Nursing Home Crisis Action

Restructure the Industry and Defund the Existing System
A Gray Paper for Elected Leaders

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Summary

In 2020, the COVID-19 pandemic not only brought an unprecedented mass death of disabled and elder residents in nursing homes and long term care facilities—but it has also exposed the pre-existing dysfunction, incompetence, danger, and corruption of the entire system of corporate institutional care in the United States. In this report, we begin to investigate how such horror has happened, why, and who is paying the enormous price. At the conclusion, we will have met the enemy, as Pogo said, and "he is us."

"The enemy" is a monster created by federal policy, allowing for-profit corporations to own chains of long-term care facilities, and lavishing on the owners the incentives and benefits in our tax laws regardless of their performance in caregiving. Worse, with no transparency of ownership, these facilities have become havens for dark money investors, and even opportunities for criminal money-laundering.

These corporations are engaged in buying and selling real estate with very favorable tax rewards. The corporations can practice medicine and also profit from Medicare, Medicaid, and other programs that can be hijacked for the corporation's benefit rather than for the benefit of those in their care.

We begin here to focus on the legislation necessary to support patient and resident-owned cooperatives. For example, creating a banking system like the Farm Credit Bureaus. The government should specifically fund cooperative medicine organizations that own their real estate.

Overview of crisis data

U.S. Department of Health and Human Services Office of Inspector General Data Snapshot June 2021, OEI-02-20-00490[A 1]; COVID-19 Had a Devastating Impact on Medicare Beneficiaries in Nursing Homes During 2020[2]

Problems

- Over 186,740[3] disabled people have died of COVID in Long-Term Congregate (LTC) institutions during the pandemic.
- More than 1,983 Skilled Nursing Facility (SNF) workers[4] died of COVID-19 during the pandemic.
- There were over 662,495 known resident cases of COVID-19[5] in Skilled Nursing Facilities (SNF).
- There were over 593,451 confirmed COVID-19 cases among SNF staff.[6]
- More than 40,000 SNF[7] residents died of other causes during the pandemic due to chronic dangerous understaffing levels and other persistent problems.[B]
- 82% (13,299) of SNFs surveyed[8] had persistent infection control practices. Infection control deficiencies were widespread and persistent prior to the pandemic.
- At the beginning of the pandemic despite *dire* warnings from health officials around the world, the long-term 'care' industry placed profit over the lives and flourishing of their staff, disabled people, and the wider community. The industry and federal and state governments *willfully* neglected to engage in meaningful pandemic (infection control) preparations.[9] [10]
- Regulation and oversight of LTC institutions are dangerously deficient.[11] We allow a rapacious industry to self-police. Disabled people continue to be forced into substandard institutions due to the Medicaid institutional bias[12] despite the Americans with Disabilities Act (ADA) and the Supreme Court *Olmstead* decision[13]; then we abandon them to predatory corporations and their representatives.
- At the industry's behest during the pandemic (despite years of glaring deficiencies), Health and Human Services eased inspections, waived training requirements, and lifted reporting[14]. To make matters worse, the industry bemoaned the cost of personal protective equipment[15] for staff and residents or the costs of increased staffing levels; they demanded that taxpayers subsidize *their* cost of doing business.
- During the pandemic, negligent industry practices resulted in the solitary confinement of disabled people in their charge.[16] Underpaid staff were forced to work at multiple facilities[17] without adequate PPE. Staff came and went spreading COVID-19 throughout facilities[18], while staff endangered their own lives, the lives of their families[19], those of residents, and our communities.
- The LTC industry lobbies against state and federal requirements[20] that would ensure the human rights of disabled people are protected. Consumers cannot compete with a powerful billion dollar industry.[21]

[A] For those readers who cannot use HTML links directly (usually by placing your cursor over the blue link and using "ctrl-click"), the Internet addresses of references (the Universal Record Locators or URL's) are shown as endnotes. Just copy and paste the URL's into your browser.

