



Transcript provided by kaisernetwork.org, a free service of the Kaiser Family Foundation¹
(Tip: Click on the binocular icon to search this document)

Nursing Home Reforms: 20 Years After OBRA '87 Kaiser Family Foundation and Alliance for Health Reform December 7, 2007

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

[START RECORDING]

ED HOWARD, J.D.: Okay why don't we get started? My name is Ed Howard with the Alliance for Health Reform and I want to welcome you on behalf of Senator Rockefeller, Senator Collins, and our board of directors to this briefing on nursing home quality, one that marks the 20th anniversary of the enactment the legislation directly addressed to improving that quality. That of course was the Nursing Home Reform Act and it was tucked into one of those multipurpose reconciliation bills that congress used to pass almost every year to help lower the deficit. This one was called the Omnibus Budget Reconciliation Act (OBRA) of 1987 and we are going to look at in the course of this program what triggered that law, what was in it, how it has been working and what is left to do to improve long term care quality, particularly in nursing homes but also in other settings. And as somebody who was working on the problems of low income older people in 1987 and who had been working for Congressman Claude Pepper before that and then subsequent to that, those of you who don't know Claude Pepper he was in his day the most renowned I think advocate for those needing long term care. This was a topic of really high interest for me back then and still is and institutionally as well. We are going to approach this topic a little differently than we usually do in a briefing. No formal presentations by our panelists, very few power point slides, so bear with us. I

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

think you will find the discussion will be both informative and challenging. I have other logistical notes that I want to come back to but let me just say that you are well aware we don't have the packets of materials for which I hope we are justly famous. They have not been delivered by the folks to whom they were entrusted yesterday. If they arrive, of course we will distribute them in the middle of the briefing. Once we do locate them, we will have them available at our offices if you would like to stop by and pick one up and of course all of the materials are available online at our website which is allhealth.org and at kaisernetwork.org which is also where you will be able to watch a web cast of this thing, probably on Monday. Our partner in today's program is Kaiser Family Foundation, one of the country's foremost voices in health care and long term care and we are happy to have with us today sharing moderating duties and informing us on the topic as well, Diane Rowland, who is the executive vice president of the Kaiser Family Foundation and one of the leading long term care experts in the country coincidentally. Diane thanks very much for being here with us.

DIANE ROWLAND, SC.D: Thank you Ed and thank you so much for pulling together I think the largest panel that we have had at an Alliance briefing in my career of working with you in these panels but I think the panel today really reflects what a broad based issue this is and how 20 years ago OBRA '87

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

really did set us on a very different course and was a monumental piece of legislation so looking back for 20 years and looking forward is really our challenge today. We wanted to start a little bit by looking at what some of the public thinks about the quality today of long term care and assessing their views so as Kaiser is want to do, we did a very quick poll of the public in October of 2007 and I was just going to share with you a few of the slides that reflect some of what the public gave us back as feedback and I think the first slide is perhaps to me the most important and that is that long term care is not an isolated issue for the American public, 68-percent of the adults that we polled had either had a family member or a close personal friend using long term care services either in a nursing home or in the home and community setting so that it is really is an issue that reaches out and touches many more people than just those who are in the nursing homes and their immediate families but the second thing that we found is that people's impressions of nursing homes and the care in nursing homes is varied. I mean a substantial share say that nursing homes are a decent place to stay if you need them and that they provide high quality services for the people who need them but yet given the level of connection that most people have with long term care and the needs for long term care, a substantial share also have great concerns about the staffing at nursing homes both in terms of their training and in terms

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

of having enough staff, an issue of course that facing the industry right now with the national nursing shortage is what do we do about maintaining the levels of care needed to provide for an increasingly frailer and sicker population that is now using nursing home services. So, when we asked the public in the next slide about their concerns there really is a growing concern about the availability of nursing home in the country and also a concern about how care is delivered in the community and what kind of assistance we provide today to people living at home who need help taking care of themselves and quite surprising usually when we ask about in the next slide whether government should do more or less in this survey many of the population agreed that there was not enough government regulation of the quality of nursing homes, an issue that began in the OBRA '87 era so that we are now looking 20 years later at still a continued concern for the role of government in helping to assure quality of care for those who are most frail and vulnerable and in our institutions or at home receiving long term care services but what we wanted to do to set the context for today's discussion was also to go back and reflect on then and a little bit on now and with the good services of Jackie Judd and Renato Perez with the Kaiser Family Foundation, we put together a video, Nursing Home Reform: Then and Now, that really goes back and interviews many of the people who were part of OBRA '87 and I would like to share that with you.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

