

Chairman Kohl, Ranking Member Smith, and other distinguished Members of the Committee,

Thank you for giving me the opportunity to appear before you today. I am the Assistant Director of Research for the Service Employees International Union (SEIU). SEIU represents almost one million health care workers, including more than 150,000 nursing home workers. SEIU respects Chairman Kohl's commitment to improving the quality of care in nursing homes. We must also acknowledge Senator Grassley's long-time leadership on these issues. And we look forward to continuing our work with both Senators on this issue. Twenty years after Congress passed landmark nursing home reform legislation, SEIU remains concerned that there are serious problems with quality of care across the industry and we fear the current enforcement system is simply not working. And it's difficult for families and residents to get the information they need to make an informed choice about their loved ones' care because the industry lacks transparency.

SEIU analyzes deficiency data from the Online Survey, Certification, and Reporting (OSCAR) data available from the Centers for Medicare and Medicaid Services (CMS). It's unfortunate that any way you cut the data, OSCAR shows that nursing homes have far too many quality problems. In fact, our research indicates that nursing home care overall appears to be getting even worse. In our analysis, we do not include life safety code violations, nor did we include complaint violations. So, the total number of problems found by state inspectors in any given year was actually worse than our numbers indicate.

By compiling all the deficiencies from annual inspections for the years 2004 through 2006 we were able to determine if the number of violations per inspection increased or decreased from year to year. Unfortunately the trends we found were quite disturbing. Overall the number of violations per inspection increased each year for a total increase of 13.8% from 2004 to 2006ⁱ.

What do these deficiencies mean?

The next analysis we did was to look at the severity of the violations. Violations of resident care, (aka deficiencies) have four levels of severity.

The first, deficiencies with "potential for minimal harm" are those that have the potential for causing no more than a minor negative impact on a resident.ⁱⁱ

Next are deficiencies with "potential for actual harm" which reflect non-compliance on the part of the nursing home in a way that causes, or has the potential to cause, no more than minimal physical, mental, or psycho-social harm to a resident.ⁱⁱⁱ

Then there are deficiencies that "cause actual harm" causing real injury to fragile nursing home residents.^{iv} Examples of actual harm citations include:

- Failure to give each resident enough fluids to keep them healthy and prevent dehydration.
- Failure to give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores.

- Failure to make sure that residents who cannot care for themselves receive help with eating/drinking, grooming and hygiene.^v

Finally we have deficiencies that “cause immediate jeopardy” meaning that something the nursing home did or failed to do put residents’ health, safety, and lives directly in harm’s way. These deficiencies require immediate correction.^{vi}

Examples of immediate jeopardy citations include:

- 1) Failure to hire only people who have no legal history of abusing, neglecting or mistreating residents; or 2) failure to report and investigate any acts or reports of abuse, neglect or mistreatment of residents.
- Failure to protect each resident from all abuse, physical punishment, and being separated from others.^{vii}

When looked at the same data set and broke down the violations by severity we found that while the least serious violations decreased during this time, the more serious violations increased. Violations that had only potential for minimal harm decreased from 2004 to 2006 by almost 10%. However, violations that had potential for actual harm increased by 17.8% and violations that were found to have caused actual harm increased by an even greater 19.5%. Even the most serious violations, those that put the resident in immediate jeopardy increased by 3.3% per inspection.

Increase from 2004	Potential for Minimal harm	Potential for Actual Harm	Actual harm	Immediate Jeopardy
2005	-4.3%	9.1%	8.2%	10.7%
2006	-9.6%	17.8%	19.5%	3.3%

The data for 2007 is of course still incomplete but based on about 60% of the projected inspections, the decrease in the least serious violations continues while violations that put residents in immediate jeopardy increased by over 20% from 2004.

Since the average number of violations per facilities is between six and seven during this period, we also looked at to see whether the number of facilities that had significantly more violations increased. For this analysis we looked at all the facilities that had ten or more violations during a single inspection in any given year.^{viii} We discovered an increase in the number of facilities that got cited by state inspectors for at least ten violations from 20.9% in 2004 to 26% in 2006. This means that more than one out of every four facilities inspected in 2006 had 10 or more violations of minimal federal resident care standards.

10 or more deficiencies	# of facilities surveyed	# of facilities with 10 or more	% of facilities surveyed
2004	15190	3168	20.9%
2005	14981	3603	24.1%
2006	14816	3845	26.0%

In addition, a new breed of nursing home operator--private equity firms--has entered the nursing home market and, for the companies we analyzed, had a clear effect on care. The private equity business model lacks transparency and accountability and may be exacerbating the problems. On September 23, *The New York Times* published an investigative story on the impact on care when nursing homes are bought by private equity firms. *The New York Times* found that among other concerns with private equity ownership of nursing homes, there are serious quality of care deficiencies. In our analysis of the deficiency data, we also looked at some of the facilities that had been bought by private equity firms, whose ownership structures are particularly complex and whose business model is based on buying and selling business within a relatively short period of time. Our analysis compared the number of violations per inspection at the nursing homes for annual inspection just before they got bought by private equity to their most recent inspection. In the case of the private equity buyout of Mariner Health Care involving over 200 nursing homes and almost 30,000 beds at the end of 2004, we found that since that buy out the total number of violations increased by 29.4%, more than double the increase of the other facilities in the same states where those homes operate.

