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Penalties for Nursing Homes Show a Drop in Last 4 Years

By ROBERT PEAR

WASHINGTON, Aug. 5 - New government statistics show a significant decline in the number of penalties imposed on nursing homes for violations of federal health and safety standards in the last four years, even though federal officials and independent experts agree that many homes still have serious deficiencies in the quality of care.

Bush administration officials said the decline resulted, in part, from improvements at some nursing homes. But experts outside the government said it also reflected less vigorous enforcement of standards and growing workloads for inspectors.

Tommy G. Thompson, the secretary of health and human services, began a "nursing home quality initiative" in November 2002, saying that consumers would benefit from "new levels of collaboration" between nursing homes and government agencies. The centerpiece of the administration's strategy is a Web site to help consumers compare the performance of more than 16,000 nursing homes.

Data obtained by The New York Times and confirmed by the Bush administration show the decline in enforcement actions:

¶The number of nursing homes penalized for violations of federal standards declined by 18 percent, to 2,146 in 2003 from 2,622 in 2000.

¶The number of civil monetary penalties declined 12 percent, to 1,979 in 2003 from 2,242 in 2000.

¶The number of nursing homes denied Medicare or Medicaid payment for new admissions fell 47 percent, to 698 in 2003, from 1,312 in 2000. This penalty is optional in some cases and mandatory in others, when serious problems persist more than three months after an inspection.

In recent years, courts have seen a sharp increase in lawsuits alleging abuse or wrongful death of nursing home residents. Spouses and children of patients have won millions of dollars by convincing juries that their relatives died because of severe bedsores, bruises, fractures, infections, malnutrition or dehydration that went untreated.

The new statistics on enforcement come from a paper by Jerry Sandlin of the federal Centers for Medicare and Medicaid Services and David Dunbar of the Georgia Department of Human Resources. They said that many nursing homes showed a "yo-yo pattern," briefly correcting deficiencies to avoid penalties, then allowing care to deteriorate again.

The paper, titled "Barriers to Effective Enforcement," says, "The enforcement process has become increasingly complex, inefficient, inconsistently applied and demonstrably ineffective in ending yo-yo compliance and ridding the industry of chronically poor-performing providers."

Nursing homes must meet federal standards as a condition of participating in Medicaid and Medicare, from which they receive more than \$64 billion a year. Medicaid covers two-thirds of nursing home patients.

State employees, working under contract with the federal government, inspect nursing homes once a year, on average, to check compliance with federal requirements. Federal officials are supposed to visit at least 5 percent of the homes to verify the states' findings.

States, squeezed by severe fiscal problems, have been unable to hire all the inspectors they need. As a result, Mr. Sandlin said, inspectors "must rush through a survey or a survey task" because they do not have enough time.

In an e-mail response to questions about the data, Mary M. Kahn, a spokeswoman for the Centers for Medicare and Medicaid Services, said, "There are a number of possible reasons for the apparent downward trend in the number of enforcement actions." The reasons, she said, include "improved quality of care in nursing homes and the effectiveness of earlier enforcement actions."

Dennis G. Smith, a senior Medicaid official, said that consumers should view the decline as "a positive thing, showing an improvement in the performance of nursing homes."

But Rick E. Carter, president of Care Providers of Minnesota, a trade association for the state's nursing homes, said, "It's no indication of quality whatsoever," because inspectors do not use objective, reliable measures of quality.

Charlene A. Harrington, a professor at the School of Nursing of the University of California, San Francisco, said that Bush administration officials "have not been vigorous in enforcing" federal standards.

"I'm not sure if it's a deliberate reduction in enforcement or just a reduction in attention and commitment," she said.

Owners of nursing homes have long advocated a more collaborative, less punitive approach to regulation. Since 2002, the administration has paid nonprofit organizations to advise nursing homes on how to improve care.

Toby Edelman, a lawyer at the Center for Medicare Advocacy, which represents beneficiaries, said: "The administration is placing less emphasis on direct enforcement of standards of care. Its basic approach is to collaborate with the industry and give information to consumers, in the hope that market forces will produce improvements in quality."

The Government Accountability Office, an investigative arm of Congress, found recently that one-fifth of nursing homes had been cited for "serious deficiencies involving actual harm or immediate jeopardy to residents," while "59 percent of all nursing homes nationwide were cited for fire safety deficiencies."

Moreover, it said, in follow-up surveys, inspectors often overlooked or minimized problems, so the official reports suggested more improvement than actually occurred.

For example, it said, at a nursing home in California, the staff ignored a patient who was "screaming and writhing in unrelieved pain" for more than an hour, but inspectors who witnessed the incident did not list it as a serious deficiency.

In Oklahoma, Ronald D. Osterhout, a member of the State Board of Health, said inspectors had told him that they were "asked to lighten up and not to find so many serious deficiencies."

Results of inspections are available through the Nursing Home Compare link at www.medicare.gov. But the inspector general of the Department of Health and Human Services said last month that consumers should use the Web site with caution, because information was missing or inaccurate for 19 percent of homes.

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