[B] "*A nursing home expert who analyzed data from the country's 15,000 facilities for The Associated Press estimates that for every two COVID-19 victims in long-term care, there is another who died prematurely of other causes. Those "excess deaths" [are] beyond the normal rate of fatalities in nursing homes…"*

- Understaffing in SNFs has been a deadly issue since the inception of nursing homes as outlined in government reports[22]. These deadly understaffing practices lead to human rights abuses[23] of disabled people from physical and chemical restraints[24] to neglect, abuse[25], deaths, and underreporting[26].
- The COVID Tracking Project[27] at *The Atlantic* reports[28] that, while less than 1 percent of the nation's population resides in nursing homes and other long-term-care facilities, these accounted for 34 percent of all U.S. COVID-19 deaths during a ten-month period under review. For nursing homes, this amounted to nearly 10 percent of all residents.

- On top of all that, the site says[29], *"the most complete figures we can assemble are both an estimate and a severe undercount of the true impact on long-term-care residents. Because of the historical deaths missing from both state and federal data, nonstandard state reporting, and the absence of federal reporting requirements for long-term-care facilities, we believe that the true toll of the pandemic among these residents is higher than these figures can show."*

Require More and Better Data for Accountability:

- We want comprehensive accounting of Medicare length of stay fraud, i.e, wrongful and inappropriate discharges that occur usually on the 20th day when Medicare reimbursements drop from 100% to 80%.
- We demand a full accounting of Medicare Resource Utilization Group (RUG) fraud, i.e, upcoding fraud[30] (classifying most residents as requiring high levels of rehabilitation in order to bill Medicare more[31]).
- We demand a full accounting of nursing home evictions based on Medicaid discrimination[32], which has for years been an egregious practice, or the dumping of residents[33] considered too disabled, troublesome, or those who justifiably object to blatant human rights violations.
- We demand accountability regarding racial and economic discrimination[34] in nursing homes.
- More than one out of every three nursing homes misreported data. The United States inspector general found that nursing homes only reported 16%[35] of the incidents where residents were hospitalized for potential abuse and neglect.
- Nursing homes failed to report 40% of falls[36] that resulted in the hospitalization of residents.
- 70% of nursing home residents[37] have been coerced into signing arbitration agreements.
- 75% of nursing homes[38] didn't have enough registered nurses on staff.
- The drugging of disabled people in nursing homes[39]: Almost 300,000 nursing home residents[40] are inappropriately given anti-psychotics each week even though *most* have *no* psychosis[41]. Citations for misuse of anti-psychotics increased by 200% between 2015 and 2017. These drugs come with an FDA Black Box warning; they can increase the risk of death in older people. Antipsychotic drugging of disabled people in nursing homes costs taxpayers $363 million annually[42] and inappropriate drugging and a lack of staffing results in falls, which costs $50 billion annually. Drugging us denies us the ability to manage our own lives, it violates our basic human rights[43]; drugging is restraint[44].

Since the start of the pandemic, a flurry of reports attesting to the horrible reality of these facilities has continued unabated.

- Corroborated reports of bodies stacked in nursing home morgues and left in rooms.
- Disabled people dying alone in fetid and soiled beds.
- The recent U.S House Ways and Means report detailing the drugging of residents to keep them restrained.
- Thirty-nine states legislated legal immunity for billion-dollar nursing home corporations.

- The Office of the United States Attorney General report detailing the prevalence of unreported abuse and neglect.
- The waiving of basic regulations during the pandemic.
- Coercive nursing home arbitration agreements.
- Widespread evictions of significantly disabled Medicaid residents—those considered too time consuming—for replacement by more lucrative Medicare patients.
- A revolving door of poorly trained and improperly screened staff.
- Consistently dangerous understaffing and manipulation of staffing levels to government agencies.
- Persistent violation of resident rights despite the superficiality of 'person-centered care.'
- The United States Government Accountability Office report on widespread infection control deficiencies in facilities across the nation.

When reflecting on the magnitude of this human rights catastrophe and the neglect detailed in government reports and media accounts, is it conscionable to continue to fund inhumane practices that, according to Kaiser Health News, have resulted in the deaths of over 70,000 disabled people nationwide (over 54,000 alone in nursing homes) since May 8th?

