

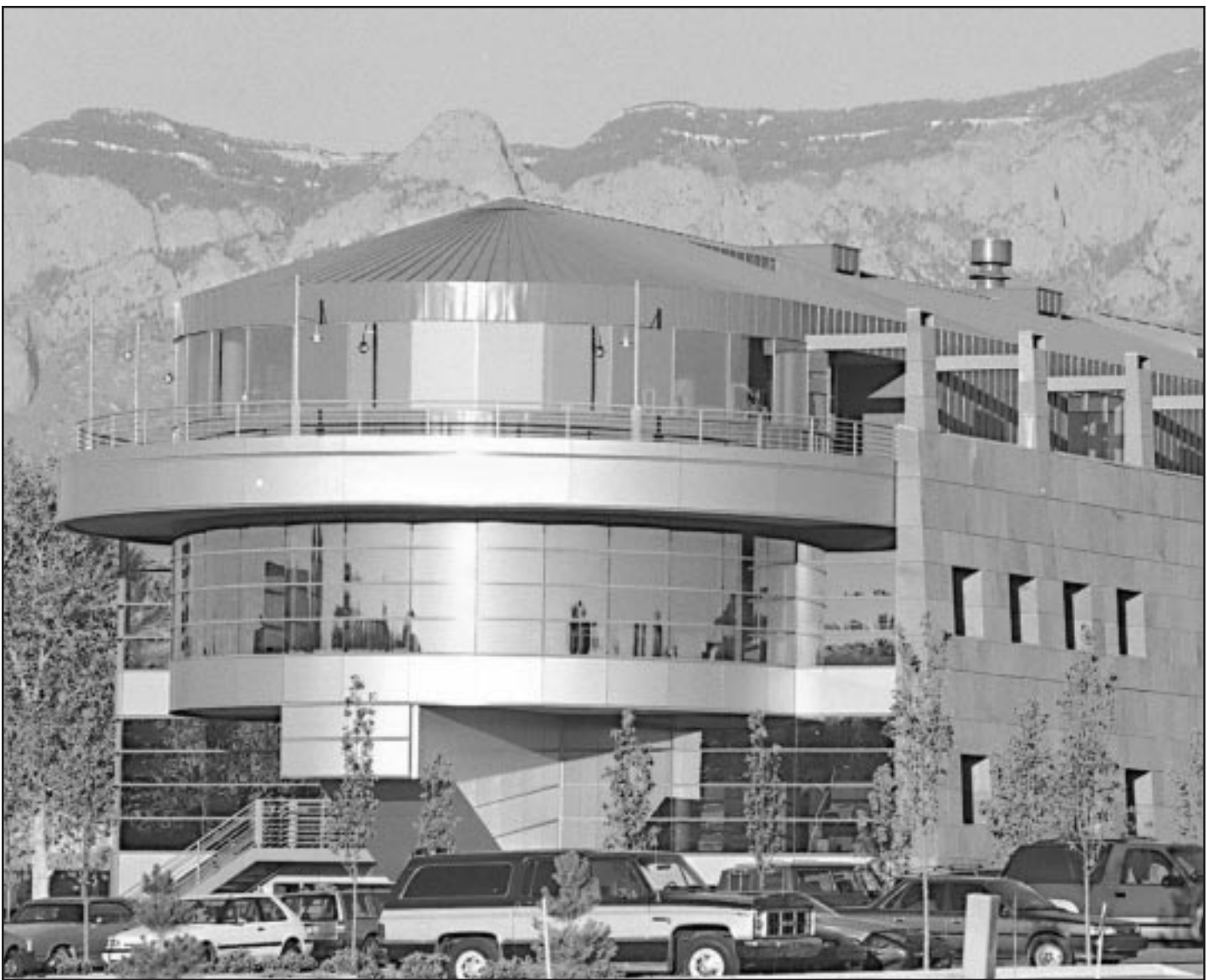


A Journal Special Report Reprint

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Troubled Times *in* Nursing Homes



JOURNAL FILE

SUN HEADQUARTERS: The Sandia Mountains provide a backdrop for Sun Healthcare Group's corporate campus in north Albuquerque. Four buildings have been built, and construction is under way on the fifth and largest of the buildings. Estimated cost for the campus: \$77 million.



Thomas J. Cole joined the Journal in 1992 and has been an investigative reporter for the past three years.

His work for the Journal has won awards for public service, investigative reporting and continuing coverage.

Prior to joining the Journal, Cole, 44, worked for The (Santa Fe) New Mexican and for United Press International in Ohio, West Virginia and Pennsylvania.

Much of his career has been spent covering politics, government and public policy.

Cole is a native of Ohio and a graduate of the Journalism School at Ohio State University.

Why We Did The Series

The nursing home industry has mounted an intense lobbying and public relations campaign for increased Medicare funding.

There is no doubt the industry is hemorrhaging red ink, and that it has a prescription of a quick fix: more government money and less regulation.

But this series by Journal investigative reporter Thom Cole shows it's not that simple.

Cole reports extensively on problems with nursing home care, and on the financial excesses of an industry that was flush with tax dollars before the Balanced Budget Act of 1997.

If Congress decides to bail out the industry by pumping billions more into Medicare, it should move carefully.

The goal should be to take care of our parents and grandparents — not profiteers and the barons of Wall Street.

T.H. Lang
Publisher

Contents

An Ailing Industry	2	Awash In Red Ink	19
Horror Stories Become Commonplace	6	Assessing Sun's Performance	23
Integrated Chief Prospered	8	Patient Advocates Sue Firms Over Care Quality	24
GAO Found Array of Overcharges by Providers	9	Pressing for Cash	27
Managing Every Penny	10	Feds Ask States to Ensure Good Patient Care	30
N.M. Homes Cited More Often for Deficient Care	13	N.M. Senators Would Revisit Issue	31
Inattentiveness Hastened Death, Family Says	15	Medicare Cuts May Be Saving More Than Hoped	32
Official: Nurse Aides Need Raise	16	Sun Investor Faces Texas-Sized Troubles	33
North Albuquerque Home Faces \$100,000 Fine	17	Editorial: Homes' Focus Must Be on Patients	36



JOURNAL FILE

CORPORATE HEALTH: The headquarters of Sun Healthcare Group features a pool, workout room and jogging track for employees.

An Ailing Industry

Medicare reforms have sent firms reeling — N.M.'s Sun Healthcare among them

Stories by **THOMAS J. COLE**
Journal Investigative Reporter

The Albuquerque headquarters of Sun Healthcare Group, with its modern architecture, elaborate art and employee-fitness center, could become a monument to the good times of the nursing-home industry in the 1990s.

Or it could become a tombstone.

Fueled mostly by taxpayer dollars, the industry's revenues shot up billions of dollars and its profits by hundreds of millions in the '90s. Corporate mergers and acquisitions became commonplace.

Large, for-profit national chains dominated the business.

Sun was a chain of seven nursing homes when created in 1989; it has grown into a multinational corporation with some \$3 billion in annual revenues.

Another Albuquerque nursing-home company, Horizon/CMS Healthcare, was just 10 years old when swallowed by a bigger fish in 1997, at a price of about \$1.6 billion.

Beverly Enterprises of Fort Smith, Ark., the granddaddy of the nation's nursing-home chains, reported \$15.5 billion in revenues and \$1.4 billion in operating earnings for years 1994 through 1998.

But the good times came to an end last year when Medicare, which had become a cash cow for the industry, cut payments for nursing-home care.

The government's goals: to slow dramatic increases in Medicare payments by forcing the industry to become more efficient and by reducing Medicare abuse.

The results: Nursing-home chains, along with companies that sell medical services and supplies to nursing-home residents, have laid off thousands of workers and reported losses in the hundreds of millions of dollars.

Stock prices of many corporations

Continued on Page 3 ➤



Continued from Page 2

have plummeted. Some companies may be forced to seek bankruptcy-court protection from creditors while they restructure.

Sun has been among the hardest hit.

It reported losses of more than \$750 million for 1998, cut more than 10,000 jobs and defaulted on payments of some of its \$1.6 billion in debt.

Sun's stock closed at 40 cents a share last Monday.

In addition to cutting Medicare payments for nursing-home care, the federal government is doing more to combat fraud and abuse of Medicare and Medicaid in the industry.

And the Clinton administration has launched a massive initiative to crack down on abuse and neglect in the nation's 17,200 nursing homes, which care for some 1.6 million people.

In short, the nursing-home industry is under the gun.

Hundreds of industry representatives attended a "town hall" meeting in April with officials of the Health Care Financing Administration, which oversees Medicare and Medicaid and sets nursing-home standards.

Industry representatives complained at the meeting in Baltimore that the Medicare cuts are too deep and the enforcement of nursing-home standards too punishing.

"When did we become the enemy?" asked one industry representative.

Ancillary billing

Before last year, Medicare payments for the routine portion of nursing-home care — that is, general nursing, room and board, and administrative overhead — were limited.

But payments for reasonable ancillary services such as rehabilitation therapy were virtually unlimited.

Simply put, the more services and supplies a nursing-home company provided to Medicare beneficiaries, the more it billed and the more it was paid.

And bill they did.

Fee-for-service payments for Medicare-covered nursing-home stays increased from \$2.8 billion in 1989 to \$12.1 billion in 1997.

The average Medicare payment for a day's stay in a nursing home was \$98 in 1990 and \$292 in 1996.

The rise in payments far exceeded the growth in the number of Medicare beneficiaries.

Increased billings for ancillary services, such as rehabilitation therapy, accounted for most of the growth in Medicare payments for nursing-



JOURNAL FILE

CORPORATE INTERIOR: This 1996 photo of Sun Healthcare headquarters shows South-western decor.

home stays, according to the General Accounting Office.

Providing ancillary services — particularly rehabilitation and respiratory therapy — became a profit center for a company like Sun Healthcare Group.

The nursing-home industry — an \$83-billion-a-year business — was accused of overcharging Medicare.

Federal auditors said the growth in Medicare payments couldn't be "readily linked to demonstrated changes in beneficiary needs." They also said Medicare was paying "significant amounts for medically unnecessary physical and occupational therapy."

The industry has said Medicare costs were driven up in part because of earlier hospital discharges for beneficiaries still in need of skilled nursing care.

Medicare accounted for about 10 percent of all the money spent on nursing-home care in the United States.

Sun and other companies used profits to increase their number of nursing homes and expand the types of services they provided to

Some basics

WHAT IS MEDICARE?

A federally funded health-insurance program for about 37 million people age 65 and over and certain disabled people.

WHAT DOES MEDICARE COVER?

Part A (Hospital Insurance) provides coverage of inpatient hospital services, skilled-nursing facilities, home-health services and hospice care. Part B (Medical Insurance) helps pay for the cost of physician services, outpatient hospital services, medical equipment and supplies, and other health services and supplies.

MEDICARE NURSING-HOME COVERAGE:

Part A, under certain conditions, helps pay for a stay of up to 100 days for a beneficiary who has been hospitalized and needs skilled-nursing care. A Medicare beneficiary who is in a nursing home but whose stay isn't covered by Part A is still eligible for Part B coverage.

WHAT IS MEDICAID?

A federal- and state-funded health-insurance program for about 36 million low-income and other needy people.

WHAT DOES MEDICAID COVER?

Inpatient and outpatient hospital services, physician services, medical and surgical dental services, home-health care, family-planning services and supplies and more.

Continued on Page 4 ➤



Continued from Page 3

their residents, and to residents of homes owned by others.

Sun and others went after the sickest Medicare beneficiaries — those who required the most services and supplies and, therefore, produced some of the biggest billings.

Many companies began providing what is known as subacute care for people who were leaving hospitals but still needed treatment to recover from a serious medical problem caused by injury or illness.

“We had numerous companies growing over 20 percent a year in earnings,” said Nancy Weaver, a health-care services analyst with the brokerage firm of Stephens Inc. in Little Rock, Ark.

“For some providers, profits doubled,” Weaver said.

Sun is an example of how good the times were for the nursing-home industry because of Medicare.

When Andrew Turner founded Sun a decade ago, he ran the company out of his basement.

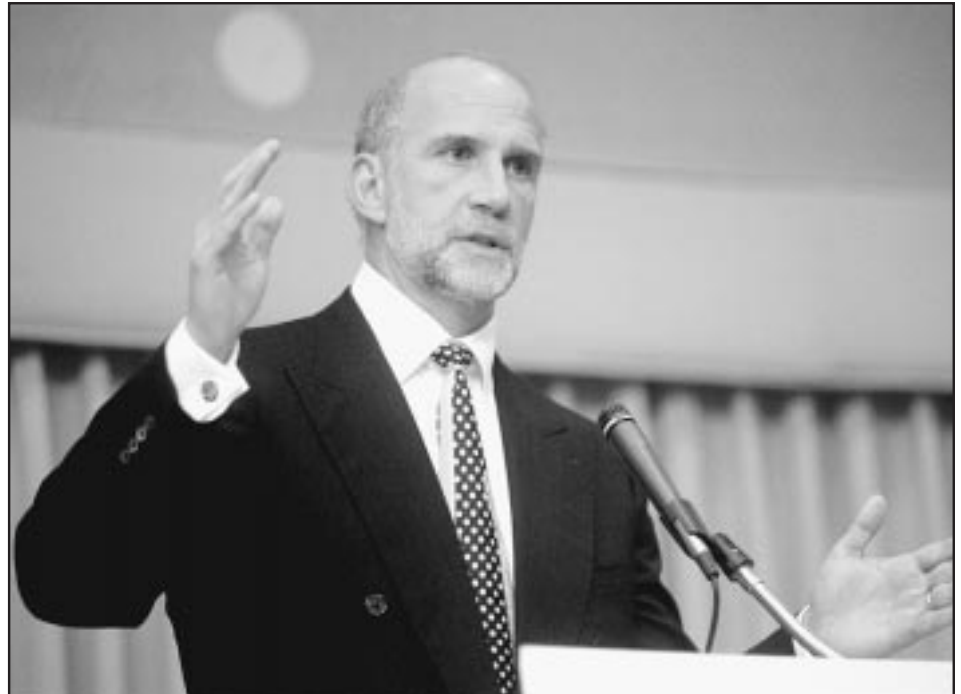
Today, the company operates nearly 400 nursing homes and other facilities in the United States and is one of the largest nursing-home chains in the United Kingdom.

Sun also has subsidiaries that provide rehabilitation and respiratory therapy, pharmaceuticals, medical supplies and other services to residents in Sun homes and homes owned by others.

The overwhelming majority of Sun’s money comes from Medicare, the federal health-care program for the elderly and certain disabled, and Medicaid, the state/federal health-care program for low-income people and other needy.

Turner, chairman and chief executive officer of Sun, earned at least \$1.1 million in salaries and bonuses in 1997, according to company filings with the federal Securities and Exchange Commission.

Under a proposed new contract, Turner was to receive a raise last year in his annual salary, boosting it from about \$540,000 in 1997 to \$700,000, the company filings say. According to the filings, he was to receive another \$150,000 raise this year and the same increase in the year 2000. The filings don’t include information on bonuses.



JOURNAL FILE

SUN FOUNDER: Andrew Turner, chairman and chief executive officer of Sun Health-care Group, started the company in 1989 with seven nursing homes. Today, it has nearly 400 facilities nationwide and about \$3 billion in annual revenues. Turner is pictured here talking to shareholders in 1995.

Turner has been conspicuous with his wealth and that of his company.

He has made tens of thousands of dollars in political contributions, most to Republican causes.

He has built an elaborate private recreation complex, including stables and an arena, in the North Valley.

He runs Sun from a corporate campus of four glass-and-sandstone buildings in Journal Center in north Albuquerque. Construction is under way on a fifth.

The estimated cost of what has been built and what is being constructed at the campus is \$77 million.

