

COMMENTS CONCERNING
THE "NURSING HOME AND COMMUNITY RESIDENCE FACILITY
RESIDENTS' PROTECTION ACT OF 1983"

DIVISION V: CRIMINAL LAW AND INDIVIDUAL RIGHTS

STEERING COMMITTEE MEMBERS

Karen Christensen
Janice E. Cooper
Barbara A. Corprew

Stephen H. Glickman
Charles J. Ogletree
Norman S. Rosenberg

The Steering Committee would also like to thank Jane Beyer
for her contributions in compiling these comments.

THE VIEWS EXPRESSED HEREIN REPRESENT ONLY THOSE OF DIVISION V:
CRIMINAL LAW AND INDIVIDUAL RIGHTS OF THE DISTRICT OF COLUMBIA BAR
AND NOT THOSE OF THE D.C. BAR OR OF ITS BOARD OF GOVERNORS.

Summary of Comments

The Proposed "Nursing Home and Community Residence Facility Residents' Protection Act of 1983"

The attached written testimony responds to proposed legislation in the D.C. City Council that would provide for: (1) enforcement alternatives in addition to the provisions of a recently enacted health care facility licensure act; and (2) procedures to ensure that transfers of residents from nursing homes and community residence facilities (CRF) are appropriate and safe. The testimony speaks in support of the legislation and makes the following comments:

- (1) The extended duration of nursing home and CRF residence by elderly and disabled persons and the limited availability of nursing home and CRF beds in the District necessitate the availability of intermediate enforcement sanctions to ensure facility compliance with licensing standards;
- (2) Civil citations and receiverships are intermediate sanctions which can bring a noncompliant facility into compliance or provide a mechanism for safe and gradual transfer of its remaining residents; and
- (3) The proposed legislation's transfer procedures are necessary to ensure that residents are transferred from nursing homes and CRF's only for valid reasons and in a manner that reduces or eliminates the emotional or physical harm associated with transfers.

The City Council's enactment of the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 has provided the District with a uniform and comprehensive system for licensing and regulating health care entities.¹ Effective enforcement of the standards contained in the licensure act and its implementing regulations is essential if the act's purpose of assuring the health, safety and welfare of recipients of health care services is to be realized. The licensure act takes a first step toward ensuring effective enforcement by authorizing the Department of Human Services (DHS) to revoke or issue provisional or restricted licenses to noncompliant facilities. The proposed Nursing Home and Community Residence Facility Residents' Protections Act of 1983 is a necessary supplement to DHS' enforcement powers relating to nursing homes and community residence facilities (CRF's).

Nursing homes and CRF's differ from other health care providers covered under the licensure act in that they are a permanent or long term residence for many of the elderly and disabled people they serve. Moreover, the availability of nursing home and CRF beds for these individuals is limited in the District. DHS regulates a broad cross-section of nursing homes and CRF's. They differ in relation to their number of residents, profit or nonprofit status, financial soundness and degree of operator sophistication and good faith. The violations in these facilities range from minor to life-threatening.

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For these reasons, revocation of the license of a noncompliant facility may not be a realistic option. Yet continued consultation efforts by the agency may prove fruitless in remedying violations that have an adverse impact upon resident health, safety or welfare. Because of the unique nature of nursing home and CRF regulation, DHS must have a full array of enforcement options to use against noncompliant nursing homes and CRF's. The Nursing Home and CRF Residents' Protection Act fulfills this need. It authorizes DHS to invoke additional intermediate enforcement sanctions; and provides the agency with discretion to use each of them when appropriate given the facility and the threat presented to its residents. Effective use of these intermediate sanctions can ensure resident health, safety and welfare while maintaining a facility's operation.

Civil Citations. A civil citation system appears in approximately twenty-five (25) states' nursing home or board and care home licensing laws.² This sanction is most often used to remedy violations in a facility which do not immediately threaten residents' lives, but which do have an adverse impact upon their health, safety or welfare. In this situation license revocation may be too severe a sanction. However, the threat of a monetary penalty if corrections are not made within a specified period of time can

2. T. Jost, Model Recommendations: Intermediate Enforcement Sanctions for Enforcement of Quality of Care in Nursing Homes at 57 to 91 (1981); Beyer, Bulkley & Hopkins, Board and Care Report: An Analysis of State Laws and Programs Serving Elderly Persons and Disabled Adults, at 97 to 106 (1983).

provide the agency with leverage needed to prompt necessary correction of violations by the facility. If all necessary corrections are not made in a timely manner, the facility faces a penalty appropriate in amount to the severity of the uncorrected violations that accumulates on a daily basis.