Follow the Money and Take it Back

- According to the Senate hearing on March 6, 2019[45], nursing homes in the United States earn approximately $170 billion annually (which comes to about $121,428 per person).
- Over 39 states[46] have granted nursing homes legal immunity during the pandemic; this leaves disabled people and their families with little to no recourse to justice[47].

"*During the coronavirus pandemic, nursing homes have received billions of dollars and non-monetary support from all levels of government in addition to reimbursement for care through the Medicare and Medicaid programs*." excerpt from: Center for Medicare Advocacy: Center Report: Billions of Dollars to Nursing Homes in Covid-19 Relief, T. Edelman, M. Edelman, MARCH 25, 2021[48] full report.[49]

The coronavirus pandemic has taken an enormous toll on nursing home residents and staff. Since the beginning of the pandemic and as of the end of February 2021, nursing facilities have reported that at least 640,271 residents and 552,660 staff members have had confirmed cases of COVID-19 and that at least 130,174 residents and 1,623 staff members have died of the virus.[1] These numbers are likely underreported, since the Centers for Medicare & Medicaid Services (CMS) did not require facilities to report COVID-19 cases and deaths until May 2020.[2] Nevertheless, the reported deaths account for more than one-third of coronavirus deaths in the United States and, in nine states, nursing facility residents and staff account for more than half of all deaths,[3] although residents account for less than .05% of the country's population.[4] D

During the pandemic, the federal government waived many longstanding resident protections and facility reporting requirements.[5] Accountability and oversight were severely limited, as CMS waived virtually all standard and complaint surveys[6] and barred long-term care ombudsmen and families from visiting. What also changed during the pandemic was the large influx of public funds sent to facilities. During the coronavirus pandemic, nursing homes have received billions of additional dollars and non-monetary support from all levels of government in addition to reimbursement for care through the Medicare and Medicaid programs. The Federal Government has given, or in some cases, loaned facilities (with many loans forgiven) hundreds of millions of additional dollars through multiple programs. Most of these federal payments have been made without regard to facilities' performance. Many states have also

increased Medicaid rates across-the-board or paid higher rates for COVID-19-positive residents or established COVID-19-only facilities and paid them high rates. In addition, the Federal and State Governments have provided indirect financial support to nursing facilities, supplying personal protective equipment, tests and testing equipment, multiple training opportunities, the National Guard, and "strike teams" to help facilities in crisis situations during the pandemic. Despite these billions of dollars, the nursing home industry continues to ask for more financial support,[7] even as patients leaving the hospital are choosing home care over facility care for their post-hospital recovery[8] and nursing facilities' occupancy rates decline to an unsustainable 70%.[9] Concerns have been raised about nursing facilities that have received extensive COVID financial assistance, although sanctioned for fraud or poor care.

Tenet Healthcare received $850 million in federal stimulus, as nurses in Worcester remain on strike, and officials want to know where that money went - masslive.com[50]

- The LTC industry persistently violates the Supreme Court of the United States *Olmstead* decision, the Older Americans Act, and the Americans with Disabilities Act by treating disabled people as fungible objects to be exploited[51] for insurance and government benefits; disabled people under their control are crammed into small, dreary, and dirty rooms; they deny our right to privacy, they place efficiency over our needs, preferences, and flourishing; we are forced to lead regimented[52] lives dominated by underpaid[53] and resentful staff; they insult us with the cruel doublespeak of 'person-centered care' when we are treated as less than human by a system designed to extract profit from our misery.

- The industry must be held accountable for *any* misappropriation of the generous taxpayer COVID-19 subsides (over $20 billion[54]) they received. Where did *our* taxpayer funds go[55]? We want a comprehensive accounting of the increases in stock dividends and executive compensation during the pandemic[56] American Health Care Association — Non Profit Data (nonprofitlight.com)[57]

- Many for-profit nursing homes themselves run deficits, but still make money. Corporations with interests in the facilities own the property through a separate company, supply medical supplies through yet another pharmaceutical company, and so on. They earn millions by skimming the money meant for resident care through these other companies. One company in N.J. owned the land two poorly run nursing homes where 60 COVID-19 patients died; 17 bodies were found hidden in a tiny on-site morgue. They received $8 million a year in rent for the two places.