There are outdoor sculptures and circular stone driveways. An extensive art collection, much of it Native American, is displayed in hallways and offices.

There is an indoor pool for employees as well as a workout room and jogging track.

Sun last year rented the largest and most ornate of the skyboxes for University of New Mexico football games. Its executives have traveled by corporate jet and stayed in luxury

condominiums.

In one case, Sun’s nursing-home subsidiary reported to the federal government part of the costs of a \$74,000 trip to Italy for some employees.

Under its new fixed-rate system for nursing-home stays, Medicare no longer reimburses companies directly for corporate costs such as travel and entertainment expenses.

Turner was unavailable for an interview, a Sun spokeswoman said.

Fixed rates

Congress and the Clinton administration ordered changes in Medicare payments to nursing homes as part of the Balanced Budget Act of 1997.

The changes include a prospective-payment system for nursing homes that is similar to the one implemented for hospitals in the mid-1980s.

Under the system, a nursing home receives fixed rates for residents whose stays are covered by Medicare. The rates are based in part on the medical needs of the beneficiaries.

Continued on Page 5 ►



Continued from Page 4

The Health Care Financing Administration on July 1, 1998, began to phase in the rates, which will become fully effective beginning July 1, 2001.

During the phase-in, a nursing home receives a percentage of the rates and a percentage of what Medicare paid in 1995 for stays at the home under the old cost-based payment system.

Under certain conditions, Medicare helps cover a stay of up to 100 days in a nursing home for a beneficiary who has recently been discharged from a hospital and is in need of skilled-nursing care to recover from a serious illness or injury.

A Medicare beneficiary who is in a nursing home but whose stay isn't paid for by Medicare is still eligible for Medicare coverage of some medical services and supplies. And Medicare also made changes in how it reimburses for those services.

The program now has annual caps of \$1,500 for occupational therapy and \$1,500 for physical and speech therapy combined. The caps took effect Jan. 1.

Slashing costs

The Medicare-payment changes have been devastating to Sun Healthcare Group.

The company reported a loss of \$753.7 million, including noncash and one-time charges, for 1998.

It has moved to cut costs by \$400 million annually. In addition to eliminating more than 10,000 jobs, Sun has closed 70 offices, frozen wages and reduced some employee benefits.

Sun has defaulted on mortgage notes and missed a \$19.5 million bank payment. It wasn't in compliance with some conditions of bank loans, and leases for some 130 nursing homes in the United States and the United Kingdom.

The company has acknowledged that Sun could choose to seek protection from the U.S. Bankruptcy Court while it reorganizes but has said that is only one of several alternatives.

Bankruptcy proceedings wouldn't necessarily mean that nursing homes would close.

"I will do anything I have to to keep those nursing homes open and provide very high-quality service to our



RICHARD PIPES/JOURNAL

WHO'S AFFECTED: New Mexico has 81 nursing homes with about 6,000 residents.

patients," Mark Wimer, president and chief operating officer of Sun, said in an interview.

To generate cash, Sun is trying to sell its assisted-living homes and rehabilitation centers.

The New York Stock Exchange removed Sun as an active stock in June.

Sun's stock reached \$20 a share in February 1998 and was still above \$6 in January before plummeting.

Sun CEO Turner — who owns almost 7 million shares in Sun, according to company filings with the Securities and Exchange Commission — has taken paper losses in the tens of millions of dollars.

Shrinking payments

The Medicare-payment changes initially were projected to save Medicare \$9.5 billion over five years by slowing growth in payments for nursing-home care.

The industry, however, says the government has overshot the \$9.5 billion mark, reducing Medicare reimbursements by billions more.

It says the fixed rates are too low, particularly in the cases of residents

who need expensive drugs, respiratory therapy and other high-cost ancillary services.

As for the caps on rehabilitation therapy for some Medicare beneficiaries, the industry says some residents need more therapy than provided for under the ceilings.

Wimer said the caps have "nothing to do with medical necessity."

"The patient isn't getting the same amount of therapy that they used to get," he said.

Wimer said his primary problem with the fixed rates for Medicare stays is that they are based on Medicare reimbursements for nursing-home care in 1995.

"The cost information they used is too old," he said.

The rates have resulted in Medicare reimbursements for nursing-home stays that are 30 percent below payments under the old system, Wimer said.

"We weren't told it was going to be a 30 percent reduction," he said. "We were told (by the government) it was going to be substantially less than that, and we prepared for what we were told."

Medicaid has historically paid nursing homes less than the costs of caring for Medicaid patients, Wimer said. But Medicare overpaid, making up for the shortchanging by Medicaid, he said.

"I will do anything I have to to keep those nursing homes open and provide very high-quality service to our patients."



MARK WIMER, PRESIDENT AND CHIEF OPERATING OFFICER

Now, he said, the federal and state governments need to pump more money into Medicaid payments to nursing homes or the federal government needs to increase Medicare reimbursements.

"We are subsidizing the government ...," Wimer said. "That is not a sustainable strategy. We've got to get more money into the system." ♦



Horror Stories Become Commonplace

Inspectors find serious care problems in about 25% of the nation's homes

In caring for some of the most vulnerable people, it isn't just a few nursing homes making a bad name for the industry.

Every year, about one-fourth of the nation's 17,200 nursing homes are found by inspectors to have deficiencies that caused actual harm to residents or placed them at immediate risk of death or serious injury, according to a report by Congress' General Accounting Office.

In New Mexico and other states, nursing-home horror stories have become commonplace:

- An 87-year-old woman walks away from a Carlsbad nursing home and drowns in the Pecos River.
- A man in a Las Cruces nursing home goes 23 days without treatment for bedsores.
- Maggots are found in the bedsores of an 87-year-old man and ants swarm a woman in California nursing homes.
- A man walks away from a Michigan nursing home and is found stabbed to death several days later; the home never knew he was gone.
- An 83-year-old woman in a Minnesota nursing home dies after being given bacon and toast; a doctor had ordered only soft food because she had difficulty swallowing.
- An 80-year-old woman in an Arkansas nursing home dies of a drug overdose administered by the home.

The General Accounting Office found that about 40 percent of the nursing homes with the most serious deficiencies are repeat offenders.

"The most frequent violations causing actual harm included inadequate prevention of pressure sores, failure to prevent accidents and failure to assess residents' needs and provide appropriate care," the General Accounting Office said.

The agency reported on what it called the "yo-yo pattern of compliance and noncompliance" among some homes.

The pattern:

A state survey, or inspection, of a nursing home finds a deficiency, and the home is given notice of a fine or other sanction. The home corrects the problem, the sanction is rescinded and a



"Nursing homes clearly have received the message that we are serious about protecting vulnerable nursing-home residents."

RACHEL BLOCK, HEALTH CARE FINANCING ADMINISTRATION'S DEPUTY DIRECTOR FOR MEDICAID AND STATE OPERATIONS

subsequent survey finds the problem has recurred.

The General Accounting Office report in March was based on state surveys of nursing homes conducted between July 1995 and October 1998.

The report came on the heels of another General Accounting Office study of nursing homes in California.

As part of that study, the General Accounting Office had nurses who are experts in geriatric care review a sample of files for nursing-home

residents who had died in 1993.

From the sample of 62 files, the nurses found 34 residents who had received care that was unacceptable and that sometimes endangered their health and safety.

The General Accounting Office said nursing-home surveyors sometimes miss health and safety problems. And even when problems are found, surveyors don't ensure they are corrected.

Representatives of the nursing-home industry have said the study of California nursing homes exaggerated the risk to patients.

Recently released data by the American Association of Homes and Services for the Aging, which represents nonprofit long-term-care companies, show nonprofit nursing homes are cited for fewer problems on average than for-profit homes.

The American Health Care Association, which represents for-profit nursing-home companies, dismissed the idea that nonprofits might provide better care.

The Health Care Financing Administration — which oversees the Medicare and Medicaid government health-care programs — sets standards for nursing-home care. And it contracts with state agencies to survey nursing homes and recommend sanctions for care problems.

Over the past year or so, the agency, President Clinton and others in his administration have announced several steps to try to improve the care of the 1.6 million or so people in the nation's nursing homes.

Those steps include fines for serious deficiencies that must be paid by nursing homes even if they correct the problems.

State surveyors are also under more scrutiny from the Health Care Financing Administration, and they have been told to conduct off-hour inspections and to pay more attention to homes with repeat problems.

"Nursing homes clearly have received the message that we are serious about

Continued on Page 7 ➤



Continued from Page 6

protecting vulnerable nursing-home residents,” Rachel Block of the Health Care Financing Administration told a Senate committee in June.

Block, the agency’s deputy director for Medicaid and state operations, said the care initiative has experienced some problems.

Many states haven’t been investigating some complaints as fast as they should, and some states have been unable to begin off-hour surveys, often because of labor agreements, Block said.

The nursing-home industry has a number of complaints with the enforcement of care standards.

The industry says the survey system should be collaborative, not confrontational, and the goal should be improving care, not finding wrong.

The industry also says inspectors don’t distinguish between major and minor problems and that findings are often questionable.

Fewer than 1 percent of the nation’s nursing homes have been cited for a pattern or widespread problems involving harm to residents, according to an industry handout.

The industry also complains that states aren’t uniform in how they conduct inspections.

“The survey process is intended to help guarantee good patient care, and not serve as a forum from which to attack the provider,” an industry representative told the Health Care Financing Administration in April.

“We believe continuing emphasis on punitive solutions has done little to improve patient care,” the representative said. “What these policies have done is drive some providers out of the industry, as well as a growing number of good employees.”

Linda Sechovec, executive director of the New Mexico Health Care Association, which represents nursing homes, outlined many of the industry’s concerns in a letter in April to Alex Valdez, head of the state departments of Health and Human Services.

Sechovec wrote:

“HCFA’s move toward an even more punitive system is, in our opinion, an exercise in futility. Fines don’t fix troubled buildings. In fact, depriving facilities of financial resources can be very detrimental.

“The current federal system is far astray from assessing the quality and services which patients, clients and families want. We



“HCFA’s move toward an even more punitive system is, in our opinion, an exercise in futility. Fines don’t fix troubled buildings. In fact, depriving facilities of financial resources can be very detrimental.”

LINDA SECHOVEC, EXECUTIVE
DIRECTOR OF THE NEW MEXICO
HEALTH CARE ASSOCIATION

believe a system that forges a consultative approach between the facility and survey agency to review clinical indicators, implement correction (sic) actions when problems are identified and that truly evaluates customer satisfaction is much more valuable in protecting the public’s interest in quality care.” ♦

Seeking remedy

Steps by the Clinton administration to improve care in nursing homes:

- Expanded the circumstances under which a nursing home can be fined or subjected to other sanctions without being given an opportunity to correct problems.
- Required states to conduct more frequent inspections of nursing homes with histories of serious violations.
- Mandated that states conduct some nursing-home inspections on weekends, early mornings and evenings.
- Targeted homes that are part of a nursing-home chain with a record of non-compliance.
- Instructed states to consider the performance of other nursing homes in a chain when determining sanctions against a home in the same chain.
- Told states to pay more attention to the issues of nutrition, dehydration, bedsores and patient abuse.
- Improved its own system for monitoring how the states conduct inspections and recommend fines and other sanctions against nursing homes.
- Created an Internet site (www.medicare.gov/nursing/home.asp) that provides inspection data for each Medicare and Medicaid certified nursing home in the country.
- Proposed that nursing homes be required to conduct criminal background checks on employees and that a registry be created of nursing-home workers convicted of abusing residents.



COURTESY OF THE BALTIMORE SUN

INTEGRATED HEADQUARTERS: Integrated Health Services of Owings Mills, Md., is just 13 years old but is a giant in the nursing-home industry.

Integrated Chief Prospered

As the company with the most homes in N.M. grew, it paid its co-founder \$8 million over three years in salary and bonuses

The head of the biggest operator of nursing homes in New Mexico earned about \$8 million in salary and bonuses in three years, according to a company document.

Robert Elkins, chairman and chief executive officer of Integrated Health Services of Owings Mills, Md., earned \$2.3 million in salary for years 1996 through 1998, says the document filed with the Securities and Exchange Commission.

He earned nearly \$5.8 million in bonuses for years 1996 and 1997, the document says.

Integrated also is making irrevocable contributions to a retirement trust for Elkins that is to hold \$23.9 million by 2001, according to the document filed with the SEC.

Integrated also leases — at a cost of

nearly \$1.1 million a year — an aircraft from a company wholly owned by Elkins, the document says. Elkins has exclusive first use of the airplane but must reimburse Integrated for its out-of-pocket costs if he uses the aircraft for personal reasons.

Elkins' company, RNE Skyview, has had a 14-seat British Aerospace jet registered with the Federal Aviation Administration.

Integrated does much of its business with Medicare and Medicaid, the government health-care programs.

The company didn't grant an interview.

Integrated operates about 26 nursing homes in New Mexico, or about one-third of all homes in the state. Nationwide, it has 370 geriatric-care facilities and 17 specialty hospitals.

Integrated operates several facilities

once owned by Horizon/CMS Healthcare of Albuquerque, which was sold in 1997.

The company is relatively young — 13 years old — and has grown into a \$3 billion-a-year business primarily by gobbling up other companies.

It has amassed a mountain of long-term debt — \$3.4 billion — and its stock price has plummeted in part because of Medicare cuts for nursing-home care.

Integrated had \$753.3 million in earnings before interest, taxes, depreciation and amortization last year and \$112.3 million in such earnings for the first quarter of this year, according to Securities and Exchange Commission filings.

The company reported net losses of nearly \$68 million, including one-time items, for 1998 and net losses of \$6.6

Continued on Page 9 ➤



Continued from Page 8

million for the first quarter of 1999.

Elkins didn't earn a bonus in 1998 because the company didn't equal or exceed earnings-per-share targets set by Integrated's board of directors.

Elkins, a psychiatrist in his mid-50s, co-founded the company in 1986.

"Integrated looks like a company out of control," a compensation expert told Business Week magazine. "The company's financial problems, he (Elkins) helped create. It seemed like he tried to find every conceivable way to figure out how to pay himself."

The Baltimore Sun reported that Elkins and Integrated in combination gave \$572,500 to President Clinton's re-election effort and the Democratic Party in the 1996 election cycle.

Elkins was invited to three White House coffees, the newspaper said.

Integrated agreed to pay \$14 million in severance and other payments to its former president, Lawrence Cirka, according to the company document filed with the SEC. Deducted from the payments was \$4.85 million Cirka paid for a house in Florida. He had been leasing the home from Integrated.

◆

Dr. Robert Elkins

- Co-founder, chairman and chief executive officer of Integrated Health Services of Owings Mills, Md.

- Earned about \$8 million in salary and bonuses for years 1996 through 1998.



- Elkins' retirement trust is to hold \$23.9 million by 2001.

- Received M.D. degree from the Upstate Medical Center, State University of New York, and completed residency at Harvard University Medical Center.

GAO Found Array Of Overcharges by Providers

Auditors estimate about \$3.1 billion in improper Medicare payments were made in '96 and '97

You've heard the story about the Pentagon's \$640 toilet seats. But how about Medicare's \$1,503 wheelchair cushions, its \$45 gauze bandages and its \$688-an-hour costs for occupational and speech therapy?

Congress' General Accounting Office documented those overcharges — and more — in reports about Medicare fraud and abuse in the nursing-home industry.

The agency told Congress in 1996:

"Although most providers are honest and bill appropriately, a wide array of provider types — including durable medical equipment suppliers, laboratories, physicians, optometrists and psychiatrists — have been involved in the fraudulent or abusive billing of Medicare for services and supplies furnished to nursing-facility patients."

The Health Care Financing Administration, which runs Medicare, told a House committee in 1997 that examples of nursing-home fraud included billings for unneeded mental-health services, inflated prices for medical supplies, residents wrongly enrolled in hospice programs to increase Medicare payments and excessive occupational and speech therapy charges.