We had hoped you would have the ability to pick up copies of the video when you came here today. It is on our website and in terms of being able to order the video or you can contact us at Kaiser if you would like more copies of it to use in other forums but for now let's take a look at then and become back to now. [Video plays]

ED HOWARD, J.D.: Well thanks to Jackie Judd, Renato Perez, and the Kaiser Foundation for that. [Applause] Now let me try and give you a preview of the rest of the program if I can. You can see we have an embarrassment of riches with respect to both the number and the quality of our discussants. As Diane mentioned, the topic is a complicated one. There are a lot of points of view that are relevant to this discussion. In order to make the most of the talent that we have assembled, Diane and I are going to be asking a series of questions that will engage both the experience and the expertise of all of our panelists I hope, then we will have some time at the end for Q&A from you in the audience, though perhaps not as long a time as we usually reserve. I am not going to give as extensive introductions as even normally is the case in these settings and I don't know whether we were able to salvage some copies of the biographical sketches. We were. Very good, thanks to the staff for doing that on very short notice and begging it from some of our friends on the hill here. It is an impressive list of folks. I mentioned the web cast. You will be able to get

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

it on kaisernetwork.org by Monday. There will be a transcript available in a few days, even a pod cast if that is your favorite way of reviewing this information. If you happen to be watching now on C-SPAN, and have access to the internet, I'm going to remind you of what I had mentioned before, that is that all of the materials that will be in the packets when we get them are available on both the Alliance website at allhealth.org and the kaisernetwork.org website where you can see the web cast later on and for those of you in the room let me just say at the appropriate time you can fill out a question card which is that green thing in your packets and a blue evaluation form to help us shape these programs to better advantage as we go along so if you haven't already muted your cell phone and pager, please do that and let's get started. You have already met a few of our panelists in the course of the video. Let me just in no particular order mention who all of them are, where they are now and where they were to the best as we can determine. Ruth Katz is the dean of the School of Public Health and Health Services at George Washington University. She was council to the subcommittee on health and the environment chaired by Henry Waksman who appeared in the video. John Rother had been at AARP for just a few years at that point, still is, had been up there at the Senate Aging Committee as staff director for a number of years before that. Susan Weiss at the American Association of Homes and Services

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

for the Aging is right where she was in 1987, though in a much more responsible position I'm sure. Elma Holder whom you met in the video had just founded the National Citizen's Coalition for Nursing Home Reform, now known as NCNHR. Janet Wells is from NCNHR and was then director of public policy now. Paul Willging you met on the film is the Associate Director of the Center on Aging and Health at Johns Hopkins and at the time president of the American Health Care Association. Chris Williams to my immediate left is now with the Agency for Health Care Research and Quality and was the senior health policy staff to Senator George Mitchell, the majority leader at that time in the Senate whom you saw in the film. Bruce Yarwood who was in the film is not on the deus. He had a fracture to deal with and we have as a very able substitute Jack McDonald who is the Senior Vice President for Golden Horizons which is the holding company for Beverly Enterprises and coincidentally he was with the American Health Care Association in '87 working on these issues. Mary Jane Koren is an Assistant Vice President of the Commonwealth Fund and in the day director of Bureau of Long Term Care Services in New York in their Dept. of Health and implementer of the nursing home reform act in the state. Josh Wiener whose very excellent paper you have not had a chance to read because you don't have the materials is a senior fellow at RGI International and has a long and distinguished record of long term care research and analysis and I commend

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

his paper to you when you get a chance to do it. Elma, let's kick this off with you if we can. You founded the major advocacy group for nursing home residents, now known as NCNHR. Tell us a little about why there was a need for such a group and what types of problems that you were trying to address?