Eliminate Perverse Incentives

Despite the abundance of laws regulating nursing homes and other congregate institutions, states and committed advocates throughout the nation have continually worked, for over a century, to enact further reforms. The good intentions of reformers aside, little has changed for nursing home residents because institutional reform is neither practically nor morally feasible. Profit comes before all else.

Seventy percent of nursing homes in the U.S. are for-profit facilities; they receive, by far, the lowest quality ratings; they have, by far, the highest occurrences of neglect and abuse. Yet, notwithstanding countless congressional hearings, public testimonies, graphic video evidence of abuse and neglect, medical studies, and reform recommendations, congregate institutions have proven themselves impervious to calls for rehabilitation and regulatory compliance.

Rather than expend energy and resources on care for residents, many nursing home corporations dedicate their time and resources to fighting against regulations and lobbying for increased taxpayer funding. A common nursing home talking point complains that the regulatory requirements protecting residents' health and safety consumes too much time, that they bog down their understaffed facilities with administrative tasks.

This is not a matter of regulatory excess. This is not a matter of low reimbursement rates. This is not a matter of excessive paperwork. It is solely a matter of profit over humanity. The coronavirus outbreak exposed the systemic understaffing and poor care in these facilities. Institutionalization, however well regulated, violates both the civil and human rights of disabled people; it demeans their lives and dignity through regimented control, and swiftly leads to despair, abject loneliness, and failing health. To the above we can add an economic dimension.

Nursing home corporations incessantly demand increases to government funding. Since their demands are usually met, they have become a bottomless drain on limited state funds, funds that could be more efficiently used for home and community-based services. In just the past six months, nursing homes have received $10 billion in federal funding, $2,500 per bed from states, taxpayer subsidized PPE and COVID testing, and now volunteer labor provided by Doctors without Borders.

The nursing home industry loves "reform." Nothing comes of it. They're banking on everyone calling for reform. They know it's not going to happen. The industry is a monster created by a combination of dark money and failed regulation.

"Despite Pandemic Carnage, Predatory Nursing Home Financiers Keep Thriving", excerpt:
"...no regulatory agency or politician has even approached holding anyone accountable for any of the asset-stripping or cash-extracting that begat the staff-slashing and PPE-depriving that caused so much senseless and unnecessary death during the pandemic. ..".
(https://prospect.org/health/despite-pandemic-carnage-predatory-nursing-home-financiers-thriving/)

Problems with environment and design due to the pressure for profits and investor return:
1. large for profit NH most likely to have outbreaks of COVID
2. small NH did much better
3. Rooms in large NH too crowded with shared bathrooms etc. (no private rooms)
4. Private bathrooms are key to stopping spread of infections.
5. US NH are old and outdated (40-50 year's old), large institutional settings, not home-like.
6. US NH below standard with poor ventilation systems.
7.We need to re-design NH in US.
d) Is NHI open to change?
A: Most are not advocating small buildings because they don't make as much money. We need new government standards with smaller buildings.

> The NHI gets millions of dollars and engages in poor mouthing at the same time. Elected officials often accept campaign funding from the nursing home industry. Campaign finance laws should be strengthened to prevent potential conflicts of interest between good policy and campaign donations from regulated industries.

> NHI gets $6B per year with worsening care. EG NH chain in Southern California (Shlomo) has 99 nursing homes in Cal; makes billions of dollars per year. Related companies are started. You used to be able to see their finances. Now each NH is independently incorporated. It is harder to pierce the corporate veil. The parent company charges exorbitant fees of their related businesses. They don't pay their workers well. Where is the money going? The transparency bill would reveal the answer. It would provide a lot

of clarity on the money flows in nursing homes.

> Nursing homes take people who have been in a hospital and get Medicare because they get 3 times what Medicaid pays. They like private pay. The NHI when they convert from Medicare to Medicaid, they transfer them to the hospital emergency room. They get a slap on the wrist for making a lucrative bed available.