An agency official said:

"The nursing-home population has a high percentage of patients who are incapable of monitoring their own bills and may not have family members to do this for them; this makes them easy prey for unscrupulous providers and suppliers."

Nursing homes received about \$23 billion in fee-for-service payments for nursing-home stays in 1996 and 1997. Federal auditors estimate that about \$3.1 billion of those payments were improper.

Improper payments can result from fraud, abuse or unintentional billing errors by Medicare providers.

Beverly Enterprises of Fort Smith, Ark., the nation's largest nursing-home chain, announced last week it reached tentative agreement to settle federal investigations related to Medicare billings.

Beverly said the settlements and related

matters will cost it between \$175 million and \$225 million. The company declined to elaborate.

Another major nursing-home company, Vencor of Louisville, Ky., has been ordered by the Health Care Financing Administration to repay \$90 million to Medicare.

Horizon/CMS Healthcare Corp. of Albuquerque paid \$5.7 million to Medicare and Medicaid in 1996 and 1997. The company, which ran nursing homes and rehabilitation facilities, was later sold.

Medicare's new fixed rates for nursing-home stays are based on reimbursements to homes in 1995, including any reimbursements that were improper due to fraud, abuse and unintentional billing errors by care providers.

"I just don't think that there is as much fraud and abuse in the system as some would like us to believe there is," said Mark Wimer, president and chief operating officer of Sun Healthcare Group.

Some of the money paid improperly to nursing homes was the result of unintentional billing errors, which Wimer said aren't fraud and abuse.

And Medicare billing requirements are often complicated and unclear, he said. There is a lot of "gray" in the system, Wimer added.

Congress and the Clinton administration have stepped up efforts to combat fraud and abuse by all providers in Medicare and Medicaid.

For example, the Department of Justice and the Office of Inspector General at the Department of Health and Human Services have received more money to bring enforcement actions.

The federal government in the past two years has collected more than \$1.2 billion in cases resulting from fraud and abuse.

The government efforts apparently have caused health-care providers to be more cautious: Federal auditors have estimated improper payments to all Medicare providers dropped by more than one-third last year. ◆



Managing Every Penny

Homes say they scrutinize patient needs, care to cope with Medicare cuts

The executive administrator of the Lakeview Christian Home of the Southwest in Carlsbad says the quality of care for her nursing-home residents hasn't suffered because of changes in Medicare reimbursements.

But Jody Knox said dealing with the Medicare changes hasn't been easy: "You have to spend a lot of effort managing every penny and every minute of care."

Knox said Medicare's old payment system for nursing homes, which allowed reimbursement for any reasonable cost, was bad for taxpayers and needed to be reformed.

"But the pendulum has swung from one extreme to the other," she said.

Medicare last year began phasing in fixed rates for nursing-home stays.

It also capped reimbursements for occupational, physical and speech therapy for nursing-home residents whose stays aren't covered by Medicare but who still receive medical services under the program.

The reimbursement changes followed several years of massive increases in Medicare billings by homes. And the result of the changes has been a lot less money for the nursing-home industry.

The government's goals were to make the nursing-home industry more efficient and to reduce abuse, but the industry says the cuts go too far and threaten quality of care.

The industry also says some nursing homes may start refusing to admit Medicare patients, although there is no widespread evidence to support either concern.

"At the moment, we don't have any systematic data that would support that the payments are inadequate to meet the needs of the residents," said Mike Hash, deputy administrator of the Health Care Financing Administration, which runs Medicare.



RICHARD PIPES/JOURNAL

CONTROLLING COSTS: Wilma Hammar, administrator at Lakeview Christian Home of the Southwest in Carlsbad, operates a computer-controlled station that dispenses medications.

The agency is, however, working to assess the impact of the changes on quality of care.

Federal law requires nursing homes with Medicaid or Medicare patients to provide care that allows residents to reach their highest practicable "physical, mental and psychosocial well-being."

Whose responsibility?

Under Medicare's new fixed rates for nursing-home stays, a home is responsible for providing routine care as well as ancillary services — such as prescription drugs, medical equipment and therapy.

The Lakeview Christian Home — a

nonprofit, church-affiliated corporation — offers nursing-home care as well as independent-living, assisted-living and home-health services.

Before admitting someone for a Medicare stay, the nursing home examines the needs of that person and what reimbursement the home will receive, Knox said in an interview.

The home has delayed some admissions so tests could be run while the Medicare beneficiary is still in the hospital, she said. After admission, such tests would be the financial responsibility of the nursing home.

Continued on Page 11 ►



Continued from Page 10

Also, Knox said, physicians have changed prescriptions for some Medicare beneficiaries after consultation with the home. The fixed rates for those beneficiaries were insufficient to cover the cost of drugs initially prescribed, she said.

Only eight of the 232 beds at Lakeview's two nursing homes are designated for residents whose stays are covered under Medicare. Knox said Lakeview is breaking even on those patients.

"That's about all we're doing," she said. But she warned the home could decide to reduce its financial risk by slashing in half the number of beds it sets aside for Medicare stays.

Knox said Medicare shouldn't make nursing homes responsible for providing laboratory work, X-rays and ambulance services under the fixed rates.

"We need to be responsible (only) for those things we can control," she said.

The therapy caps for some Medicare beneficiaries are less of an issue at Lakeview Christian Home, Knox said.

The annual caps are \$1,500 for occupational therapy and \$1,500 for physical and speech therapy combined.

A nursing home could bill a resident for any therapy costs above the caps but wouldn't be guaranteed payment. A home also might be able to bill Medicaid, according to the Health Care Financing Administration.

"The bottom line is that doctors are going to be much more careful in ordering services," Knox said.

"Those black-and-white areas (where therapy is clearly needed) are going to be taken care of," she said. "Those gray areas are not going to be taken care of."

The Lakeview Christian Home has had some care problems in recent years. A woman was accidentally strangled in a bed rail in 1993. Another woman disappeared in 1994 and was later found drowned in the Pecos River. The home paid \$1.6 million in settlements but didn't admit liability.

'Compromises are made'

Other providers of nursing-home care for Medicare beneficiaries tell a similar story to that of Knox.

Sun Healthcare Group of Albuquerque, one of the nation's largest nursing-home chains and an operator of eight homes in New Mexico, said it continues to provide high-quality



RICHARD PIPES/JOURNAL

PROVIDING SERVICE: Valerie Luna, an occupational therapist at Lakeview Christian Home of the Southwest in Carlsbad, works with resident Lucy Griego on combing her hair.

service.

Mark Wimer, president and chief operating officer of Sun, said the company has a legal duty to get residents to their highest level of independence but doesn't have a duty to provide services no one will pay for.

"They do conflict at some point," Wimer said in an interview. "Compromises are made."

For example, therapy programs are not as extensive as they once were, according to a Sun spokeswoman.

St. Joseph Healthcare System offers nursing care for Medicare beneficiaries at two Albuquerque facilities.

St. Joseph Healthcare said the centers are receiving at least 13 percent less money under the fixed rates than they did under the old reimbursement

scheme.

As an example of how reimbursements sometimes fall short of the costs of care, St. Joseph Healthcare cited the case of a 78-year-old woman who received nursing care for a little more than two weeks.

The costs of the care were about \$8,000; the reimbursements totaled about \$5,000, according to St. Joseph Healthcare.

St. Joseph Healthcare hasn't changed the way it cares for Medicare beneficiaries, said Sheri Milone, therapy director for the system's Rehabilitation Hospital and Outpatient Center in Albuquerque.

But Milone said in an interview that physicians understand the nursing units are operating under tighter financial

Continued on Page 12 ►



Continued from Page 11

controls.

St. Joseph Healthcare is taking part in a government study on one of the two major parts of the Medicare fixed-rate system — how the service needs of residents are determined.

St. Vincent Hospital in Santa Fe has a 20-bed unit within the hospital that provides nursing care for Medicare beneficiaries.

The hospital projects a first-year drop in reimbursements from \$1.8 million to \$1.1 million, according to Gary Thompson, the unit's administrator.

To offset the decline, the hospital has cut — from about seven hours to six hours — the amount of skilled-nursing time provided to residents each day, Thompson said in an interview.

Also, residents aren't getting as much occupational therapy as they once did, he said.

"We could probably make more significant cuts, but that would impinge on quality of care," Thompson said.

The nursing unit is covering its direct costs but isn't generating money to help in the hospital's payment of overhead expenses, such as building and utility costs, he said.

Northeastern Regional Hospital in Las Vegas, N.M., late last year shut down an eight-bed unit within the hospital that provided nursing care for Medicare beneficiaries.

Van Osborn, the hospital's chief financial officer, said in an interview that the unit was closed primarily because the changes in Medicare reimbursements resulted in substantially less money for the hospital.

"It wasn't a decision we just made lightly," Osborn said. He added that other nursing-home beds are available in the area for Medicare beneficiaries.

Alex Valdez, who heads the state departments of Health and Human Services, said he hasn't heard any reports of nursing-home care or admissions problems created by the Medicare changes.

Mark Thompson of the Senior Citizens Law Office, an advocacy group for the elderly in Bernalillo County, said that group also hasn't received reports of problems.

Michelle Lujan Grisham, director of the state Agency on Aging, said she hasn't evaluated the impact of the Medicare changes on nursing-home care but believes care will suffer.

"They (some nursing homes) were



RICHARD PIPES/JOURNAL

BUDGET BATTLE: Jody Knox, executive administrator of the nonprofit Lakeview Christian Home of the Southwest in Carlsbad, says the nursing home is now just breaking even on its Medicare residents.

Some basics

NUMBER OF NURSING HOMES IN U.S.: About 17,200.

NUMBER OF NURSING-HOME RESIDENTS IN U.S.: About 1.6 million.

NUMBER OF NEW MEXICO NURSING HOMES: 81.

NUMBER OF NEW MEXICO NURSING-HOME RESIDENTS: About 6,000.

.....
 erring on the part of profit yesterday. They are today," Grisham said.

Only three New Mexico nursing homes went on Medicare's fixed rates in 1998. For the others, the rates kicked in between Jan. 1 and June 1 of this year.

The Health Care Financing Administration plans to adjust the fixed rates next year, but the nursing-home industry is pushing for an immediate increase.

Effects on care

The American Health Care Association, a trade group that represents nursing home and other long-term care providers, has hired an outside firm to determine impacts on nursing-home care as a result of the

Medicare changes.

Preliminary data from the national study show a 15 percent decline in the average length of a Medicare-covered nursing-home stay.

"Nursing homes are re-evaluating the extent to which Medicare resources will allow them to appropriately care for the sickest patients," Susan Bailis, a representative of the American Health Care Association, told a Senate committee in June.

NovaCare of King of Prussia, Pa., a national provider of rehabilitation services, said data from the nursing homes it serves show a 55 percent drop in patients admitted to therapy in the first three months of the year, as compared to the same period in 1998.

NovaCare has estimated that 650,000 Medicare beneficiaries whose nursing-home stays aren't covered by the program but still receive some medical services under Medicare will receive therapy in a nursing home this year. And the therapy caps will be exceeded in the cases of 84,000, the company said.

Representatives of pharmaceutical suppliers for nursing homes have expressed concern that the fixed rates encourage homes to use low-cost drugs rather than those with greatest effectiveness.

"What happens to residents when needed but more-expensive medications are withheld to save money and replaced with less costly and less appropriate medications?" a supplier asked at a "town hall" meeting held in April by the Health Care Financing Administration.

There have been isolated reports of hospitals having difficulty moving Medicare beneficiaries to nursing homes.

The General Accounting Office said hospitals are a safety net for Medicare beneficiaries while the reimbursement changes for nursing homes are implemented and modified.

Elma Holder, founder of the National Citizens' Coalition for Nursing Home Reform in Washington, said the Medicare changes are being felt most by large nursing-home chains that relied heavily on the program, she said.

She said the industry has always argued that it doesn't receive enough money.

"The industry is quick to pick up on any excuse for not delivering good care," Holder said. "We have been suffering from quality-of-care problems for some time ... I don't know how it could get much worse." ♦



N.M. Homes Cited More Often for Deficient Care

New Mexico nursing homes still rate better than the national average, despite the growing number of problems found by state inspectors.

Data compiled by the federal Health Care Financing Administration in 1997 showed 71 percent of the state's nursing homes had no deficiencies or only the most minor.

Only Kentucky fared better.

But that 71 percent figure slipped to 25 percent in 64 surveys conducted in New Mexico between July 1, 1998, and May 6.

The industry contends state regulators are under pressure from advocates and the Health Care Financing Administration to find more problems.

"Deficiencies doubled almost overnight," said Linda Sechovec, executive director of the New Mexico Health Care Association.

"I don't think quality of care changed that significantly."

The Bureau of Health Facility Licensing and Certification came under sharp attack from advocates for nursing-home residents last year. And the Clinton administration has announced efforts to improve care in nursing homes.

Alex Valdez, who heads the state departments of Health and Human Services, said he could only speculate on why more deficiencies are being found.

But, Valdez said in an interview, "We have attempted to be more diligent" in enforcing nursing-home rules and regulations.

He said, for example, that five workers were added to the Bureau of Health Facility Licensing and Certification.

The bureau, which is part of the state Health Department, has a \$1.1 million annual contract with the Health Care Financing Administration to survey homes.

The Bureau of Health Facility Licensing and Certification found an average of 4.74 deficiencies in its most recent surveys of the state's 81 homes. That compares to a national average of 5.19.

The percentage of homes nationwide found to have either no deficiencies or only the most minor was 23.6, compared to 25 percent in New Mexico.



MARK HOLM/JOURNAL

KEEPING WATCH: Donna Kittredge with the state Bureau of Health Facility Licensing and Certification checks patient charts at a nursing home.

Data show New Mexico homes do well in some areas — such as treating bedsores and incontinence — but poorly in others, including providing sufficient fluids to residents and making medication errors.

Nursing homes routinely avoid sanctions, including fines, by correcting problems.

The Health Care Financing Administration sets standards for nursing homes.

It also analyzes the types of deficiencies found by state surveyors in nursing

homes around the country.

Data show that for the survey year 1997-98, the most frequently cited deficiencies in New Mexico dealt with training of workers, physically restraining residents, respecting the dignity of residents and developing care plans for residents.

Other survey data show New Mexico homes, when compared to all homes nationwide, are better on average in some areas but poorer in others.

For example, the data show, New Mex-

Continued on Page 14 ►



Continued from Page 13

ico homes have been found to be better on average in such areas as providing safe, clean, comfortable and homelike environments; not employing people guilty of abuse; treating bedsores and incontinence; keeping homes free of hazards; providing supervision and devices to prevent accidents; maintaining the nutritional statuses of residents, and not using unnecessary drugs.

On the downside, New Mexico homes are below average in making sure residents can exercise their rights and be free of coercion; having policies to prohibit abuse and neglect; providing appropriate activity programs; accurately assessing patients and coordinating with health-care professionals; developing comprehensive care plans; providing sufficient fluids to residents; making medication errors; having sufficient around-the-clock nursing staff; and food storage, preparation and distribution.

"Overall, I believe the quality of care in New Mexico is as good or better than other parts of the country," said Sechovec of the New Mexico Health Care Association.

Sechovec, whose organization represents nursing homes, said in an interview that some homes do a better job than others.

Matthew Gervase, who until recently headed the Bureau of Health Facility Licensing and Certification, generally agreed with Sechovec's assessment.

He said that "by and large" nursing-home care in New Mexico "is pretty good."

But Michelle Lujan Grisham, director of the state Agency on Aging, said many New Mexico homes have been found deficient in such areas as providing food and water.

"We're just talking about basic, basic care," Grisham said in an interview. "We're not impressed with the quality of care in New Mexico."

