

# CHICAGO LAWYER

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## MED-MAL MATTERS

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness ... "

— Charles Dickens

On Dec. 22, Kaiser Health News, an arm of a nonpartisan health-care foundation, published a report concluding that American nursing homes are dangerously underregulated, putting their residents' safety at risk. Less than two weeks later, news outlets began reporting on a number of Trump administration actions last year to decrease regulatory oversight of nursing homes.

In its report, Kaiser reported the results of its four-year analysis of nursing home safety. The headline says it all: "Infection Lapses Rampant in Nursing Homes but Punishment is Rare." According to the report, hand-washing, contagious patient isolation and preventing sick caregivers from working — basic requirements of infection control — are routinely ignored in American nursing homes, spreading germs and compromising patient safety.

Kaiser Health News describes itself as a non-profit, nonbiased news service committed to in-depth coverage of health-care policy and politics. After reviewing four years' worth of federal inspection reports, Kaiser found that 74 percent of nursing homes have been cited for infection control lapses, more than any other type of violation.

Inspection records revealed that nurses and other caregivers cause preventable infections because they are often unfamiliar with basic infection control protocols, they are not properly trained on how to clean patients and, even when they know better, they take dangerous shortcuts because they are rushed and understaffed.

Nimalie Stone, the medical epidemiologist for long-term care at the Centers for Disease Control and Prevention in Atlanta, explains that staffing models have not kept up with an influx of vulnerable patients and that nursing homes need to consider higher staffing levels.

In addition to failing to prevent infections, caregivers also directly infect residents by working while sick. Kaiser describes a January 2017 norovirus outbreak in Shelton, Wash., in which at least six infected employees returned to work without waiting the required 48 hours after their symptoms ended.

The virus — a major inconvenience for cruise ship passengers but potentially much more serious for a debilitated nursing home resident, ultimately spread to 32 employees and 40 percent of the residents. Dr. David Nace, a University of Pittsburgh School of Medicine professor quoted by



## NURSING HOME LAPSES

The dangers of deregulating elder care

By **THOMAS A. DEMETRIO** and **KENNETH T. LUMB**

Kaiser, states that nurses and aides come to work sick because they know they won't get paid for sick days.

Just as troubling, Kaiser reports that, though repeat citations by inspectors is common, fines and other meaningful disciplinary action are rare. Of the 12,056 nursing homes that violated infection control rules over four years, only 161 were given higher level citations.

Kaiser concludes that the value of a lower-level citation as a deterrent is "questionable." In the four years studied, 7,045 nursing homes had more than one infection control citation and 942 homes had four or more citations. Kaiser's analysis concludes with a prescription from Joseph Rodrigues, the long-term care ombudsman in California: "Perhaps a bigger stick might be more helpful."

Enter the Trump administration. In the latter half of last year, the administration, through the Centers for Medicare and Medicaid Services, announced that inspectors should no longer issue a fine for a "one-time" violation, no matter how egregious the violation or significant the suffering it causes, including death.

The federal agency has also told state inspectors, who enforce federal and state regulations on behalf of both jurisdictions, to cease issuing daily fines for any violation that happened before an inspection, no matter how long the violation continued uncorrected.

According to the *New York Times*, these changes to the Medicare program's penalty protocols were requested by the nursing home industry. Janine Finck-Boyle, director of health regulations and policy at LeadingAge, an business trade group, tells the *Times* that nursing homes are struggling to cope with regulations:

"If you're a 50-bed rural facility out West or in the Dakotas," she said, "you don't have the resources to get everything done from A to Z."

Maybe if you don't have the resources to get everything done from A to Z — including W (as in, "wash your hands!") — you shouldn't be taking care of America's elderly.

A perfectly logical initial reaction. But if many nursing homes do not have adequate resources to provide quality care, where have those resources gone? Stayed tuned for an answer. CL

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