- Because pay for personal attendants are poverty-level wages, disabled people living in the community struggle to retain qualified staff and, as a result, many are forced into nursing homes. Poorly paid attendants who fail to show up for work jeopardize disabled people's health, and the fear of solitary confinement in a nursing facility induces untold psychological duress.

- Families must often miss work or school to assist with caregiving duties when poorly paid attendants do not show up for work.

- With underfunded HCBS, parents often have no other choice than to place disabled children in congregate institutions.

- Because of underfunding of HCBS, families/spouses are often separated when a disabled member must be institutionalized.

- Struggling attendants are forced to juggle multiple jobs, some of which are in congregate settings. This makes the six month lockdown of nursing facilities ineffectual and cruel. It also endangers the public health by spreading the virus and, in turn, results in hospitalizations, long-term health effects, and increased state Medicaid costs.

- During the pandemic, it is safer and more economically sound for attendants to choose work that pays higher wages than to work multiple jobs as attendants.

- It is safer for attendants to collect unemployment than go back to their jobs as currently paid.

Take Action NOW

"This nursing home industry needs to be defunded and abolished. Its food source is an abundant supply of disabled people who are too politically powerless to turn anywhere else for help. The way to starve it is to give people a genuine choice in determining how, where, and from whom we will receive assistance." Disability rights activist Mike Ervin, *Smart Ass Cripple*, Progressive Magazine.

Many Americans suffer from the misguided notion that the present inherently corrupt and oppressive system that dumps disabled people in nursing homes with no possibility of parole can be reformed. **It cannot**.

What makes people in nursing homes vulnerable? It's not their perceived "frailty." It is the self-fulfilling prophecy that nursing homes should be the means of first resort for delivering long-term care. If there are no better options, then by design the belief has become reality.

Immediate Action

- Regulate the financing of for-profit nursing homes to mandate transparency of finances. Require full disclosure of stock ownership by individuals and private equity firms and other holding companies.
- REQUIRE ALL NURSING HOMES IN THE US TO FILE ANNUAL CONSOLIDATED FINANCIAL STATEMENTS AS PUBLIC INFORMATION WITH DETAILED FLOW CHARTS OUTLINING EACH OPERATORS CORPORATE STRUCTURE, INCLUDING ALL RELATED PARTY ENTITIES AS WELL AS UNRELATED PARTIES DOING BUSINESS WITH THE FACILITY. ALSO REQUIRE NURSING HOME MANAGEMENT AND PROPERTY COMPANIES TO SUBMIT AUDITED FINANCIAL REPORTS. (MODEL FOR THIS BILL: CALIFORNIA AB 650, STERN, "SKILLED NURSING FACILITY TAXPAYER DOLLAR TRANSPARENCY"MORE INFO: https://canhrlegislation.com/sb-650-fact-sheet/)

  • REINSTATE CIVIL MONEY PENALTIES FOR NURSING HOMES FOR ALL DEFICIENCIES ON A PER-DAY BASIS AS THE DEFAULT PENALTY, AS A MEANS TO PROMOTE ACCOUNTABILITY (https://www.hrw.org/news/2021/03/25/us-concerns-neglect-nursing-homes)
- INVESTIGATIONS BY THE APPROPRIATE HOUSE AND US SENATE COMMITTEES AND SUBCOMMITTEES
- Revise applicable tax laws providing real estate benefits for corporations that own nursing homes. Extend depreciation from three years to ten to stop the churn of facility ownership and profit-taking by flipping.
- Prosecute for-profit nursing homes that have a record of fraudulent charging of Medicare and Medicaid, abuse and rule-breaking, fines, and unpaid fines.
- Convene a Grand Jury to consider the evidence against the American Health Care Association and the National Center for Assisted Living (AHCA/NCAL) is the largest association in the United States representing long term and post-acute care providers, with more than 14,000 member facilities. As the largest lobby for the nursing home industry, it operates as a racketeering (RICO) conspiracy.