The Agency on Aging has a federal- and state-funded ombudsman program that serves as an advocate for people in long-term care, including nursing homes.

The program has five employees, two contract agents and about 150 volunteers, Grisham said.

Revamping oversight

In a letter in April to Valdez, Sechovec outlined a number of industry beefs

with the survey work by the Bureau of Health Facility Licensing and Certification.

The letter said surveyors are inconsistent and communicate poorly with homes. Sechovec also said homes that complain about surveyors are retaliated against.

Valdez said a department trainer will be assigned to sit in on exit conferences where surveyors explain their findings to nursing homes.

The trainer will assess whether additional communications training for surveyors is needed.

Joseph Mulloy, a division director under Valdez, said most complaints about surveyors aren't substantiated. "We expect professionalism from our staff, and we get it," he said.

Mulloy said the state is changing the

"Overall, I believe the quality of care in New Mexico is as good or better than other parts of the country."

LINDA SECHOVEC,
EXECUTIVE DIRECTOR OF THE NEW MEXICO
HEALTH CARE ASSOCIATION



procedure used for nursing homes to dispute findings of deficiencies. Outside parties will help review cases, he said.

The Health Care Financing Administration monitors the survey work by states, and HCFA representatives sometimes accompany state surveyors on inspections.

They also make visits to nursing homes after state surveyors have been there to check on their work.

Molly Crawshaw, chief of professional health advocacy and analysis at the Dallas regional office of the Health Care Financing Administration, said the agency hasn't written any negative reports on New Mexico surveyors in the three years she has been with the agency.

"They've been very committed to working with us," Crawshaw said in an interview.

Correcting problems

If it finds deficiencies in a nursing home, the Bureau of Health Facility

Licensing and Certification routinely notifies the home it will recommend sanctions if the problems aren't corrected.

Sanctions can include a ban on new admissions of Medicare and Medicaid patients, termination from the Medicare and Medicaid programs and civil monetary penalties.

The Health Care Financing Administration must approve any sanctions against a home that takes Medicare beneficiaries.

Nursing homes routinely correct problems to avoid sanctions. A home could avoid a fine even in a case where it caused harm to a resident who died.

As part of the Clinton administration effort to improve care in nursing homes, the Health Care Financing Administration recently expanded the circumstances under which sanctions

can be imposed without a home being given an opportunity to correct problems.

For the years 1995 through 1998, \$535,400 in fines were levied against nursing homes in New Mexico and the state collected \$278,478. Some fines were reduced and others appealed.

One of the biggest fines — \$53,495 — was paid by the New Mexico Veterans Center in Truth or Consequences, which is operated by the Health Department.

A resident at the center died in 1997 after foot ulcers led to leg amputations. Another resident died last year after he fell out of a van.

A state survey found residents weren't getting baths, wandered away from meals without eating and sometimes sat in urine-soaked clothes.

"We investigated, we found deficiencies, we cited ourselves, we corrected those deficiencies and today we have a clean record," Valdez said.

He said he expects the Veterans Center to be as good or better than any nursing home in the state. ♦



Inattentiveness Hastened Death, Family

Sun Healthcare disputes claims in wrongful-death lawsuit

Betty Johnson became a resident of Sun Healthcare Group's Golden Age nursing home in Clovis in July 1996.

Johnson was transferred to a hospital on March 14, 1998. She died 10 days later.

The cause, according to the death certificate, was sepsis — a poisoning caused by infection. The condition that led to sepsis was listed as a decubitus ulcer, more commonly known as a bedsore.

A review of Johnson's case by the state Bureau of Health Facility Licensing and Certification found Golden Age had harmed her by not providing necessary care and services.

Among other things, the review said, the nursing home failed to consistently turn Johnson every hour to help battle the bedsore on her lower back.

Johnson was old — she was 89. And, like many people of that age, she had multiple, serious health problems.

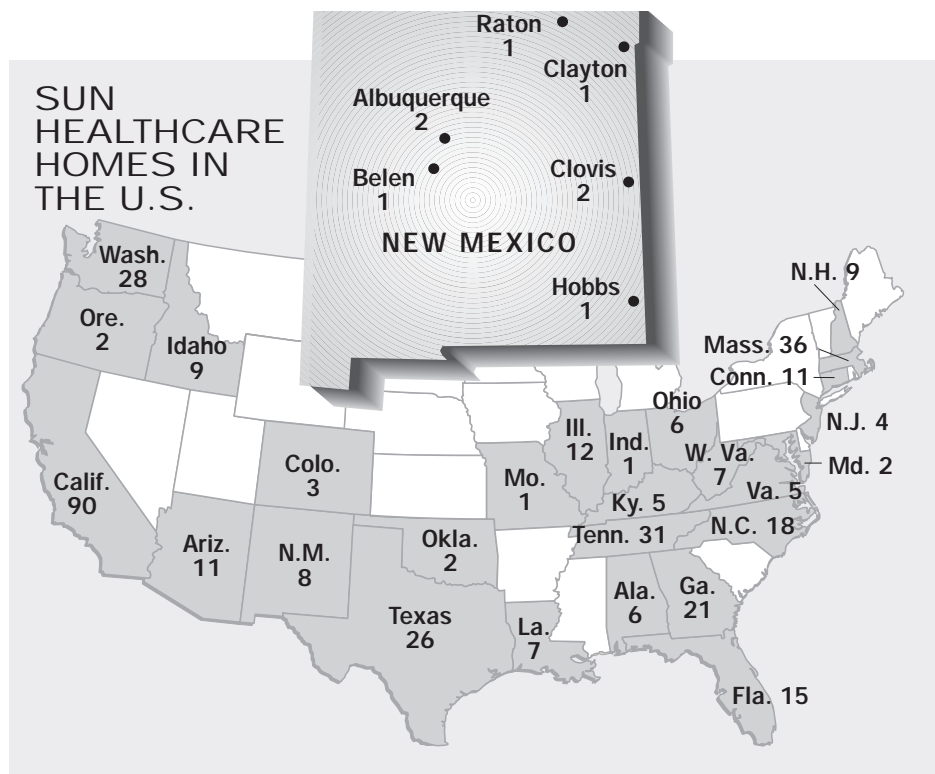
But the nursing home "helped her into the grave a lot sooner," said Barbara Gould, who was once married to a grandson of Johnson and visited her often at Golden Age.

Some family members last year filed a wrongful-death lawsuit against SunRise Healthcare Corp., the nursing-home subsidiary of Sun Healthcare Group. The name of SunRise was recently changed to SunBridge.

In response to the lawsuit, Sun has said it "applied the knowledge and used the skill and care ordinarily used by a reasonably well-qualified nursing home."

Golden Age is one of eight Sun nursing homes in New Mexico, and other homes also have had problems.

The company didn't grant a request for an interview on specific incidents involving patient care in its homes.



CAROL COOPERRIDER / JOURNAL

However, Phyllis Goodman, vice president for corporate communications for Sun, said in a recent letter to the Journal:

"Our goal is to deliver excellent patient care to the approximately 40,000 residents in our facilities across the country. We have extensive clinical, social, management and other internal systems in place to assist us in meeting that goal."

The company in July released survey results that it said showed 90 percent of residents in Sun homes in New Mexico



JOHNSON: Died after being transferred from nursing home to hospital

and their families would recommend their facilities to a friend or family member.

The survey was conducted from October through March by Research and Polling Inc., Sun said.

Residents or the people responsible for arranging their care were mailed survey forms, the company said. Completed forms were received from about 30 percent of those surveyed.

Seeking accountability

Gould, a registered nurse, said she worked briefly at Sun Healthcare Group's other Clovis home, High Plains, before Johnson's death. She said she quit because the home was understaffed and the staff was poorly trained.

Gould, who is not a party to the



Official: Nurse Aides Need Raise

Health and Human Services chief says caregivers should earn more than burger-flippers

Caring for nursing-home residents is tough work and most of it is done by low-paid, certified nurse aides.

The pay, about what a fast-food worker earns, makes it difficult for homes to attract and keep CNAs.

Beverly Enterprises of Fort Smith, Ark., the nation's largest nursing-home chain, has to replace more than 80 percent of its CNAs each year.

A government audit last year in Maryland found 51 employees at eight nursing homes had criminal records, many for serious offenses.

Advocates have argued there is a direct link between the quality of care

in homes and the level and quality of CNAs and other staff.

Alex Valdez, who heads the departments of Health and Human Services, said the workers who care for parents and grandparents should be paid more than those who flip burgers.

Nursing-home companies "have a responsibility from the payers of health care, which to a large extent are the taxpayers of this country, to address compensation and where they place their priorities," Valdez said in an interview.

"The industry has to bring some stability to the work force," he said. "There has to be some corporate responsibility."

Valdez said some pay has been



VALDEZ: Wants "corporate responsibility"

increased at state-run nursing homes.

Linda Sechovec, executive director of the New Mexico Health Care Association, which represents nursing homes, said all the problems in attracting and keeping CNAs can't be solved simply by corporate will.

"There's also a government responsibility to provide the necessary resources" to pay for quality nursing-home care, Sechovec said.

The nation's job market is tight, she said, and many people aren't interested or suited for a caregiver role. "It requires a special type of person," she said.

Sechovec said starting salaries for CNAs have been moving up in Albuquerque and now are in the \$7- to \$8-an-hour range.

She noted the nursing-home industry is working with the state to provide job opportunities to welfare recipients. ♦

Continued from Page 15

lawsuit against Sun, said in an interview that she found the same problems at Golden Age when visiting Johnson.

"I would like this big corporation to have some accountability," said Gould, who moved to Maine last fall. "The people aren't getting what they need."

Johnson had undergone hip-replacement surgery in early 1998, according to the review of her case by the Bureau of Health Facility Licensing and Certification.

The review found she was reported to have had the bed sore at the time she went back to the nursing home. But the bed sore worsened, according to the review.

"The facility failed to provide aggressive, timely and appropriate treatment," the review said.

The review also found the nursing home failed to consistently maintain Johnson's hydration and didn't monitor her for incontinence as set out in her

care plan.

The state cited Golden Age for three deficiencies — two of which were found to have caused actual harm.

A deficiency with a finding of actual harm is among the most serious deficiencies for which a nursing home can be cited.

Sun contested the findings in the case of Johnson.

Some concerns

The Bureau of Health Facility Licensing and Certification conducts annual surveys, or inspections, of all nursing homes in New Mexico.

The bureau's surveyors, which include health-care professionals, review patient files, talk to residents and staff, and examine the cleanliness of homes, among other things.

New Mexico's nursing homes had an average of 4.74 deficiencies in their last annual surveys.

The most serious are those found to

have caused actual harm to residents or to have put them in immediate jeopardy for serious injury or death.

Here is a list of the Sun homes in New Mexico, month of last survey and deficiencies found:

- Golden Age in Clovis; August 1998; four deficiencies, none for actual harm or immediate jeopardy.
- High Plains in Clovis; October; six deficiencies, none for actual harm or immediate jeopardy.
- Belen; April; seven deficiencies, including one for actual harm for failing to appropriately manage the behavior problems of some residents.
- Clayton; April; one deficiency, not for actual harm or immediate jeopardy.
- Hobbs; July 1998; eight deficiencies, none for actual harm or immediate jeopardy.
- Raton; March 1998; three deficiencies, none for actual harm or immediate jeopardy.
- West Mesa home in Albuquerque;

Continued on Page 18 ►



JOURNAL FILE

FIGHTING PENALTY: State surveyors last fall found several problems at the Valle Norte Caring Center in north Albuquerque and fined its operator nearly \$100,000.

North Albuquerque Home Faces \$100,000 Fine

■ *Integrated is appealing penalty involving an Alzheimer's patient and other problems at Valle Norte*

The Valle Norte Caring Center has been cited for numerous, sometimes serious deficiencies in recent years. Valle Norte is one of about 26 nursing homes in New Mexico operated by Integrated Health Services of Owings Mills, Md., the state's largest operator and one of the nation's largest chains.

Integrated Health Services, which has owned the home since the end of 1997, didn't respond to a request for an interview.

The company's annual report says it has developed a comprehensive quality-assurance program to verify that high standards of care are

maintained.

The report also says Integrated "requires that its facilities meet standards of care more rigorous than those required by federal and state law."

The company says it maintains a toll-free telephone line that patients and staff are encouraged to call to report problems.

Critical case

Valle Norte, located in north Albuquerque, is a relatively new facility with 113 beds.

A state-certification survey in 1996 at Valle

Continued on Page 18 ►



Continued from Page 17

Norte found 11 deficiencies and a 1997 survey found 12, according to data maintained by the Health Care Financing Administration.

None was for causing actual harm to residents or placing them in immediate jeopardy of serious injury or death.

Valle Norte at the time of the surveys was owned by Horizon/CMS Healthcare of Albuquerque.

A certification survey in October — after Integrated bought the home — resulted in Valle Norte being cited for 15 deficiencies, including four for immediate jeopardy.

Three of the deficiencies for immediate jeopardy dealt with a resident with Alzheimer's who was found about one block from the home.

Housekeeping staff, who had just left work, discovered the woman on the ground. She was cut, flushed, short of breath and sweating, according to a survey by the Bureau of Health Facility Licensing and Certification.

The woman was near a steep, rocky slope, the investigation said. At the base of the 25-foot slope was a road and a concrete-lined arroyo.

The Bureau of Health Facility Licensing and Certification conducts annual certification surveys of nursing homes and follow-ups to ensure problems are corrected. It also surveys homes in response to specific complaints.

The survey in October found Valle Norte failed to adequately supervise the woman, who had a history of wandering. The nursing home had placed an alarm

device on the woman but she removed it.

The survey also found:

- Some residents dressed in extra clothing because of uncomfortably low indoor temperatures.
- Standing water and scum in water and ice dispensers.
- Littered food debris, trash and dirty dishes, as well as food spills.
- Kitchen workers touching food and dishes with contaminated gloves.
- Some residents weren't given sufficient fluids to prevent dehydration and other health problems.
- Some residents who were to receive only finger food were given a pork chop and steak.
- A walk-in refrigerator had a thermometer reading of 50 degrees.
- Turkey breast being prepared for an evening meal was more than 30 days past its shelf life.

A follow-up visit to Valle Norte by the Bureau of Health Facility Licensing and Certification in November found the problems had been corrected.

The bureau, however, recommended that the Health Care Financing Administration fine Valle Norte nearly \$100,000 because of the incident involving the woman and other problems.

The Health Care Financing Administration — which sets standards for nursing-home care and oversees Medicare and Medicaid — imposed the fine. Valle Norte appealed; the appeal is pending.

The Bureau of Health Facility Licensing and Certification also conducted a complaint survey at Valle Norte in August 1998 that resulted in findings of two deficiencies for actual harm.

The bureau said one resident didn't

receive a medication as frequently as ordered by a physician.

In the case of another resident with a history of falls, the home was cited for failing to provide physical-therapy services. A fall had resulted in the woman blackening her eyes.

Exceeding state average

Data compiled by the Health Care Financing Administration in June show homes operated by Integrated Health Services in New Mexico had an average of 6.42 deficiencies in their most recent surveys.

That compares to an average of 4.74 deficiencies for all New Mexico homes.

Integrated Health Services may not have operated all the homes at the time of the surveys included in the June report.

Not included in the June report were deficiencies at three homes that Integrated successfully contested.

The Casa Arena Blanca nursing home in Alamogordo had more deficiencies — 19 — than any other home operated by Integrated Health Services. It was surveyed in late March.

Four of the deficiencies were for placing residents in immediate jeopardy, and 10 were for actual harm.

Survey data show six, or 23 percent, of the homes operated by Integrated Health Services had either no deficiencies or only the most minor deficiencies in their last certification surveys.

