differ in their reporting of incidents. **Ms. Tinker** said that both facility types have deficiencies reporting and addressing incidents. The big difference is how they are regulated. Group homes have a lot of state-specific regulations. **Chairman Grassley** asked if state and federal inspectors receive adequate training on signs of abuse and neglect. **Mr. Dicken** said inspectors are trained, but there could be more clear guidance on what to do if they do suspect a crime.

Ranking Member Wyden asked if criminal background checks are required across the country for nursing home staff. **Ms. Tinker** said no, 13 states do not require background checks, and other loopholes exist. For example, state Medicaid programs can forgo a background check if a provider is already enrolled in Medicare. **Ranking Member Wyden** asked how Congress could strengthen the nursing home rating system. **Mr. Dicken** said that GAO has made several recommendations to CMS including making information more readily available.

Sen. Lankford asked if there are some states that are only doing a state background check and no national background check. **Ms. Tinker** said yes, those are among the 13 states she mentioned. **Sen. Lankford** asked if the rating system takes into account the results of staff background checks. **Mr. Dicken** said no, not directly. It includes general issues related to staffing and abuse. **Sen. Lankford** asked if there are indicators families can find that point to very high quality facilities. **Mr. Dicken** said that adequate staffing is associated with lower frequency of abuse. Consumers should also get information beyond the rating system. **Sen. Lankford** asked if there are ways to change reporting so that more cases are reported. **Mr. Dicken** said that GAO has recommended that CMS revisit the reporting process.

Sen. Stabenow asked what CMS can do immediately, and what Congress should do legislatively. **Ms. Tinker** said that the most important thing CMS can do immediately is take a comprehensive look at the data they have to better target resources. Legislatively, Congress should provide Medicaid fraud control agents with broader authorities to investigate and prevent abuse wherever it occurs. **Mr. Dicken** said that CMS could immediately provide guidance on how state agencies should respond to abuse suspicions.

Sen. Daines asked what can be done to make sure that reports are taken seriously. **Ms. Tinker** said that CMS needs to use its data to identify risk areas and then provide more resources to those areas. **Sen. Daines** asked why abuse is underreported. **Mr. Dicken** said that some staff fear retaliation and the complaint process should be streamlined.

Sen. Menendez asked if better reporting and accountability in the nursing home system would improve the work environment and help address the staffing shortages. **Ms. Tinker** said HHS has not done work on that question specifically, but she imagines it could help. **Sen. Menendez** asked what potential barriers there are to creating a unified reporting system. **Mr. Dicken** said that GAO has not evaluated that question specifically, but existing reporting systems differ in their roles and jurisdictions. **Sen. Menendez** asked why background checks have not been more widely adopted. **Ms. Tinker** said that states often require legislation and funding to implement background checks.

Sen. Carper asked how CMS is working to address the recommendations from HHS and GAO. **Ms. Tinker** said that CMS has accepted many of their recommendations, however, they have not addressed the most important recommendation to evaluate their data.

Sen. Cardin said that the majority of abuse is taking place in non-institutional settings. He asked how Congress can address that. **Ms. Tinker** said Congress could increase the authority of Medicaid fraud units. **Sen. Cardin** asked if the government is taking appropriate steps to prevent abuse from happening. **Mr. Dicken** said more can always be done to improve prevention efforts.

Sen. Warner asked if nursing homes should have access to the national practitioner database. **Ms. Tinker** said that HHS has not done work on the benefit of that, but comprehensive background checks are critical. **Sen. Warner** asked if cuts in Medicaid

funding would put increased downward pressure on nursing home quality. **Mr. Dicken** said that adequate staffing is highly related to quality, so Congress should closely examine anything that would lower funding for nursing homes.

Sen. Hassan asked how Congress can make sure CMS is appropriately tracking incidents of reported abuse. **Ms. Tinker** said that CMS has concurred with a recommendation to change their tracking practices.

Sen. Casey asked why cost reporting is so important for nursing homes, and what CMS has done to make this information more accessible. **Mr. Dicken** said that cost reporting is important for transparency and public confidence. CMS has not complied with recommendations to make the information more accessible.

Sen. Brown asked if government needs to change the way it oversees nursing home care. **Mr. Dicken** said that a lot of systemic issues remain, though some improvements have been made. **Ms. Tinker** said oversight has focused on different issues over the years, and there have been lots of improvements. The data is better than ever today, and government should be leveraging that tool. **Sen. Brown** asked if GAO has examined quality differences between for profit and not for profit nursing homes. **Mr. Dicken** said that GAO included a number of factors in its analysis, including profit status.

Sen. Cortez Masto asked to whom abuse incidents are reported. **Ms. Tinker** said it varies. There are state survey agencies, law enforcement, and the federal government. **Sen. Cortez Masto** asked why appropriate reporting to law enforcement is important. **Ms. Tinker** said that timely reporting is critical for law enforcement to address the crime.

Panel II Testimony

Mr. Blancato said that more than 10 percent of elders are victims of abuse. This is a national emergency. Congress needs to invest money into elder abuse prevention programs at the state and local level, and better enforce laws so that federal funds are not involved in elder abuse. A new update to the Elder Justice Act should maintain the critical programs in the bill: dedicated funding for adult protective services, enhanced support for the long term care ombudsman program, and providing grants for the establishment of elder abuse forensic centers. The main objective of the Elder Justice Act was to obtain dedicated and adequate funding for elder abuse prevention. Neither has been accomplished.

Mr. Parkinson said that his organization is ready to work with Congress to improve the nursing home industry. No level of abuse and neglect should be tolerated. He looks forward to reviewing today's GAO report in depth. He recommends that Congress improve the background check system, add patient satisfaction to the nursing home rating system, address the staffing shortage, and adequately fund Medicaid.

Ms. Smetanka said that reports continue to indicate that more must be done to protect nursing home residents from abuse. Congress should take steps to establish and enforce minimum requirements for sufficient staffing, establish standards and oversight for

nursing home ownership and management, prevent the rollback of standards, increase the transparency of information, and strengthen and fund elder justice provisions.

Panel II Questions and Answers

Chairman Grassley asked if Congress should change the role of the Elder Justice Coordinating Council. **Mr. Blancato** said his organization is a big fan of the council. It is one of the great accomplishments of the Elder Justice Act.

Sen. Hassan asked how Congress can act specifically to protect seniors with disabilities from abuse and neglect. **Ms. Smetanka** said that the disability population needs specific protections, and having a strong long term care ombudsman program is critical. Adequate staffing is also hugely important.

Sen. Cortez Masto asked if Congress should set standards when it comes to staffing. **Mr. Parkinson** said that in the aggregate, it's always good to have more staff. But the industry has done a pretty good job of staffing. Any mandatory staffing requirement needs to be paid for.