- Ban states from allowing legal immunity for nursing home owners. Call for legislation in Congress that would prohibit states from granting legal immunity to nursing homes; "New Consumer Voice Report on Nursing Home Immunity", (http://act.theconsumervoice.org/site/MessageViewer?dlv_id=7339&em_id=4087.0)

- Ban states from allowing or enforcing arbitration laws against patients and workers.

- Task the Office of the Inspector General for HHS with more frequent reports: watchdog audits, investigations leading to fraud and other criminal charges. https://oig.hhs.gov/oei/reports/OEI-02-20-00490.asp#.YNHbUAeIL3Y.facebook

Short term actions:

State governments have the option of creating home and community assistance programs that use Medicaid money in a way that provides the support disabled persons need without going into a nursing home. But states are not currently required to do so. That means that the freedom and self-determination of thousands are based on legislative whim, not on a legally protected human right. And whims are fickle. They can be rescinded or altered abruptly and capriciously.

Why can't everybody's care be based in home and community services? Senators Casey & Wyden and Representatives Pallone, Dingell, Schakowsky, and Matsui introduced the Better Care Better Jobs Act; that would invest $400 Billion for Medicaid Home and Community Based Services (HCBS) - so taking Biden's proposal and making it its own separate bill.

Long term actions:

We must address the problem of lack of accessible and senior-appropriate housing. Co-ops are a successful congregate living model established by the Quakers. The Kendall sites are organized as non-profit corporations. The coop model requires that those who live there are the owners and have the say in policy positions and finances.

In ADDITION to HCBS for those who cannot be cared for at home, let's demand that Congress at least BEGIN to consider authorizing and funding alternatives to nursing homes that already exist, now!

Alternatives to the current for-profit nursing home industry:

1) https://www.aarp.org/caregiving/basics/info-2018/alternative-housing-options.html (Alternative Housing Options for Long-Term Care)

2) https://www.youtube.com/watch?v=YSZhrxOkBZI (Short Youtube Ted Talk on the "dementia village" that's redefining elder care)

"The Path Forward" BY SARI HARRAR, JOE EATON AND HARRIS MEYER (AARP, Bulletin, Jan/Feb 2021, Vol 62, #1)

Excerpts from page 37: See #8 under the heading "Goal: Reexamine Business Approaches": "Rethink ownership" which quotes Charlene Harrington who calls for, among other things: "… ending the for-profit ownership model that dominates the industry—especially the private-equity investment model of flipping properties for big, fast returns…";

See #9 under the heading “Goal: Reshape the Industry” which says: “….Americans question nursing homes as the default model of care… the solution may be extending home care services…”; and

And under the same goal ("Reshape the Industry") #10: “Create smaller nursing homes”, which says: “…small, family-like households are a better option…. ‘Covid-19 rates have been far lower in small nursing homes…. all of the features that make them a great place to live also make infection prevention and control easier’…; [and] “… comparing costs … to conventional nursing homes found that Medicare Part A costs for hospitalizations were about 30% lower….”.

3) Co-ops: "Worker Co-ops in Long Term Care”, By Margaret M. Bau, April 19, 2011, (https://geo.coop/articles/worker-co-ops-long-term-care)

4) Homey, smaller nursing homes: "Putting The Home In A Nursing Home”, By Marissa Evans JULY 10, 2014 (https://khn.org/news/nursing-home-neighborhood-q-and-a/)

5): Home and Community Based Services, pay home care workers better, and allow them to form or join unions;

a) "Defund the Nursing Homes; The pandemic has made clear that people in nursing homes are extremely vulnerable and that something needs to be done about it.”, by Mike Ervin, June 18, 2021, The Progressive Magazine (https://progressive.org/magazine/defund-the-nursing-homes-ervin/?fbclid=IwAR01L-Zy6e_CCyGNPhxefKe_uegTs6oH8qrQApFlSh_JUyKoHmFmAJOLaps#.YM5dNXOnjXY.facebook)