Statewide, 25 percent of the 64 homes surveyed between July 1, 1998, and May 6 had no deficiencies or only the most minor deficiencies. ♦

Continued from Page 16

December; five deficiencies, none for actual harm or immediate jeopardy.

■ Mission Manor Care home in Albuquerque; July 1998; no deficiencies.

Sun unsuccessfully contested one of the deficiencies found at Golden Age in the August 1998 survey.

The Bureau of Health Facility Licensing and Certification conducts follow-up surveys to ensure problems are corrected and also conducts surveys in response to complaints.

At Sun's home in Raton, a complaint survey in October found a woman hadn't received blood-pressure medication as

ordered by her physician.

The woman was sent to a hospital emergency room after her blood pressure soared to as high as 256/112 and she displayed symptoms of a stroke, according to the survey results.

The Sun home was cited for causing harm to the woman. She later recovered.

Also at Sun's Raton home, a woman suffered a broken hip in November 1997 when a door fell on her, according to a complaint survey.

Workmen had taken the door off its hinges and propped it against a wall, the survey found. The woman pulled on the door four days later.

The incident resulted in a deficiency

of actual harm.

A complaint survey at Sun's West Mesa home in September resulted in findings of two deficiencies of actual harm.

The survey found that a resident transferred to a hospital following a fall was lying in sheets that were stained with urine and caked with dried feces.

Cracks in the man's hands and his fingernails also were encrusted with feces, the survey said.

The survey found that the home also had failed to deal properly with a resident who resisted elevating his feet as ordered by a physician. The man had ulcers on his ankles. ♦



Awash In Red Ink

Industry blames Medicare cuts; critics say bad business decisions played role

The nation's large nursing-home companies took a financial beating in 1998 after the government slashed Medicare payments, but some chains are weathering the cuts much better than others.

Beverly Enterprises of Fort Smith, Ark., made money in the first three months of this year. So did HCR Manor Care of Toledo, Ohio.

Meanwhile, Sun Healthcare Group of Albuquerque reported a net loss of \$113.2 million, including one-time charges.

The mixed reports have caused some to suggest that not all of the financial woes in the nursing-home industry are a result of the Medicare cuts.

"What factors have put certain companies at particular risk?" Iowa Republican Charles Grassley, chairman of the Senate Special Committee on Aging, asked in a floor statement May 5.

"Did these companies try to grow too large, too fast? Did they take on more debt than they could manage? Was their business strategy flawed?"

Medicare, the federal health-care program for the elderly and certain disabled, last year began paying fixed rates for Medicare-covered stays in nursing homes.

It also capped how much it will pay for rehabilitation therapy for Medicare beneficiaries whose stays in nursing homes aren't covered by the program

Continued on Page 20 ➤

TOP NURSING-HOME COMPANIES

Name of company (hometown)	Care facilities	Beds	1998 revenues in billions	1998 losses in millions	High 1998 stock price	Stock price as of July 26	Business Week comments
Beverly Enterprises (Fort Smith, Ark.)	562	62,293	\$2.8	\$31	\$16	\$6.69	Focused, had good foresight
Mariner Post-Acute Network (Atlanta)	416	49,656	\$2.8	\$241	\$21	\$0.56	A collection of 3 ailing companies
HCR Manor Care (Toledo, Ohio)	297	47,138	\$2.2	\$2.9	\$47.87	\$21.12	Best operator in the group
Sun Healthcare Group (Albuquerque)	397	44,941	\$3.1	\$753.7	\$20.13	\$0.40	Expanded at the wrong time
Integrated Health Services (Owings Mills, Md.)	380	44,302	\$3	\$68	\$39	\$5.81	Jumbled foray into disparate businesses

Sources: American Health Care Association; Securities and Exchange Commission; Business Week Magazine





Continued from Page 19

but who are still eligible for Medicare coverage of some medical services and supplies.

The changes are expected to save Medicare \$9.5 billion or more over five years.

Medicare previously reimbursed nursing homes based on their costs, a generous system that had resulted in ever-increasing billings and billions of dollars more being spent on nursing-home care.

The industry says the cuts have created a financial crisis and wants the government to start pumping more money into reimbursements for nursing-home care.

But Grassley said questions about the operation of companies need to be answered before the government acts.

"Otherwise," Grassley said, "we could wind up subsidizing the mistakes of well-compensated executives."

More services, more profit

There are several reasons Sun Healthcare Group has been hit so hard by the Medicare changes.

The most basic is that Sun was built in part on Medicare's former payment system.

The overwhelming majority of Sun's money comes from Medicare and Medicaid, the state/federal health-care program for low-income people and other needy.

About 10 percent of the residents in Sun's homes had their stays paid for by Medicare, but Medicare had accounted for about 40 percent of the company's nursing-home revenues, according to Sun.

Many of those Medicare residents require high-cost medical services and supplies, such as ventilator support, intravenous-drug therapy and intense rehabilitation.

Under Medicare's old payment system, those patients made economic sense because the more services and supplies provided, the more Sun could profit.

Now, those same patients represent potential losses.

The new fixed rates for nursing-home stays are considered by the industry as well as outsiders to be insufficient to cover the care for those high-need patients.

In addition to nursing homes, Sun also has subsidiaries that provide rehabilitation therapy, pharmaceuticals, medical supplies and other services to residents of its homes as

well as residents in homes owned by others.

Because of the fixed rates, Sun's homes and those homes owned by others can no longer directly pass along to the government the costs of supplies and services from Sun subsidiaries.

Some of the homes served by Sun subsidiaries but not owned by the company have decided they can't continue to contract with Sun, choosing instead to provide services and supplies themselves.

Also, the money that homes are willing to pay for services and supplies isn't as much as Sun was able to collect under the old Medicare payment system.

Sun's rehabilitation-therapy business also could suffer because of the Medicare caps on therapy for nursing-home residents whose stays aren't covered by Medicare but still receive some services and supplies under the program.

Providing therapy and other ancillary services to Medicare beneficiaries in Sun homes and those owned by others was the economic engine for Sun.

Providing therapy doesn't require a great deal of investment in equipment and other capital, and a large volume isn't required to make a profit.

"Ancillary services ... historically provided more than half of the company's operating profits," the company has said in its financial statements.

Sun used the revenues to acquire an ever-increasing number of nursing homes, earning it the nickname "Pac Man," according to The Wall Street Journal.

Expansion, debt

Sun Healthcare Group was created just a decade ago but today has some \$3 billion in annual revenues and nearly 400 nursing homes and other facilities in the United States. It also is one of the largest nursing-home chains in the United Kingdom.

Sun increased its exposure to the Medicare-payment changes by continuing to expand even when it knew the changes were coming. (The company says Medicare cut payments far more than it said it would.)

Just over a year ago, Sun purchased 98 nursing homes and assisted-living centers from Retirement Care Associates of Atlanta. Retirement Care Associates also owned most of Contour Medical, a provider of medical and surgical supplies. Sun paid about \$320 million.

Sun is now trying to unload the assisted-



HASH: The Health Care Financing Administration's deputy administrator



GRASSLEY: Senate Special Committee on Aging chairman



WIMER: Sun Healthcare president and chief operating officer

Continued on Page 21 ►



HOW SUN HEALTHCARE GREW



■ **1989:** SunRise Healthcare is founded by Andrew Turner; it operates seven nursing homes.

■ **1991:** SunDance Rehabilitation is established to provide therapy to nursing-home residents.

■ **1993:** SunScript Pharmacy is created to supply pharmaceuticals. Companies are combined under Sun Healthcare Group, and 40 percent of company is sold in a public stock offering that raises \$50 million.

■ **1994:** Sun merges with Mediplex Group of Massachusetts in a \$312 million cash/stock deal. It goes international, buying a majority interest in 17 homes in United Kingdom.

■ **1995:** Sun buys most of Columbia Health Care of Toronto for \$8.7 million in cash. It merges with Golden Care of Indianapolis in a \$55 million stock deal.

■ **1996:** Sun purchases a stake in OmniCell Technologies of Palo Alto, Calif., for \$25 million cash.

■ **1997:** Sun buys Health Factors of Tampa, Fla., for \$8.5 million-plus. It purchases Hospital Therapy Services of Sarasota, Fla., for \$16.8 million in cash. It acquires Regency Health Services of Tustin, Calif., for \$625 million in cash and assumed debt.

■ **1998:** Sun buys a majority interest in a German company for \$15.1 million in cash. It purchases Retirement Care Associates of Atlanta and most of Contour Medical in a deal valued at about \$320 million.

Continued from Page 20

living centers to generate much-needed cash.

"It's real easy to look at the RCA deal after the fact and say we would have been better off not having done it," said Mark Wimer, president and chief operating officer of Sun.

"You could argue that maybe we shouldn't have paid what we did pay for the company," Wimer said in an interview. "My counter argument to that

(is) we paid less for that than we did anything else."

He also said the deal to acquire Retirement Care Associates had been in the works for 18 months. And, Wimer said, the deal will work out in the long run.

Sun also has a major problem that isn't directly related to the changes in the Medicare reimbursements. That is debt. It totals about \$1.6 billion.

"I would agree that we have a fundamental problem with our debt-to-equity ratio because our stock is trading

at a dollar a share," Wimer said in early June.

The company's stock has since dropped to well below \$1.

Greater tolerance

So why are some nursing-home chains doing better than Sun Healthcare Group?

In the case of HCR Manor Care, it is partly because it has a relatively high percentage of nursing-home residents

Continued on Page 22 ►



Continued from Page 21

whose stays are covered by private insurance or other private-pay sources.

Executives for Beverly Enterprises said in its annual report that the company began preparing in 1994 for the eventual shift to Medicare fixed rates and the efficiencies that would be demanded.

“We deliberately rejected opportunities to use nursing homes as a platform to sell expensive ancillary services to the government and to exploit the Medicare-reimbursement system,” the report said.

“We decided to discontinue a practice that was common throughout our industry at the time — the use of expensive rehabilitative services provided by outside contractors.”

After Beverly posted a profit for the first three months of the year, David Banks, chairman and chief executive officer, said, “We’re very encouraged by the initial results we’ve achieved under” the fixed rates.

Andre Demitriadis, chief executive officer of LTC Properties, a health-care real estate trust, told *Business Week* magazine that the government has essentially eliminated the get-rich-quick games.

Haley Barbour, former head of the Republican National Committee and now a lobbyist for Sun and other nursing-home companies, said the most financially sound companies have been able to tolerate the Medicare changes better.

“Companies that have more debt can less well tolerate lost revenue,” Barbour said in an interview. “Companies that have less debt can tolerate it longer.”

“(Companies) that own more facilities outright probably can tolerate it more than those that have to pay a lot of lease payments. That’s just like any other business.”

Analyzing causes

The Health Care Financing Administration, which runs Medicare, doesn’t believe Medicare changes are the only causes of the financial troubles of some nursing-home chains.

Mike Hash, the agency’s deputy administrator, said in an interview that analysts suggest some companies have been hurt by ill-considered expansions and expansion-related debt.

“In trying to tease apart what contribution the Medicare program has made to the financial distress (of the industry), we haven’t gotten to that point yet,” Hash said in an interview.



“Companies that have more debt can less well tolerate lost revenue (such as Medicare cuts). Companies that have less debt can tolerate it longer.”

HALEY BARBOUR,
FORMER HEAD OF THE REPUBLICAN
NATIONAL COMMITTEE AND NOW A LOBBY-
BYST FOR NURSING-HOME COMPANIES

The General Accounting Office also has said a combination of factors has likely contributed to the financial woes of some companies.

“Some of these organizations invested heavily in the nursing-home and ancillary-service businesses not long before the enactment of the (Medicare changes), both expanding their acquisitions and upgrading facilities to provide higher-intensity services,” the General Accounting Office said in a report in June.

The GAO also said, “The intentional design (of the Medicare changes) is to require inefficient providers to adjust their practice patterns to remain viable.” ♦

Some basics

WHAT DOES MEDICARE COVER?

Part A (Hospital Insurance) provides coverage of inpatient hospital services, skilled-nursing facilities, home-health services and hospice care. Part B (Medical Insurance) helps pay for the cost of physician services, outpatient hospital services, medical equipment and supplies, and other health services and supplies.

MEDICARE NURSING-HOME COVERAGE:

Part A, under certain conditions, helps pay for a stay of up to 100 days for a beneficiary who has been hospitalized and needs skilled-nursing care. A Medicare beneficiary who is in a nursing home but whose stay isn’t covered by Part A is still eligible for Part B coverage.

WHAT DOES MEDICAID COVER?

Inpatient and outpatient hospital services, physician services, medical and surgical dental services, home-health care, family-planning services and supplies and more.

MEDICAID NURSING-HOME COVERAGE:

For certain individuals whose stays aren’t covered by private insurance or Medicare.



HOW TO RESEARCH A NURSING HOME

Inspection reports for the nation's more than 17,200 nursing homes are available on a Web site created by the Health Care Financing Administration. The address is <http://www.medicare.gov/nursing/home.asp>. Below are partial examples of two Sun Healthcare reports found on the HCFA site. The Journal Web site, <http://www.abqjournal.com>, also has links to several Web sites related to nursing-home care.

The screenshot shows a navigation bar with links: Home, Nursing Home Search, Phone Directory, Helpful Hints, Q&As, Important Information, and Guestbook. Below the navigation bar is the "Nursing Home Compare" logo and the "Nursing Home Search" heading. Two search results are displayed, each with contact information, ownership details, and health deficiency statistics.

Nursing Home Name	Address	Type of ownership	Medicare/Medicaid participation	Number of beds	Date of last inspection
SUNRISE FOUNTAINVIEW CARE CENTER	2540 CARMICHAEL WAY CARMICHAEL, CA 95608 (916)482-0465	For profit - Corporation	Both	178	Sep 10, 1998
SUNRISE CARE & REHAB - TOWN MANOR	55 LOWELL STREET LAWRENCE, MA 01840 (508)688-6056	For profit - Corporation	Both	105	Aug 12, 1998

Health Deficiencies:

- Average number (and range) of health deficiencies in this state: 10 (0 to 51)
- Total number of health deficiencies for this nursing home: 7

Health Deficiencies:

- Average number (and range) of health deficiencies in this state: 3 (0 to 30)
- Total number of health deficiencies for this nursing home: 2

Assessing Sun's Performance

One analysis shows Sun had more serious deficiencies than industry norm; company says performance near national average

State inspectors found nearly 39 percent of 321 nursing homes operated by Sun Healthcare Group caused actual harm to residents or placed them at immediate jeopardy of serious injury or death, according to data from annual inspections.

The Health Care Financing Administration, which sets standards for nursing-home care, maintains an Internet site where it posts results of annual state surveys, or inspections, of nursing homes nationwide.

The agency posts only the most recent survey results, and there is a lag between

when surveys are conducted and when the results are posted.

The Journal examined the survey results posted in May for 321 nursing homes across the country operated by Sun Healthcare Group. Other Sun homes were excluded from the examination because they weren't operated by Sun at the time of the posted surveys. Three others were excluded because the survey information was incomplete.

The examination showed 124 Sun homes, or 38.6 percent, were cited for at least one deficiency of causing actual harm to residents or placing them in

immediate jeopardy of serious injury or death.

These are the two most serious possible deficiencies.

A report issued in March by Congress' General Accounting Office for nursing homes nationwide said 27 percent was cited for actual harm or immediate jeopardy between Jan. 1, 1997, and Oct. 22 of last year.

A Sun spokeswoman cautioned against comparisons because the time period covered by the GAO report doesn't exactly match the time period of the

Continued on Page 24 ➤



Continued from Page 23

inspection surveys.

The survey results of the 321 Sun homes showed about 20 percent had no deficiencies or only the most minor of deficiencies. That compares with 23.6 percent for all nursing homes nationwide for the period of July 1, 1998, to May 6, according to the Health Care Financing Administration.

