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OP-ED

# U.S. still failing nursing home communities

**More needs to be done for the older adults in long-term care facilities, hard-hit by the coronavirus.**

*By David R. Hoffman*



Victoria Manor nursing home has had 52 confirmed COVID-19 cases and nine deaths in Cape May, N.J. TYGER WILLIAMS / Staff Photographer

A failed regulatory system and a nursing home provider community ill-equipped to address a pandemic has led to well over 16,000 nursing home resident and staff member deaths, and serious physical and emotional harm to nursing home residents and their families.

“A society’s quality and durability can best be measured by the respect and care given its elder citizens,” President John F. Kennedy said in 1963. By that standard, our society has failed miserably, especially for older adults residing in long-term care facilities during this pandemic. Most disturbing is society’s muted collective

response to the rising death toll. Can you imagine the outrage toward a disaster at a nuclear power plant where over 16,000 people die from radiation poisoning? Yet, coronavirus deaths get reported without any national call to action.

We cannot solve this problem without defining it and analyzing what has gone wrong. “Neglect” sums it up. Federal regulation provides a framework by defining neglect as “the failure ... to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.”

The enormous failure by the federal government to sound the alarm in a timely fashion, ensure that protective gear was available to health-care providers, and deliver meaningful guidance to nursing home providers cost us not only time but lives.

Interestingly, the last time I was in a nursing home was March 4, during a monitoring visit, and the issue of restricting visitors’ access to the building was discussed with the provider. The nursing home staff was concerned that restricting access by third parties would lead to possible regulatory citations by state surveyors, and therefore was reluctant to do so. Yet would we stop an intruder carrying a weapon into a nursing home? I sure hope so.

Lack of consistent, thoughtful enforcement of the nursing home regulations by the Centers for Medicare and Medicaid Services (CMS) and state survey agencies has created a toxic environment in which reasoned approaches to protecting resident health and safety are subverted by misguided regulatory interpretations.

Often, the regulations impair a facility’s ability to seek solutions for fear of violating a federal regulation or resident rights in the process. We then expect nursing homes to be “proactive” as issues arise without the requisite support. The role of the state survey agencies must be more than finding fault with facilities — there must be more of an effort to provide technical assistance.

The nursing home industry’s failure to adequately prepare for this relentless virus has been deeply upsetting, yet not unexpected. It was known that COVID-19 was coming and attacked the elderly in particular. The experience at the Life Care Center facility in Washington made clear that nursing home resident fatalities were inevitable. What did the nursing home industry do to prepare?

In 2016, the requirements of participation for nursing homes required that facilities establish and maintain “an infection prevention and control program designed to provide a safe, sanitary and comfortable environment and to help prevent the development and transmission of communicable diseases and infections.” This program mandated surveillance, identification of reporting requirements,

precautions to prevent the spread of infections, isolation protocols, prohibitions on infected staff having direct contact with residents, and hand hygiene procedures. Were these requirements met, guided by a fully qualified infection preventionist? Or was this regulatory mandate recklessly ignored?

A fully functioning infection control program would have mitigated the death toll in nursing homes. A nationwide review of regulatory compliance with the established program is warranted.

Regulators should review whether facility personnel were practicing disaster drills that plan for isolation, education of staff, evaluation of PPE need, convening planning meetings with the mandated skilled infection preventionist and infection control team, and, of course, anticipating the enhanced challenges associated with staffing the facility during a time of great stress. What was done, and what should happen right now as it pertains to infection control?

The aftermath of this pandemic will lead to congressional hearings, cited deficiencies by regulators with fines and penalties imposed on facility owners, possible civil and criminal prosecutions, handwringing and finger-pointing, and, of course, lawsuits. The unfortunate reality is that none of these actions will better prepare us for the future.

On March 3, the U.S. attorney general announced that the Department of Justice was launching a National Nursing Home Initiative that will “coordinate and enhance civil and criminal efforts to pursue nursing homes that provide grossly substandard care to their residents.” In 1996, as an assistant United States attorney in Philadelphia, I brought the first case against a nursing home chain (13 cases thereafter) and started what would become the DOJ’s nursing home initiative based on the exact same failure of care theory noted by the attorney general.

What has changed in 24 years? Certainly not enough to defend against allegations of neglect by those responsible for the care for some of the most frail and vulnerable members of society.

David R. Hoffman is the president of a national health-care consulting firm that focuses on patient and resident safety and compliance. He serves as a federal and state monitor of nursing homes and is a practice professor of law at the Drexel

University Kline School of Law.

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