Universal Long Terms Services and Supports (for all, not just for Medicare recipients) "Principles: Universal/Integrated Long-Term Services and Supports” (https://www.disabilityrightsca.org/legislation/principles-universal-integrated-long-term-services-and-supports)

6): Medicare for all (aka "Guaranteed Healthcare for all", aka "single payer") because it includes long term care benefits. '"The Medicare for All Act of 2021 also includes universal coverage of long-term care with no cost-sharing for older Americans and individuals with disabilities, and prioritizes home and community-based care over institutional care', Rep. Jayapal wrote in a statement." (https://aldianews.com/articles/politics/medicare-all-reintroduced-reps-jayapal-and-dingell-co-sponsored-top-latino dems#:~:text=“The%20Medicare%20for%20All%20Act%20of%202021%20also,institutional%20care”%2C%20Rep.%20Jayapal%20wrote%20in%20a%20statement.)

7) Make for-profit nursing homes illegal; "Non-Profit vs. For-Profit Nursing Homes: Is there a Difference in Care?” MARCH 15, 2012, (https://medicareadvocacy.org/non-profit-vs-for-profit-nursing-homes-is-there-a-difference-in-care/); excerpt: “...For-profit and chain-operated nursing facilities tended to devote fewer resources to direct patient care, resulting in poorer quality of care for residents…”.

UNTIL WE GET RID OF NURSING HOMES AS WE KNOW THEM BECAUSE THEY DON’T ACT IN THE BEST INTERESTS OF THOSE THEY CLAIM TO SERVE, WE SHOULD REVISE, RESTRUCTURE AND REINVENT THE ROLE OF THE NURSING HOME OMBUDSMAN AND INCENTIVIZE OVERSIGHT TO MAKE IT TRULY EFFECTIVE ON BEHALF OF NURSING HOME RESIDENTS AND THEIR FAMILIES.

The Older Americans Act Ombudsman program desperately needs role clarification. In numerous newspaper interviews, a county head ombudsman discussed their role as investigators and likened ombudsmen to “Sherlock Holmes.”

Ombudsmen need to understand that they are resident advocates first; they need to take seriously what residents, their families, and certified volunteer ombudsman tell them. In one CE training, the county ombudsman advised volunteers that we should be cautious about believing residents because their anxiety made them paranoid. On numerous occasions he said that people with anxiety were paranoid. Since the widespread discounting of what older and disabled people report helps abuse and neglect to continue, the undermining of residents’ credibility should be forcefully prohibited rather than endorsed.

- Restructure the oversight of nursing home administrators and their licensing with independent and strict overseers such as the ombudsmen. Currently representatives of the nursing home industry are appointed by states to oversee nursing home administrators. As a result, few administrators (and there is a revolving door— the average administrator lasts approximately six months) exhibit competency with regard to disability and resident rights.

- Rather than give increased funding to nursing homes, increase the number of ombudsmen, incentivize volunteer ombudsman work. Presently, in a typical county, we have roughly one paid ombudsman for every fifty facilities. The program relies heavily on volunteers, as it should. However, a head county ombudsman conveyed that some nursing home administrators were so truculent with certified volunteers that the program could not retain volunteers in those facilities. Knowing this, nursing home staff and administrators regularly harass and intimidate certified volunteer ombudsmen, with the result that volunteers are not placed in these facilities and, as mentioned above, because there are not sufficient numbers of paid ombudsman to replace them, these facilities have little oversight.

Create a new kind of care facility based on what we can learn from Norway and innovations in the U.S.

Norway is 20-30 years ahead of us.
Norway, 30 years ago made a decision to rebuild all NH in country. Required private rooms and private bathrooms. Each city is responsible for the NH and hospitals in their area and are owned by the local government. Govt can contract out management to a non-profit or a for profit. But only 6% of Norwegian NH are contracted out. The rest are owned and operated by the local govt. Not trying to make money. There was a large investment in redesigning NH. Moved to small homes with cluster designs. 10-12 residents in each home (cluster). Some are separate small buildings. Some are big buildings with 2 or more cluster of rooms in it. All clusters have their own dining room and kitchen, food cooked on premises. Staff stay within that unit. Residents are living with a group, like a family. They get to know everyone. The staff on each unit has an RN, and nurses that give Rx and treatments. Care givers not only take care of patients they do the cooking and cleaning. This reduces the number of staff coming in and out of the clusters. A large building with a cluster on each floor had a table at 9 am with candles lit, gorgeous, with table cloths, comfortable and warm. Residents are quite disabled but are able to provide the care. Warm and pleasant. Quite a contrast with the US NH’s. "Reflection Living" out of Wichita Kansas resembles what you are describing.