Sun didn't grant a request for an interview on specific incidents involving patient care in its nursing homes.

However, Sun's vice president for corporate communications said in a letter to the Journal that the company's goal is to deliver excellent patient care to the 40,000 or so people in its facilities.

"Quality care is a product of resources," Phyllis Goodman wrote. "If we as a society want quality care, we must be willing to pay for it. With the implementation of the Medicare (fixed rates for nursing-home stays), the federal government is taking away the financial resources necessary to pay for the level of care we all say we want."

Of 288 Sun facilities surveyed in 1998, 37 were deficiency-free, she said. Goodman called that "an extremely difficult result that is considered an unusual achievement."

Sun nursing homes have had some serious problems. For example:

- In Sun homes in Massachusetts, a comatose woman was raped and became pregnant, and a man and woman died after medication errors.

- In California, lawsuits have been filed against Sun on behalf of five women who were residents of the same home. The lawsuits allege wrongful death in the cases of two of the women.

- Several Sun homes in Washington have been cited by the state for numerous deficiencies that allegedly caused actual harm to residents.

- In Illinois, a man transferred from a Sun home to a hospital was found to have a temperature of 107 degrees. He died the next day.

Consumer Reports magazine in

Patient Advocates Sue Firms Over Care Quality

Suit alleges records falsified to collect Medicare and Medicaid payments

SACRAMENTO, Calif. — Advocates have sued Albuquerque-based Sun Healthcare Group and others in federal court here, claiming the nursing-home companies collected government payments for substandard care.

Brought under the federal False Claims Act, the lawsuit claims the nursing-home operators failed to provide the level of care required by Medicare and Medicaid, then falsified records to show otherwise.

The falsified records were then used to obtain reimbursement from the government health-care programs, the lawsuit says.

Sun said in its response to the lawsuit that the litigation makes "sweeping, unspecific allegations" that are "deeply harmful." The company has said it will vigorously defend itself.

In addition to Sun, defendants include Integrated Health Services of Owings Mills, Md., and Crestwood Hospitals.

The lawsuit deals with the care at Crestwood nursing homes in California over several years.

Integrated Health Services managed Crestwood homes for about two years ending in 1996, according to the lawsuit. Sun took over management of some of the homes in 1996 and acquired about a dozen Crestwood homes in 1997, the lawsuit says.

Crestwood has called the allegations "defamatory." Integrated Health Services also has denied the accusations.

Sun and Integrated Health Services are both national chains with nursing homes in New Mexico.

The lawsuit was filed in January 1997 by advocates for nursing-home residents. The advocates are suing on behalf of themselves as well as the U.S. government in what is known as "qui tam," or whistleblower, litigation.

The advocates and the government would share in any winning of damages.

The lawsuit alleges the defendants had a

practice of not employing enough staff to maintain the quality of care required to participate in Medicare and Medicaid.

As a result, the lawsuit says, some nursing-home residents suffered dehydration, malnutrition, mental and social isolation, urinary infections, bedsores and other problems.

"Defendants' conduct was the result of corporate-imposed budget constraints to maximize their profits and to allow their CEO to receive large compensations," the lawsuit says.

As part of the lawsuit, three former employees at Crestwood homes have filed affidavits that records were falsified. One ex-worker said she and other nurses falsified patient charts to cover up that medications weren't given as ordered by physicians.

The lawsuit says the defendants filed false claims to obtain more than \$50 million a year in reimbursements from Medicare and Medicaid.

U.S. District Judge Lawrence Karlton in October rejected requests by Sun and the others to dismiss the lawsuit. When a lawyer for Crestwood sought a clarification, the judge said, according to a transcript of the hearing:

"Please, let's get on with the lawsuit. I understand you're desperate to make sure nobody sees the facts."

The U.S. Attorney's Office in Sacramento could have intervened in the case but declined to do so. Such intervention could have increased the size of the government's share of any damages won.

Sun has said in the lawsuit that the lack of involvement by the government is a signal that the case is without merit.

Regency Health Services, a chain of nursing homes in California acquired by Sun in 1997, is a defendant in a separate qui-tam lawsuit brought by advocates for nursing-home residents.

The number of qui-tam cases nationwide has exploded in recent years, from 33 in 1987 to 417 in 1998, according to statistics from the Department of Justice.

Statistics show health-care providers are targets of the majority of cases. ♦

Continued on Page 25 ►



Continued from Page 24

1995 ranked Sun 34th out of 43 nursing-home operators nationwide. The magazine examined state inspection reports and visited homes.

Consumer Reports ranked 20 percent of Sun's homes much worse than average and 10 percent much better.

States and the Health Care Financing Administration can impose a number of sanctions on nursing homes because of deficiencies.

They include fines, a ban on admissions and decertification from Medicare and Medicaid.

Sun recorded a charge of \$5.5 million in 1998 for monetary penalties and general legal costs of its nursing-home business, according to its annual report.

The report also says:

"The federal government has proposed to terminate several of the company's facilities from the Medicare and Medicaid programs, and has imposed bans on admissions and civil monetary penalties against several facilities, on the basis of alleged regulatory deficiencies."

Goodman, of Sun, said in her letter that two of 375 company facilities were decertified from the Medicare program in the past 12 months.

One of the buildings was deficiency-free on a follow-up state survey; the second was sold, she said.

Massachusetts woes

Massachusetts nursing homes operated by Sun Healthcare Group have had some of the chain's most publicized problems.

A 24-year-old comatose woman was raped in 1998 at a Sun home in Lawrence, Mass.

State surveyors said the home provided appropriate care for the woman but cited the home for failing to conduct an adequate background check of the nursing aide charged in the rape, according to The Boston Globe.

Sun told the newspaper that the surveyors' findings exonerated the home.

Another state survey of the Lawrence home in August 1998 resulted in findings of two deficiencies, neither for actual harm or immediate jeopardy.

A 49-year-old man and 88-year-old woman died after medication errors in 1997 and 1998 at a Sun home in Randolph, Mass., according to The Boston Globe.

"It's disgusting what they're doing to our parents and grandparents."

LESLEY ANN CLEMENT,

ATTORNEY REPRESENTING FIVE FAMILIES
IN LAWSUITS AGAINST SUN HEALTHCARE

The woman was accidentally given a lethal dose of a painkiller, the newspaper said.

The man died of cardiac arrest after being given a potassium supplement, it said. He was supposed to get a potassium-reducing medication. Too much potassium can disrupt heart rhythm.

A state survey of the home in the spring of 1998 found a "lack of an effective medication-administration system, resulting in significant medication errors."

The survey also found other problems at the home, and state follow-ups in July 1998 and in September found that not all deficiencies had been corrected.

The Health Care Financing Administration fined Sun nearly \$390,000.

Sun told The Boston Globe in December 1998 that it had corrected the problems at the home and said the two deaths hadn't been directly linked to the medication errors.

According to a published report about the home provided by Sun, the home has taken several steps to improve care.

Those steps include hiring a new pharmacy and an independent pharmacy consultant and hiring more than 100 nursing employees, nearly a complete turnover of staff.

The state in June found the home to be in compliance with care standards.

An 89-year-old woman at a Quincy, Mass., nursing home died in 1997 after she was struck by a younger patient, fell and hit her head, according to The Boston Globe.

A state survey of the home last year resulted in findings of 11 deficiencies, including one of actual harm that involved medications.

An aide at a Sun home in Wilmington, Mass., was charged last year with nine counts of mistreating patients — including forcing one to eat her own feces and kicking, slapping and spitting on others, The Boston Globe reported.

A state inspection of the home last year resulted in findings of one

deficiency that wasn't for actual harm or immediate jeopardy. That deficiency dealt with medication errors.

The Service Employees International Union, which represents workers in three Sun homes in Massachusetts, has accused the company of understaffing homes.

The union aired radio advertisements in New Mexico last year that were critical of Sun. The ads came during a strike by union members at two homes in Massachusetts.

"Sun is one of the worst operators in Massachusetts," Tom Higgins, staff coordinator of the union's Massachusetts Local 285, said in an interview.

Sun operates about 34 homes in Massachusetts, and 13 had no deficiencies and two had only minor deficiencies in their last surveys, according to the data posted on the Internet by the Health Care Financing Administration.

Sun's homes in Massachusetts are among its oldest operations.

California troubles

In California, lawsuits have been filed against Sun on behalf of five women who were residents at the chain's Fountainview home in Carmichael, according to attorney Lesley Ann Clement, who represents the women's families.

Clement said the lawsuits allege severe abuse and neglect and, in two cases, wrongful death.

A complaint about the care of one of the women resulted in the state levying a \$10,000 fine against the nursing home, The Sacramento Bee newspaper reported. The fine was later reduced to \$1,000.

Clement said Sun is contesting all the lawsuits.

A Sun spokesman has said the nursing home's staff and owners work hard to ensure the Carmichael home meets the high care standards set by Sun for its homes.

Continued on Page 26 ►



Continued from Page 25

Records show California surveyors have substantiated 17 complaints about the Carmichael home since Sun took over its operation.

The previous operator had one substantiated complaint, according to records.

A state survey of the Carmichael home last year resulted in findings of seven deficiencies, including one of actual harm. The actual-harm deficiency came in the category of making sure each resident is being watched and has assistance devices when needed to prevent accidents.

California has about 1,400 nursing homes, and the state has targeted 26 of those for increased survey work because of repeat problems.

The Carmichael home is one of five Sun homes on that list of 26, according to Ken August, a spokesman for the California Department of Health Services.

Because it has homes on the so-called focused-enforcement list, Sun cannot apply for any new nursing-home licenses in California, August said.

Sun operates about 90 homes in California.

"It's disgusting what they're doing to our parents and grandparents," Clement said in an interview. "I don't know how (Sun founder and CEO) Andy Turner puts his head on the pillow and goes to sleep."

The lawyer said the problems in Sun's homes are primarily due to understaffing. And the level of staffing, she said, is driven by Sun's need for profits.

In the state of Washington, 18 of 23 Sun homes exceeded the state average of eight deficiencies in their last surveys, according to the Internet data posted in May by the Health Care Financing Administration.

And 22 of the 23 homes were cited for at least one deficiency of actual harm or immediate jeopardy. One home received a total of 19 such deficiencies.

Surveyors have imposed a number of sanctions against Sun homes, including fines and bans on new admissions.

And state officials recently met with Sun representatives to discuss the quality of care in its homes and the corporation's financial health, said Irene Owens, who works in nursing-home quality assurance for the state Department of Social & Health Services.

"The state of Washington takes surveys and complaints very seriously,"

Owens said in an interview.

In Illinois, a 62-year-old developmentally disabled man died Aug. 9, 1998, a day after being transferred to a hospital from one of Sun's two homes in Edwardsville.

The state Department of Public Health said the man died of acute bacterial sepsis, a poisoning caused by infection.

The man had severe shaking and sweats in the final days of his life, and the home failed to keep his family and physician updated on his condition, the department found.

The nursing home also failed to monitor the effectiveness of antibiotics that the man was taking and neglected to monitor his body temperature, the department said.

The home's records showed the man's temperature was taken twice between

Aug. 4 and the day he was admitted to the hospital, the department said. He had a temperature of 107 degrees upon admission to the hospital.

A series of state surveys of the home following the man's death resulted in findings of more than 40 deficiencies, including 17 for actual harm, according to a published report.

The state recommended the Health Care Financing Administration fine the nursing home thousands of dollars and bar it from Medicare and Medicaid.

An advocacy group for nursing-home residents also has been pushing for a criminal investigation of the care received by the man who died.

A Sun spokeswoman said in April that the company expected the home to be found in compliance with care standards in its next survey. ♦

Sun's response

Dear Mr. Cole:

... As you know, Sun operates approximately 365 long-term care facilities across the country where we care for more than 36,000 residents. Our goal is to provide quality care to our residents in every facility we operate, and we devote a significant amount of resources to achieve that goal.

In response to your question relating to the percentage of facilities with deficiencies in high severity categories, the March 1999 GAO report which reports the national average as 27 percent covers the time period January 1997 through October 1998. As you accurately reported in your story today (Monday), there has been heightened scrutiny by HCFA on survey and enforcement issues over the past several months. The data on HCFA's Web site is based on surveys from 1998 and 1999 and would more clearly reflect this increased oversight. I would strongly caution against comparing data from the HCFA Web site to the GAO's data from 1997 and 1998.

We recognize that because we operate a large number of facilities our survey data will generally reflect national trends in nursing home care. In fact, our survey results closely reflect the national average in terms of deficiencies per facility — 6.7 deficiencies per facility in the second quarter of 1999

compared to 6.3 per facility nationally for the year-to-date.

Over half of our facilities were acquired in the last 22 months. We work hard to instill Sun's commitment to quality care in facilities where we take control of operations and we constantly strive to improve our care whenever we identify the need. However, it can sometimes take several months for us to completely integrate our systems in a newly-acquired facility. The facility's survey results may not show improvement for a year or more, depending on when the survey is conducted.

In addition, when a deficiency is cited by a surveyor, it is only the beginning of the process. Once we receive the written survey from the state, we often appeal what we consider to be unwarranted findings to an Administrative Law Judge. The final outcome of this dispute and appeal process is not reflected on the original survey which is posted on HCFA's Web site. ...

Sincerely,

Karen Gilliland
Director, Public Relations



Pressing for Cash

Industry's lobbyists urge Washington to loosen Medicare purse strings

WASHINGTON — As chairman of the Republican National Committee, Haley Barbour supported efforts to slow growth in Medicare spending. And Congress and the Clinton administration did just that in the Balanced Budget Act of 1997.

Now, as a lobbyist for a consortium of nursing-home companies, Barbour advocates that billions of dollars more be pumped into Medicare reimbursements for the industry.

"There is no contradiction," Barbour said when asked about his work for the nursing-home industry and his past support of efforts to stem the rise in Medicare expenditures.

Congress and the Clinton administration have gone too far in cutting Medicare payments for nursing homes, threatening the industry's financial health, he said.

"It's a level of spending that will not support what has to be done to provide appropriate and adequate care," Barbour said.

The cut in Medicare payments to nursing homes followed several years of double-digit growth in such payments. The government hoped to make the industry more efficient and to reduce Medicare abuse.

The hiring of Barbour is part of a massive lobbying and public-relations effort by the nursing-home industry to get more Medicare dollars — an effort that also includes television and newspaper advertisements across the country.

The nursing-home industry is no stranger to politics.



CAMPAGNING FOR DOLLARS: The nursing-home industry has placed these newspaper advertisements as part of an extensive public-relations and lobbying campaign to get more Medicare money.

Keep Th

M that always kept his word and he always kept his promises.
 And he taught me to do the same.
 After his stroke, our family had to rely on nursing care to provide him the health care he deserves.
 And the government promised that Medicare fund would help pay for that health care.
 Unfortunately, those promises have been broken.
 In fact, Medicare spending is billions less than the balanced budget promised.
 That's unacceptable.
 My dad's generation, his generation, made sure it was taken care of.
 And this is their reward...this is how their debt is paid.
 Now it's up to Congress and the White House. They can provide the Medicare funding seniors deserve, and the balanced budget promise

EMERGENCY ALERT . . . IMMEDIATE ACTION REQUIRED!

Vital Patient Services Threatened By Medicare Payment Cuts

Right Now, Team Up With the American Health Care Association and the Alliance for Quality Nursing Home Care Help Us Lead the Fight to Restore Funding For Quality Patient Care — For Our Nursing Home Patients!

Patients recuperating from strokes, amputations, head trauma, and degenerative diseases may no longer have access to the vital services they need — all because of huge cuts in Medicare payments to nursing homes.



Restore Medicare Funding
1-888-456-1414

Thousands of nursing home employees have lost their jobs because Medicare payments have been slashed.

2.) Tell the families of your patients that Medicare payments have been slashed, threatening access to nursing home care and cutting vital resources. Ask them to call Congress and the White House toll-free at 1-888-456-1414.