Actual harm violations increased for these same facilities increased by an incredible 66.7%, while the other homes in these states saw an increase in these types of violations of 1.5%.

Deficiency Type	Mariner % Increase Post Buyout	Non-Mariner % Increase
All Deficiencies	29.4%	11.9
Potential for Minimal Harm	-8.0%	-13.3%
Potential for Actual Harm	33.6%	18.0%
Actual Harm	66.7%	1.5%
Immediate Jeopardy	87.5%	13.3%

And during their most recent inspection over 43% of this company's facilities were cited by state inspectors for ten or more violations compared to 25% before the sale.

Facilities Cited for 10 or More Violations		
	% of Facilities Before Sale	% of Facilities After Sale
Mariner Homes	25.1%	43.8%
Non Mariner Homes	21.6%	26.2%

Most importantly, we must remember that each of these statistics reflect a fragile nursing home resident whose needs are not met or who is or could be injured because of a nursing home's poor performance. We owe it to our seniors to do better.

The bottom line is that reform is needed to improve transparency and enforcement throughout the industry. CMS must improve the efficiency of the enforcement system in ways that will catch the homes that need to make improvements, and they need to do so earlier in the process than many do now, before fragile nursing

home residents are injured. Furthermore, given the increase in the number of homes cited for ten or more violations, it is imperative to focus more attention on homes that are chronic poor performers. We are encouraged that the Chairman and Senator Grassley are considering legislation to address these concerns, and we urge you to consider the following policy changes:

Increase the transparency and accountability of corporate ownership

- Require full disclosure to the Centers for Medicare & Medicaid Services (CMS) of all affiliated entities with a direct or indirect financial interest in the facility and their parent companies, and the owners (including owners of the real estate), operators, and management of each facility; and require that all these entities be parties to the Medicare provider agreement and listed on Nursing Home Compare. CMS should maintain an ownership database and monitor the quality of care provided by the companies. Severe penalties, including exclusion from Medicare, should be established for hiding ownership or affiliated relationships.
- CMS should address the lack of transparency by amending the provider agreement to require that providers, including purchasers of an existing facility or company, deposit assets in a surety bond with the amount (to be determined) proportional to the number of beds in the facility.
- Require CMS to certify the provider agreements annually to ensure that they are consistent with the current ownership structure and affiliated entities.
- Require CMS to post enforcement actions against facilities and maintain actual CMS form 2567 survey reports on Nursing Home Compare.

Promote improved staffing

- Require CMS to collect electronically submitted data from facility payroll records and temporary agency contracts on a quarterly basis, including data on turnover and retention; and require CMS to report that information on Nursing Home Compare as quality measures that include a ratio of direct care nursing staff (RNs, LPNs, and CNAs) to residents and turnover and retention rates.
- Require that information on cost reports for Medicare be reported based on five cost centers: (1) direct care nursing services; (2) other direct care services (e.g., activities, therapies); (3) indirect care (e.g., housekeeping, dietary); (4) capital costs (e.g., building, equipment and land costs); and (5) administrative costs. The cost reports should be reported electronically to CMS and summary data should be made available on Nursing Home Compare. In 2004, MedPAC recommended requiring nursing facilities and skilled nursing facilities to publish nursing costs separately from other costs on cost reports. This recommendation was reiterated in a June 2007 MedPAC report (www.medpac.gov/Chapters/Jun07_Ch08.pdf)
- Require CMS to conduct audits of nurse staffing data reports and cost reports at least every three years to ensure the accuracy of the data reported and to prevent fraud. Severe penalties should be established for filing false reports or failing to file timely cost reports.

Taxpayers trust that Medicare and Medicaid dollars will go toward providing seniors and the disabled with the quality care they deserve. I thank you for inviting me here to testify about SEIU's concerns about the quality of care in nursing homes today.

ⁱ The deficiency data for each year was compiled from the CMS archives of quarterly inspection data from the Online Survey Certification and Reporting System (OSCAR). Since it sometimes takes a while for data to be submitted to CMS we combined information from multiple quarterly downloads to capture all the inspections for a particular year. We then eliminated any duplicate inspections (e.g. due to changes in provider number) and duplicate deficiencies in a single survey. Data for 2007 included deficiencies as recent as September 26th 2007.

Deficiencies per inspection increased from 6.07 in 2004 to 6.90 in 2006

ⁱⁱ Centers for Medicare and Medicaid Services, State Operations Manual, "Appendix P – Survey Protocol for Long Term Care Facilities – Part I – (Rev. 22, 12-15-06)," Section IV: Deficiency Categorization.

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^v Based on information from "About the Nursing Home – Inspections," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 10/29/2007.

^{vi} Centers for Medicare and Medicaid Services, State Operations Manual, "Appendix P – Survey Protocol for Long Term Care Facilities – Part I – (Rev. 22, 12-15-06)," Section IV: Deficiency Categorization.

^{vii} Based on information from "About the Nursing Home – Inspections," Centers for Medicare and Medicaid Services Nursing Home Compare data, downloaded 10/29/2007.

^{viii} Even if a facility had more than one inspection that resulted in 10 violations the facility was only counted once.