There is a new non-profit US model called Green Houses. A franchise, they have about 300 throughout the US. Some in Mississippi, and other southern states. Each site is comprised of small houses built on a campus. These sites did extremely well during pandemic with few infections, in contrast to typical US NH. All of the Green Houses are private pay.

Q: Staff compensation? The organization setting it up dictates that. The non-profits generally pay higher wages.
In Norway the staff gets very high salaries. A nursing assistant gets the equivalent of $50K/year and good benefits paid by the municipalities.

Q: Norway's per capita health care costs are lower
A. I think it is. But they save money because they don't try to make profits. Most of the money goes to services. In US only 30-40 % goes to services, the rest to profits, real estate, related companies.

Norway had an experiment in Oslo: they brought in a couple of NH chains. There was a huge scandal. The way they made money that did not pay the pension benefits to workers. So the for-profits were kicked out of the management. They simply did not renew the contracts. The cities own the buildings. We in the US are held hostage because the for-profits own the buildings.

They have very good staffing ratios in Norway with RNs much higher than the US. It's an investment. Criticism of high cost of set up, but legislators said we're going to use those facilities ourselves, so we want them to be nice. You never hear US Congressmen say that.

Q: There is a much broader sense of caring for each other in Norway.
A: Yes, it's called solidarity, they want to protect the people in the community and respect older people. We have a very ageist society in the US.

Q: How do we change this? On the surface it looks pretty obvious. Yet you have Reflection Living as an outlier in the US rather than new models.

A: In California we got into the Master Plan for Aging smaller NH homes. We had the state change the regulations to accommodate smaller NH but it didn't go anywhere because regulations were too restrictive to allow a home-like model. There are all kinds of regulations that get in the way. The Governor has asked the various departments to get together to improve the regulations to allow this new model to work. In California we like to see loan programs revised to focus on small homes and non-profits. The for-profits have plenty of money for capital and don't need the state to do that. Some of the big REITs have $4B revenue each year and own hundreds of NH. They have plenty of money to reinvest and change NH they own. They need to be pushed by the regulators. We're pushing for a revision of the HUD program. They have billions of dollars in loans they've given to the worst operators. We really feel the whole HUD program needs to be revised not to give money to the for profit companies with bad reputations, and instead give it to small, public non-profits.

Q Champions of this idea?
A New Biden admin. Senator Wyden is working on a NH reform bill and there is interest in the Ways and Means Com. And we've been working with the American Bar Assoc. Sabbatini has put together a resolution for small homes to promote this idea. There are other small home models that can be done, but we need state and fed leadership on financing and regulations to support these models.

Q: Other positive models

A: City and County of SF owns one of the largest homes in the country, 750 beds. They redesigned it and rebuilt it for earthquake preparedness. They have good wages and benefits for their workers. Another example is the VA homes. Several of them (and state VA NH). The federal homes did well during the pandemic with good wages and benefits. Some state homes did well, but not the ones who contracted out to for-profits. VA needs to rethink their NH strategy. They don't have enough beds so they contract out. But the VA has put a lot of money into home care. The Biden Admin has made a commitment for $400B

for HCBS. Many people do not have to live in NH. They're forced into it because they don't have access to good home care. We need to rebuild and downsize the NH. We don't need as many NH as we have. Cut them by half or more. We've seen states do that. Oregon is a good example that has shifted away from NH. They have foster homes, HCBS, and others. They made a commitment to put $ into communities instead. Oregon is a good model for other states. Minnesota is also a good example. We need a vision instead of going back to business as usual.

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