3.) Tell your family, friends and neighbors that your most seriously ill patients may not have access to the vital ser-

vices they need because Medicare payments to nursing homes have been cut by billions of dollars. Ask them to call Congress and the White House toll-free at 1-888-456-1414.

WHAT YOU MUST DO RIGHT NOW FOR THE WELL-BEING OF YOUR PATIENTS

1.) Call your U.S. Senators, your Representative and the White House toll-free at 1-888-456-1414. Tell them to restore Medicare funding now!

4.) Spread the word that the American Health Care Association and the Alliance for Quality Nursing Home Care are working to fix the problem! Watch for powerful ads this week on CNN, CNBC and Fox News!

The American Health Care Association and the Alliance for Quality Nursing Home Care Need Your Help Now to Restore Funding For Quality Patient Care.



POLITICAL DONATIONS

The nursing-home industry gives millions of dollars to state and federal candidates. Campaign contributions by Andrew Turner, chairman and CEO of Sun Healthcare Group*:



1994

■ \$55,000 to gubernatorial candidate (now Gov.) Gary Johnson.

1995

■ \$2,000 to Sen. Pete Domenici, R-N.M.

1998

■ \$100,000 to Johnson's re-election campaign.

■ \$5,000 to Johnson challenger Martin Chávez, former Albuquerque mayor.

■ \$2,000 to Rep. Heather Wilson, R-N.M.



Johnson



Domenici



Chávez



Wilson

* Some money given in combination with wife.

Sources: Center for Responsive Politics; Campaign finance reports

Continued from Page 27

The industry has spent millions of dollars on lobbyists and contributed millions more to President Clinton, members of Congress and the Democratic and Republican parties.

Representatives of the nursing-home industry have attended White House coffees, and at least one nursing-home owner, Alan Solomont of Massachusetts, has been an overnight guest of the president.

Complex law

Barbour headed the Republican National Committee from 1993 to 1997.

An affable, 50-something lawyer from Mississippi, he is a partner in Barbour, Griffith and Rogers, considered one of Washington's top lobbying firms.

The firm reported to Congress earnings of \$7.3 million last year. Other

clients include BellSouth, Philip Morris and the Swiss government, according to a published report.

Barbour, in an interview in his well-appointed office just a few blocks from the White House, said he was retained in April as a lobbyist by a consortium of about 10 to 12 nursing-home companies.

Those companies include Sun Healthcare Group of Albuquerque; Beverly Enterprises of Fort Smith, Ark.; and HCR Manor Care of Toledo, Ohio.

The lobbyist said his job is to work Republican members of Congress.

Former House leader Vic Fazio, D-Calif., was hired by the same group to take the lead in lobbying Democrats, Barbour said.

Fazio, while a member of Congress, voted for the Balanced Budget Act of 1997.

Barbour said the nursing-home industry is in financial pain largely because of how the law has been implemented by the administration, through the Health Care Financing Administration.

"In a law that's this complex, it's expected that there are going to be implementation problems," he said.

The primary problem is that the new fixed rates for Medicare-covered stays in nursing homes were set too low by the Health Care Financing Administration, Barbour said.

As a result, he said, payments to nursing homes are billions of dollars below what Congress intended in the Balanced Budget Act of 1997.

Barbour and the industry want an immediate across-the-board increase

Continued on Page 29 ►



ONGOING BATTLE: A television advertisement by the nursing-home industry says cuts in Medicare payments threaten the care of the 1.6 million people who live in homes.

Continued from Page 28

that would be in effect until the new system of fixed rates is fully implemented by HCFA beginning July 1, 2001.

The agency is expected to make refinements in the rates before full implementation.

"My clients don't want to get rid of it (the new system of fix rates)," he said. "They just want it implemented in a way that results in the level of spending Congress intended and results in their being able to operate and spend that

money where it produces the care."

Barbour said lower-than-expected payments to nursing homes are part of a bigger problem: Overall Medicare spending was down in the first six months of the 1999 federal fiscal year.

And the former GOP chairman hinted that could become a political liability for Democrats in 2000 elections if the Clinton administration doesn't act to put more money into the program.

"From any standpoint, no member of Congress from either party wants to get blamed for shortchanging Medicare and causing a crisis for senior citizens,"

Barbour said.

The administration says the lower-than-expected spending on Medicare might be due to several factors, including low inflation, efforts to reduce fraud and abuse, and delays in making payments to providers.

'We have to make our case'

The Wall Street Journal reported in May that the American Health Care Association — a trade group that represents nursing-home companies and

Continued on Page 30 ►



Continued from Page 29

other long-term care providers — was mapping out an extensive lobbying effort, including a possible \$1.5 million advertising campaign.

Linda Keegan, vice president of the association, said in an interview that she didn't know where *The Wall Street Journal* got the \$1.5 million figure. But she added, "We have to make our case."

"Our efforts are really focused right now on pulling all the lobbying efforts together, coordinating them," Keegan said. "We're thinking about how we communicate to the American public and policy-makers in particular that this issue is having a real impact on people."

The American Health Care Association and the Alliance for Quality Nursing Home Care have jointly placed newspaper and television ads.

A 30-second TV ad says Medicare payments for nursing homes have been cut billions of dollars more than called for in the Balanced Budget Act of 1997.

The ad features a daughter talking about her father, who has suffered a stroke, and his need for nursing-home care.

"My dad, his generation, did everything for us," the daughter says. "And this is their reward? This is the big payoff?"

The TV ad asks viewers to call Congress and the White House and ask that Medicare funding be restored.

An ad similar to that of the TV spot has been published in newspapers. Another newspaper ad urges health-care workers to call their representatives in Congress and the White House.

Health-care workers are also asked to request that residents' families and others do the same.

"Patients recuperating from strokes, amputation, head trauma and degenerative diseases may no longer have access to the vital services they need," the ad says.

Keegan said members of the American Health Care Association, which includes Sun Healthcare Group, would pay the group's costs. The Alliance for Quality Nursing Home Care is the group of nursing-home companies, including Sun, that hired Barbour and Fazio.

Mark Wimer, president and chief operating officer of Sun, said in an interview that he didn't know how much the company would spend on lobbying activities.

But, he added, "We're spending more effort now trying to get our message across than we have ever done before because the circumstances are more dire than they've ever been."

Lobbying effort

Nursing-home companies have traditionally acted individually and through trade groups to try to influence

policy-makers in Washington and at the state level.

For example, the American Health Care Association gave nearly \$725,000 to Democratic and Republican candidates for federal office in 1997 and 1998.

The association has lobbyists on staff and spent at least \$224,000 on outside lobbyists last year, according to lobbyist data collected by the Center for Responsive Politics and Public Disclosure Inc., both of Washington.

The health-care professionals who work in nursing homes — occupational therapists, dietitians and others — also have trade groups that spend hundreds of thousands of dollars on campaign contributions and lobbyists.

Like other nursing-home companies, Sun Healthcare Group has made campaign contributions and hired lobbyists on its own.

Sun donated \$15,000 to the National Republican Senatorial Committee in 1996, according to data from the Federal Elections Commission and made available by the Center for Responsive Politics.

Reports filed with Congress show Sun spent about \$150,000 on lobbyists in 1997 and 1998, according to data collected by the Center for Responsive Politics and Public Disclosure Inc.

Employees of Sun, including chairman and chief executive officer Andrew Turner, also have made contributions to federal candidates. ♦

Feds Ask States To Ensure Good Patient Care

Florida, Texas and Missouri had to intervene for a troubled chain last year

The Health Care Financing Administration has advised states they need to be prepared to deal with financial problems in nursing homes.

The agency, which oversees the Medicare and Medicaid government health-care programs, said in a letter in May to the states:

"As you probably know, several national nursing-home chains are reporting significant financial difficulties. While we hope that these organizations will see their way through these difficult periods, we are

nevertheless concerned that the quality of care residents receive in chain facilities citing financial pressures be protected."

The letter said states should have plans to use their receivership laws to take over operation of homes if necessary. Also, the letter said, states need to be prepared to relocate residents.

Mike Hash, deputy administrator of the Health Care Financing Administration, said in an interview that the agency has no evidence company bankruptcies are going to occur.

"We do, in fact, have a responsibility to be prepared to protect and act on behalf of our beneficiaries, and that's a responsibility we take very seriously," Hash said.

Another official said in June the agency was examining information from the Securities and Exchange Commission and Wall Street analysts on leading publicly traded health-care corporations.

"This can help us understand trends and Medicare's role," the official told a Senate committee.

Continued on Page 31 ►



N.M. Senators Would Revisit Issue

Bingaman, Domenici concerned about cuts' effects on service

The nursing-home industry has found allies in New Mexico Sens. Pete Domenici and Jeff Bingaman.

Both said they were contacted by representatives of Sun Healthcare Group of Albuquerque, one of the nation's largest nursing-home chains, which has reported losses in the hundreds of millions of dollars and job cuts in the thousands.

But Domenici and Bingaman said their efforts are aimed at helping the entire industry, which is reeling from Medicare cuts for nursing-home care. The cuts are the result of the Balanced Budget Act of 1997.

"What we're trying to do is to get a revisiting of this whole issue and sort of a rethinking of about was done in '97 to see how much of it makes sense and whether some of it does not," Bingaman said in an interview.

"I'm not trying to bail out Sun Healthcare," the Democrat said. "I'm not trying to bail out any particular company. I'm just saying that this is a vital service ... and I don't want to see that service inter-

rupted."

Domenici and Bingaman sent a letter in May to Health and Human Services Secretary Donna Shalala, asking her to help the industry.

Sixty-one other senators signed on to the letter.

"We are concerned that (new Medicare) payment rates for (nursing-home care) are well below the levels envisioned by Congress, and this reduction in payments could seriously erode the quality of care available to our seniors," the letter said.

The letter asked Shalala to re-examine regulations adopted in implementing the new fixed rates for Medicare-covered stays in nursing homes.

"In particular, we would urge you to revise the regulations to reflect the needs of medically complex patients, particular-



SHALALA: Asked to hike payments to nursing homes

ly their need for nontherapy ancillary services," the letter said. Nontherapy ancillary services include medications and artificial limbs.

The government last year began paying nursing homes fixed rates for Medicare-covered stays. It also capped how much it will pay for occupational, physical and speech therapy for Medicare beneficiaries whose nursing-home stays aren't covered by the program but still receive some medical services under Medicare.

The government previously reimbursed nursing homes on a cost basis, which had resulted in ever-increasing billings in the billions of dollars.

The industry has claimed the new fixed rates are too low, particularly for nursing-home residents who require expensive drugs, respiratory therapy and other high-cost services.

Shalala's department is the parent agency for the Health Care Financing Administration, which runs Medicare.

"If HCFA does not revise the regulations, we fear we will see closings of

Continued on Page 32 ►

Continued from Page 30

Hash said the Health Care Financing Administration has experience in dealing with financial troubles in nursing homes.

The Texas Department of Human Services in January took control of a chain of 13 homes after Medicare payments were suspended because of alleged over-billings.

The Health Care Financing Administration advanced money to the state to help keep the homes open. Three of the homes were later closed, but the state found operators for the other 10.

In another case last year, Texas, Florida and Missouri took over more than 20 homes owned by a Dallas-based chain because of financial troubles and alleged care problems.

Like other states, New Mexico has a law that permits it to take over a nursing home with court approval.

To help finance continuing operation of a home, the state can draw from a pool built up with civil fines paid by nursing homes for deficiencies found in inspections.

The pool is about \$227,000, according to the Department of Health.

New Mexico requires that a nursing home with more than 59 beds has at least four beds designated for residents whose stays are covered by Medicare.

The New Mexico Health Care Association has asked that the requirement be revoked in some cases.

Executive director Linda Sechovec said in a letter to Health and Human Services chief Alex Valdez that homes could face financial problems if forced to admit patients whose cost of care is more than Medicare payments for service.

Under the association's proposal, only nursing homes with no current Medicare patients would be able to withdraw from the Medicare program.

Valdez said in an interview that he is against the proposal because it would result in Medicaid, which is funded in part by the state, paying for the stays of some nursing-home residents whose bills would have been picked up by Medicare.

The cost to Medicaid would be about \$3 million to \$5 million a year, he said.

Iowa Republican Charles Grassley, chairman of the Senate Special Committee on Aging, has introduced legislation designed to protect patients when health-care providers are involved in bankruptcy proceedings.

In addition, court-appointed trustees for bankrupt health-care businesses would have to make sure patients are transferred when facilities are closed.

"Right now, the bankruptcy code does a good job of helping debtors reorganize and creditors recover losses. My bill would make sure the bankruptcy courts also look out for patients' interests," Grassley said. ♦



Continued from Page 31

facilities, layoffs of dedicated caregivers, reductions in access to (nursing-home) services and erosion in the quality of care," the senators said.

The Health Care Financing Administration is planning to make refinements to the fixed rates next year. The industry says that's not soon enough. It says it needs an immediate across-the-board increase in the rates.

But Mike Hash, deputy administrator for the Health Care Financing Administration, said the agency doesn't have the legal authority to do that.

Such a move, Hash said in an interview, must be authorized by Congress. And, he said, the agency hasn't seen evidence that Medicare beneficiaries are being denied access to nursing homes or that the quality of care is declining because of the new fixed rates.

He added, however, that Medicare's new caps on how much it will pay for physical, speech and occupational therapy are "ripe for review."

The caps apply to nursing-home residents whose stays aren't covered by Medicare but who are receiving therapy under the program.

Medicare will pay up to \$1,500 a year for occupational therapy and up to \$1,500 for physical and speech therapy combined.

The Health Care Financing Administration is studying the possibility of caps that would be based on patient diagnosis.

Also, there are proposals to leave the cap at \$1,500 for occupational therapy but create separate caps of \$1,500 each for physical and speech therapy.

In an interview, Domenici said the nursing-home industry can't wait until the fixed rates for nursing-home stays are refined next year by the Health Care Financing Administration.

"That's pretty long when an industry is bleeding like this one," the Republican said.

The fixed rates for nursing-home care were mandated in the Balanced Budget Act of 1997, which both Domenici and Bingaman supported.

One prominent senator who didn't sign the letter to Shalala was Iowa Republican Charles Grassley, chairman of the Senate Special Committee on Aging.

Grassley has questioned whether some nursing companies are suffering more than others because of debt problems or ill-considered expansions.



BINGAMAN: Not trying to bail out companies

Bingaman said his impression is that a variety of factors are hurting nursing-home companies.

Other health-care providers — including hospitals, home-health agencies and health-maintenance organizations — also are seeking changes in the Balanced Budget Act of 1997.

President Clinton recently proposed that \$7.5 billion be spent over 10 years in payments to health-care providers whose ability to deliver quality services has been affected by the Balanced Budget Act. Nursing homes could get a share of that money.

Congress' General Accounting Office has reported on the pressure on lawmakers from health-care providers, including nursing homes.

"The very boldness of these changes has generated pressure to reverse course," the GAO said in June. "In the current environment, the Congress will face difficult decisions that could pit particular interests against a more global interest in preserving Medicare for the long term."

The GAO said it would be premature to significantly monitor the provisions of the Balanced Budget Act without thorough analysis or a trial of the provisions over a reasonable period of time. ♦

Medicare Cuts May Be Saving More Than Hoped

Nursing-home industry and federal regulators don't agree on how much

The Congressional Budget Office initially estimated that changes in Medicare reimbursements for nursing-home care would save \$9.5 billion over five years.

This spring, the industry said a new estimate by the CBO showed savings would actually be \$16.6 billion — or \$7.1 billion more than Congress and the Clinton administration intended in passing the Balanced Budget Act of 1997.

The industry demanded that reimbursements be increased.