Connecticut and Iowa have civil citation systems similar to the one included in this proposed legislation.³ Each of those states frequently issues citations and finds them very effective in prompting facilities to make necessary corrections of violations. Both Connecticut's law and this proposed legislation impose strict time limitations upon the process of appealing the initial issuance of a citation. Both provide that these time limitations may be waived by agreement between the facility and the agency. Caution should be exercised by DHS in extending the bill's time limitations. Until an appeal of a citation is resolved, the facility is not under an obligation to correct the alleged violation that generated the citation. If DHS believes that the violation presents a significant threat to resident health, safety or welfare or the facility has a history of noncompliance, DHS should seriously question a request for an extension.

Receivership. The appointment of a receiver to operate a nursing home or CRF is a serious measure because it temporarily deprives the operator of control of the facility. It's use should be limited to those situations in which it is absolutely necessary.

3. Conn. Gen. Stat. Ann. §§ 19-610 to -612a (West Supp. 1982); Iowa Code Ann. 135C.40 to .45 (West 1972 and Supp. 1982-1983).

The proposed legislation recognizes this by limiting the grounds upon which the District can petition for a receivership.

Approximately fifteen (15) states have a receivership provision in their nursing home or board and care home licensing laws.⁴ As would be expected, this sanction is not used as frequently as other enforcement mechanisms, such as civil citations.

A receivership is most necessary when a facility has a large number of residents who will have to be transferred, due either to voluntary closure or unsafe conditions in the facility. If an individual has resided in a nursing home or CRF for a number of years and has developed stable relationships with other residents of the facility, a sudden move can be dangerous. Studies of elderly persons transferred from one nursing home to another have demonstrated increased dissatisfaction levels and significant declines in physical and mental health.⁵ Operation of a nursing home or CRF by a receiver for a limited period of time can reduce or

4. Jost, supra note 2; Beyer, supra note 2.

5. Miller & Liebermann, The Relationship of Affect State and Adaptive Capacity to Reactions to Stress, 20 J. Gerontology 492 (1965); Lawton & Yaffee, Mortality, Morbidity and Voluntary Change of Residence by Older People, 18 J. Am. Geriatrics Soc'y 823 (1970); Effects of Enforced Relocation on Life Adjustment in a Nursing Home, 6 Int'l J. Aging Human Dev. 249 (1975) cited in Comment, Involuntary Relocation of Nursing Home Residents and Transfer Trauma, 24 S. Louis U.L.J. 758, 759 (1981). Although the residents of board and care homes are not as physically dependent as those in nursing homes, an analogy might be made to the emotional and psychological impact of transfer upon elderly and disabled persons in nursing homes. Both Illinois and Wisconsin extend nursing home transfer protections to board and care home residents in their licensing laws. Ill. Ann. Stat. ch. 111, §§ 4153-415 to 423 (Smith-Hurd Supp. 1982-1983); Wis. Stat. Ann. § 50.03(5m) (West Supp. 1982).

eliminate the threat presented by a transfer. The receiver can either remedy the dangerous conditions in the facility and transfer operation back to the original operator or new owner; or provide for a gradual and safe transfer of the residents of the facility. A safe transfer is ensured by Section 7(b) of the proposed legislation, which sets out the protections a receiver must offer to residents prior to the transfer. Section 7's clear enunciation of the receiver's responsibilities assures that the individual appointed as such will perform in a responsible manner. A special fund which finances costly facility corrections is a very important component of the act. It can make the difference between a usable and unusable receivership provision.

Transfer or Discharge of Residents. The dangers of abrupt resident transfers from a facility under receivership apply equally to residents being transferred from any nursing home or CRF. The proposed legislation appropriately limits the conditions under which a facility may transfer a resident and mandates the development of rules to ensure that a transfer made for valid reasons is safe and orderly. The availability of counseling and relocation teams to assist residents can be invaluable in reducing the dangers associated with the transfer. The right of a resident to contest the alleged validity of the proposed transfer is also an essential resident protection.