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Long-Term Care Study Faults D.C. Inaction

No Fines, Violations Despite New Power

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The D.C. Department of Health has failed to use new city regulations to hire additional monitors, issue violations or impose a single fine against any nursing home nearly two years after getting the authority to do so, according to a report issued yesterday by AARP.

The report documents several incidents this year in which complaints about health and safety violations resulted in no more than a cursory investigation.

In one case, a man died of acute respiratory distress after he fell out of bed because a nursing assistant left the side rails down -- a violation of federal rules that resulted in no city fines or other sanctions.

"The responsibility for this situation lies not just with the nursing-home industry, but with the failure of the District to take its promises seriously," said the report's author, Gerald M. Kasunic of AARP Legal Counsel for the Elderly, an AARP subsidiary that provides free legal services to District residents 60 years of age and older.

The District has the main responsibility for annual inspections and complaint investigations. Since January 2002, when the new regulations were published, the city has not levied any fines, although federal authorities have imposed \$80,000 in fines against District nursing homes during that period.

For nearly eight years, from April 1994 to January 2002, the District lacked any local nursing home regulations.

Implementation of the rules did not begin until last month because it took that long to prepare the nursing homes for the new requirements, said Theodore J. Gordon, a senior deputy director the Department of Health.

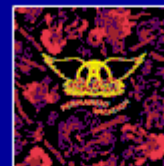
Gordon said that many of the nursing homes are in old facilities, have difficulty recruiting qualified staff and have been affected by the national shortage of nurses and nursing assistants. He said that the city's schedule of fines was not issued until January and that the federal fines were a result of the department's referrals.

But political leaders say they are impatient.

On Friday, Del. Eleanor Holmes Norton (D-D.C.) released a report noting that between April 2002 and July 2003, 40 percent of nursing homes had violations that hurt or endangered residents

The AARP report, called "Broken Promises," was released as more than 150 seniors packed a day-long

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D.C. Council hearing on the quality of care for the 2,800 residents at 21 nursing homes that receive federal Medicaid and Medicare money.

"You can judge a society by the way it treats its seniors and its youth," said council member Sandy Allen (D-Ward 8), chairman of the Committee on Human Services, at the start of yesterday's hearing. "Historically, the District has done a terrible job in the provision of services to both."

Advocates faulted Mayor Anthony A. Williams (D) for not providing enough resources to city regulators.

"The D.C. government must act on its promises to establish an effective enforcement system," said Romaine B. Thomas, president of the 87,000-member AARP District of Columbia.

As the long-term care ombudsman for the District, Kasunic monitors care at nursing homes and similar facilities. He told the council that his office received 2,200 complaints in fiscal 2003, an 11 percent increase over last year. Of the 1,988 complaints about nursing homes, the most common were about untreated symptoms, lack of appropriate care and unresponsive staff -- the same top complaints as in 2001 and 2002.

Toby S. Edelman, a lawyer at the Center for Medicare Advocacy Inc., said the city "misses and fails to cite obvious deficiencies." City inspectors discount the seriousness of violations they do not witness and fail to aggressively pursue problems noted in patients' case files, said Edelman, who studied complaints at two nursing homes from 1998 to 2003.

Gordon said he respected Kasunic but defended his department's work.

"He's out there every day, 24 hours a day," said Gordon, who oversees nursing home regulation. "I'm not there, and by the time I get there and review the circumstances, I'm dealing with what people are telling me. We do what we think is correct, and the results are the results."

The new rules require that "unusual incidents" be reported within eight hours and that by 2005 nursing homes have a registered nurse on duty 24 hours a day. They also provide for fines from \$65 to \$10,000 a day, per violation, and make it easier for the department to suspend or revoke a nursing home's license.

But Gordon warned that the department "may not be able to maintain the current inspection schedule and enforcement responsibilities without an increase in resources."

Gail L. Jernigan, president of the D.C. Health Care Association, a trade group for long-term care facilities, and administrator of the Washington Nursing Facility, said that "capricious multimillion-dollar lawsuits" and "overwhelming piles of paperwork" are among the industry's challenges.

Nursing home residents who attended the hearing offered different suggestions. "Nurses are spending more time behind computers and on paperwork instead of working with us," Queen E. Woodard, a 91-year-old resident of Stoddard Baptist Nursing Home, said to a round of "amen."

Dorretha Dade, an 80-year-old resident of the Washington Home, called for more generous reimbursement rates.

"It takes money to pay for quality care," she said.

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