That hasn't happened yet, and the industry has since acknowledged the claim of \$7.1 billion in unintended savings was based on an incorrect analysis of CBO documents.

But nursing-home officials continue to argue the cuts were deeper than they were supposed to be. A recent estimate by the American Health Care Association puts the unintended savings over five years at \$4 billion.

The industry has said it can live with a \$9.5 billion reduction in Medicare reimbursements for nursing homes but no more.

Under the CBO estimate of \$9.5 billion in savings, Medicare payments for nursing-home stays were projected to be \$12.7 billion in 1999. Spending was \$13.4 billion in 1998.

After this year, however, payments are projected to once again increase annually.

The CBO estimate doesn't include Medicare payments for nursing-home residents whose stays aren't covered by Medicare but still receive therapy and other services under the program.

The Health Care Financing Administration believes reimbursements for nursing homes might be running below those of the initial Congressional Budget Office estimate.

But Mike Hash, deputy administrator for the Health Care Financing Administration, said various factors — including the Medicare cuts, government efforts to curb fraud and abuse and changes in the types of patients being treated in nursing homes — are causing the lower-than-expected spending. ♦



DOMENICI: Nursing-home industry needs help soon



Sun Investor Faces Texas-Size Troubles

His nursing-home chain has a history of problems

DENTON, Texas — Peter “Woody” Kern is one of the biggest nursing-home operators in Texas, where he and his companies have a history of criminal, civil and regulatory troubles.

He’s also the No. 2 individual stockholder in Albuquerque-based Sun Healthcare Group, one of the nation’s largest nursing-home chains.

Documents filed with the U.S. Securities and Exchange Commission show Kern’s 3.5 million shares to be second only to the 7 million owned by Sun founder, chairman and chief executive Andrew Turner.

“I threw a lot of eggs in that basket,” Kern said in a lengthy interview in his office in Denton.

And those eggs are in a precarious position. Sun has said it is considering bankruptcy reorganization — a move Kern said could wipe out his \$7 million investment in the company.

He’s counting on Congress and the Clinton administration to bail out Sun and other financially ailing nursing-home companies by pumping more money into Medicare.

“To the extent that the feds have screwed up Medicare, they will in fact fix Medicare,” Kern said. “They can’t let everybody go out of business.”

Kern also has had some Texas-size problems elsewhere:

- His nursing-home companies in Texas in early August filed for protection from creditors while they reorganize under U.S. bankruptcy laws. He said the companies’ financial problems are due to inadequate Medicaid payments from the state of Texas, low occupancy levels and, to a lesser extent, Medicare reforms.

- He is awaiting trial on a 1992 charge of misapplication of fiduciary property. He allegedly didn’t refund money to nursing-home residents and their families. Kern has denied wrongdoing.

- His nursing-home operations company, Texas Health Enterprises, has been indicted in the deaths of two residents. The company has repeatedly been accused of poor patient care and has paid millions of dollars in fines, set-

tlements and judgments.

- Kern agreed never to return to Massachusetts as a nursing-home operator after his homes there had difficulty meeting care rules.

- In Ohio, he once testified against his father and a state auditor in a Medicaid-fraud scheme. His father went to prison, and Kern eventually bought the family nursing-home business.

Kern has been the subject of unflattering news stories, including a page-one report in *The Wall Street Journal*. NBC’s *Dateline* recently visited.

“I really have not tried to screw anybody in my life,” Kern said in the recent interview in his office. “I don’t make any conscious effort to do that, whether it’s patients, business relationships, whatever.

“And to be characterized the way I constantly am troubles me because I don’t think that’s an accurate portrait.”

Regardless of how he is portrayed, Kern is a wealthy man thanks to the nursing-home industry.

He is the majority owner of the Tampa Bay (Fla.) Storm, an Arena Football team, and the Asheville (N.C.) Tourists, a Class-A affiliate of baseball’s Colorado Rockies.

Kern also owns one of the largest residences in Texas, a ranch in north Texas and a million-dollar-plus vacation home in Gulf Shores, Ala. He drives a Mercedes-Benz but gave up a company airplane.

“People say I live too ostentatious,” Kern said. “You either have it or you don’t.”

Taking a chance

Sun Healthcare Group has reported nearly \$1.5 billion in losses and eliminated more than 10,000 jobs in recent months. Its stock once traded for \$20 per share.

Sun’s stock closed Friday at 38 cents a share in over-the-counter trading. That means Kern already has lost millions of dollars on paper.

Kern decided to take a chance on Sun when stock in the company hit bargain-basement levels. He now owns about 6 percent of Sun’s common stock.



KERN: No. 2 stockholder in Sun Healthcare Group

Kern has about 30 years of experience in the nursing-home business but doesn’t expect Sun to ask him to join the board of directors.

“Here in the state of Texas, I’m indicted,” Kern said. “It doesn’t look good” to be placed on the board.

Sun and other large nursing-home companies with financial problems blame a cut in Medicare payments.

Congress is expected this fall to consider legislation to boost the payments. Backers of the legislation include New Mexico’s senators, Republican Pete Domenici and Democrat Jeff Bingaman.

Kern argued against bankruptcy for Sun in a recent letter to Turner.

“Sun could continue to manage and control costs and become in the very near future marginally profitable,” Kern wrote. The company would become more profitable after the Medicare bailout, he said.

Kern also noted in the interview that much of Sun’s reported losses have been only paper losses.

He said Turner told him in a meeting in June that if Sun filed for bankruptcy, Turner would receive an interest in the reorganized company.

“Here’s one guy that will probably do

Continued on Page 34 ➤



THE ASSOCIATED PRESS

BIG HOUSE: Peter “Woody” Kern spent \$3.6 million to buy the Veladi Ranch in south Texas last year. The ranch house, pictured here, is 29,000 square feet. Kern said in a recent interview he is now trying to sell the ranch because it is too far from his business and second ranch north of Dallas.

Continued from Page 33

whatever it takes to survive and come out at the other end of the tunnel, even if there were a bankruptcy,” Kern said.

Kern said he hadn’t received a response to his letter to Turner.

A Sun spokeswoman said the company had no comment on Kern’s investment in the company and his remarks on a possible bankruptcy.

Kern notified the Securities and Exchange Commission in April that he had obtained the large stake in Sun.

Sun officials said at that time that

Kern would have no role in the company’s operation.

“We just believe that he’s confident in our company,” a Sun spokeswoman told *The Dallas Morning News*. “I’m not going to speculate on why.”

Spread too far

The headquarters for Kern’s nursing-home business is a converted supermarket in gritty downtown Denton.

“I like the temples out there in Albuquerque,” Kern said with a laugh.

The remark is a reference to the corporate headquarters built by Sun and

another nursing-home company, Horizon/CMS Healthcare. Horizon was acquired in 1997 by another company.

Kern, 52, is dressed for the interview in chinos and a denim shirt. He is a bear of a man with blue eyes, ruddy cheeks and graying hair and beard.

He wears an ArenaBowl ring and a gold necklace with a diamond-studded emblem of his football team.

Kern is an affable man. He laughs a lot.

He grew up in northeast Ohio. His father, a dentist, ran a few nursing

Continued on Page 35 ►



Continued from Page 34

homes.

Kern said he graduated from Case Western Reserve University with a degree in biochemistry.

He said he planned to attend medical school but joined the family nursing-home business full time when his father suffered a heart attack.

He took over in 1978, about the time of his father's conviction and retirement.

Kern expanded the business and said that by 1986 he had homes in Ohio, Connecticut, Florida, Oklahoma and Texas.

He said he sold some of his homes in 1987 to Horizon, the former Albuquerque company, for \$70 million. That same year, he moved to Texas. And he again expanded, buying homes in Michigan, Wisconsin, Massachusetts, California and New Mexico.

There were troubles with care standards in Massachusetts and elsewhere.

"We were spreading too far from the base," Kern said. "We didn't do a good job of it."

He got rid of many of the homes.

As of Jan. 1, according to Kern, his companies operated about 92 homes in Texas and eight homes in Michigan.

Kern said his Texas Health Enterprises will still run about 60 nursing homes in Texas when it emerges from bankruptcy.

His companies' revenues were in excess of \$200 million annually, he has said.

Pending lawsuits

Quality of care has been an issue at several of Kern's homes in Texas.

The state Department of Human Services and the U.S. Health Care Financing Administration, which set care standards, have assessed more than \$381,000 in penalties against Kern's Texas Health Enterprises since Jan. 1, 1996, a government document shows.

Another \$3.1 million in possible penalties are pending.

The Texas Attorney General's

Office has filed about 20 lawsuits against Texas Health for allegedly violating care standards, according to the office.

Texas Health agreed to pay \$300,000 to settle one case, the office said. Arbitration in two other cases resulted in the company being assessed about \$400,000.

A couple of the lawsuits were withdrawn or dismissed, and one case resulted in Texas Health being ordered to pay only a small amount. Eleven lawsuits are pending.

Kern's nursing homes have been sued dozens of times by residents or their families, and he estimated he and his insurers have paid about \$10 million in settlements and judgments.

Texas Health is under criminal indictment in the deaths of two nursing-home residents in Amarillo.

Kern said his homes have been wrongly accused of some things and rightly accused of others. He said lawyers who sue nursing homes are out of control and that other nursing-home companies have also been hit with large jury awards.

He said his homes provide care that is above average in the industry, and produced some data from state inspections that supported that argument.

"This is humans dealing with humans. There are going to be mistakes made," he said. "There have been patients that have been injured."

He added, "Those are unfortunate situations, but as a pattern I'll categorically deny that. It just isn't there."

Kern said he expects the health-care professionals he hires to do their jobs and said he doesn't feel personally responsible when they err.

"If it were a matter of intentionally understaffing, intentionally cutting food budgets and not paying for medical supplies ... then I would feel some personal responsibility.

"Then I did something overt to make sure it (providing quality care) couldn't get done. ... That's

Expensive incidents

Some judgments, settlements paid by Peter "Woody" Kern's Texas Health Enterprises:

- A jury in 1998 ordered Texas Health to pay \$28.3 million in damages to the daughter of a 78-year-old man. The man allegedly died from complications that resulted from malnutrition and improper feeding with a tube. He had been a resident of a home in Conroe. Texas Health said the man died because of a surgeon's mistake. The company decided not to appeal and settled the case. Kern said the settlement was \$3 million.

- A jury in 1997 assessed \$10.7 million in damages against Texas Health in the death of an 80-year-old woman. The woman died after developing a gangrenous leg at a home in Pilot Point and having the leg amputated. Her family sued. Courts have since reduced the award to about \$6.5 million, plus interest. The case remains on appeal.

- Texas Health in 1998 agreed to pay \$4.65 million to the family of a 64-year-old paralyzed woman. The woman was raped by an employee at a Midland home. The employee had a criminal record and had been fired for patient abuse 13 months earlier from an Odessa home also operated by Texas Health.

- Texas Health was ordered to pay a \$3.3 million judgment in 1998 to the parents of a mentally ill resident at a Texas City home. The resident wandered away from the home and died in the heat.

- A court in Midland in 1998 ordered Texas Health to pay \$2.75 million in damages. The case resulted from a sexual assault of a female resident.

- Texas Health in 1996 paid \$1.25 million to the widow of a 79-year-old man who was in a home in Grand Prairie. He was given barium for a test and the barium hardened in his colon. He died after a 36-hour bout of uncontrollable vomiting.

- Texas Health conceded no wrongdoing but agreed to pay \$850,000 in 1995 to the family of a 71-year-old woman. The woman suffered from dementia and wandered away from a home in Fort Worth. She was killed by a car.

Continued on Page 36 ►



EDITORIAL, AUG. 5, 1999

Homes' Focus Must Be on Patients

Nursing home services mushroomed into a big, for-profit business in the United States during the 1990s. Driven at the margin by the bottomless financial resources of the federal Medicare and Medicaid programs, the number of facilities exploded along with a concentration of ownership.

Though the Medicare patients were only a fraction of the patient load, they became cash cows, as profit-driven health-care entrepreneurs figured out how to derive the maximum cash flow from those nursing home patients in need of maximum ancillary services. The resulting ocean of liquidity funded astronomical salaries for some nursing-home chain CEOs, the building of lavish campus-like headquarters for others, and the posting of fat balance sheets that rewarded stockholders.

It's not just the federal pocketbook that is being tapped. In New Mexico, nursing home cost is the second largest segment of Medicaid, second only to the Salud! managed care program, according to Alex Valdez, who heads the state departments of Health and Human Services. Medicaid nursing-home care has cost \$240 million for some 2.2 million patient days of services so far this year. Of that total, \$65 million came from the state general fund.

There were some instances of fraud and abuse, as is always the case when government opens up its pocketbook.

But, the explosion in cost was primarily the natural result of blending the profit-driven American business ethic with a growing and deserving client class, funded with federal program dollars. For-profit nursing-home chains exist to make as much money as possible in the business of providing services in their niche of the health-care business in America. What seem like obscene profits in the context of funds siphoned out of the health-care pot are the legitimate trophy of success in the context of business. They are not altruistic service organizations seeking to provide the maximum quantity and quality of health care at the lowest possible cost.

The nursing-home chains followed the predictable path of concentrating their business efforts on the segments of the trade that were the most promising profit centers. Problem is, their profit bets were made against a federal government that was not going to tolerate indefinitely the explosive growth in costs. The government, acting on the instructions of Congress through the Health Care Financing Administration, sharply cut back the reimbursement rates, and the industry was sent reeling.

Stock prices plummeted, Sun Health-care of Albuquerque, one of the fastest growing of the big chains in recent years, teeters on the edge of bankruptcy. All are cutting costs, largely by laying off employees and tightening up on operating costs. Such massive cost-cut-

ting cannot leave the quality of patient care unscathed.

The industry asserts the federal cuts were too severe and is pressing Congress through a massive lobbying and public relations campaign for a bailout. While virtually all involved agree the cuts were too deep in some categories, it is difficult to get urgent about saving the fortunes of the chain highfliers.

Congress and the Health Care Financing Authority should move slowly in reopening the federal spigot to the nursing home industry. Extreme care should be taken to ensure that new money will help the elderly of Main Street, not the financiers of Wall Street.

A meaningful system of rewards and sanctions should be imposed to engineer an improvement in patient care in exchange for new money.

For the long term, Congress should debate whether the profit motive really is the best motivator for allocating the federal health-care dollar, especially for such a vulnerable segment as the nursing-home client population.

The priority of government must be to ensure that the grandparents of America have access to safe and caring nursing homes with therapy and medications as appropriate to improve their quality of life, with the government as the payer of last resort to make certain nobody is excluded.

Continued from Page 35

where I think you could put a noose around my neck and say you son-of-a-bitch, you did that to enrich yourself. Never has happened in 30 years."

Good and bad

Jim Lehrman, associate commissioner in the Texas Department of Human Services, said Kern has some good homes, some average homes and some poor homes in terms of quality of care.

Three of Kern's homes have been cited by the department as being among the

state's best, Lehrman said.

But, he said, studies of the state's inspection data show Kern's homes, when analyzed as a group, are mediocre to poor when compared with others in Texas.

"Historically, it's been below normal," Lehrman said of Kern's chain.

Paul Carmona, head of the attorney general's Elder Law and Public Health Division, said Texas Health Enterprises is "way out in front" in terms of being sued by the attorney general and of paying penalties and other money to the state.

"It's impossible to ignore the history of

what's gone on with this company," Carmona said. "They're definitely out of the ordinary."

He objects to Kern's denying personal responsibility for what has occurred in his homes. "To me, it's personally unseemly," Carmona said.

Brandon Boehme, a Fort Worth lawyer who said he has sued Kern's nursing-home business about 20 times on behalf of residents and their families, said Kern was correct when he said other nursing-home companies have been hit with bigger jury awards.

But, Boehme added, "Nobody has been hit more often with large judgments."