ELMA HOLDER: Well the problems have certainly been described well in the video. There was widespread neglect and that neglect often as neglect does turns into abuse over time and then to premature death and certainly consumers around the country were very concerned about the care that their loved ones were getting. The spark and the flame that ignited consumer action really was the Ralph Nader Report, "Old Age: The Last Segregation." It made sense that consumers around the country would respond to Mr. Nader's report. Certainly the Senate Special Committee on Aging did and its hearings were also beneficial to gain more citizen interest in something that might be done at the national level because people were scattered and there were no organized citizen groups but after Nader's report there was more action in congress and certainly more action by the administration. One of the things that happened along with igniting consumer groups that started forming in different parts of the country was that in terms of the eight point plan for nursing home reform that came out of the administration, that eight point plant through the brainstorm of Dr. Arthur Fleming, the renowned doctor, the

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

deceased Dr. Arthur Fleming, they made a plan to develop a National Ombudsman Program and the Ombudsman Program in every state was actually to work with citizen volunteers, citizen groups, so that kind of gave more fuel to the fire for consumers getting involved and that Ombudsman Program as it was initiated really increased the awareness of the public about issues in nursing homes. Another thing that ignited people was through the legal services programs, the legal service in Denver which started the Smith O'Halloren case against the administration and that was a real turning point then because consumers recognized how important that case was. A lot of consumers including myself testified at the hearing in court about that trial. The thing that it did, too, was just I think introduce to the world Sid Katz' work on assessment and we became aware that there were some tools that could be developed that could be used by consumers and resident assessment became highlighted. We were able to meet because we were invited to an actual American Nursing Home Association meeting, American Health Care Association now, in Washington D.C. in 1975. Consumer groups, we persuaded them to invite several consumer groups and we actually saw when we came together there were about 20 people from different parts of the country. We knew that we had common problems in every state, that we faced common problems, and we knew we needed a national united voice and so by the time the day was over we had formed the National

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

Citizens' Coalition for Nursing Home Reform. Another thing that consumers got rallied around in early times was the issue of nurses' aides and in 1978 we brought to the government a report on nurses' aides. Just a couple of other things that highlighted consumer involvement, in 1981 it was mentioned on the video about the deregulation of nursing homes. That is quite a rich history there and people remember the kitchen cabinet of the Reagan Administration where a nursing home owner out of Ohio became significant help to the administration to deregulate nursing homes. Obviously that rallied consumers a great deal and we were able to get support of congress in looking at that. Continued exposes came and then there was pressure from Congress, particularly Congressman Waksman, to have the Institute of Medicine Report, and I have a couple more things that are very important, the release of the IOM report was there. We know that. I think this is interesting history. Barbara Frank and I were called in to Mr. Tillson's office and he said see all these IOM reports we have done all these years up here behind me? They have all gathered dust, virtually nothing has happened because of these reports and I challenge your organization to do something to make that into a national law so we did that with the help of AARP, we were able to form the Campaign for Quality Care, thank you John, and we really, I think that is the consumer involvement and we have been working on it ever since, trying to get it implemented.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

ED HOWARD, J.D.: That is a terrific story. Thank you, Elma. You mentioned Congressman Waksman, it does raise the question of what happened on the hill in that era to get us going and fortunately we have with us both Ruth Katz and Chris Williams who were in critical positions on the hill at the time, Chris in the senate, Ruth in the house. Maybe you can start, Ruth, what was the big motivation for congress to act and what did you feel the need to address first or most critically?

RUTH KATZ, J.D., M.P.H.: First let me say I am sorry that I didn't appear in the video because I've got to tell you we all looked great then. [Laughter] Twenty years later it is wonderful to see everybody but there is no doubt that all of us have aged just a little bit. [Laughter] Thank you for this opportunity to appear with old friends and colleagues to talk about a very important issue. What really I think got congress motivated to act was in fact the proposals that were coming out of the Reagan Administration, one, to put aside new regulations that were supposed to go into effect at the end of the Carter Administration that were very focused on patient's rights or residents' rights. Secondly, the Reagan Administration's proposals to deregulate from the survey and certification point of view the regulations then in place. As I think you heard on the video, there was across the board almost outrage from members of congress about what was happening, Republicans,

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

Democrats, independents alike, and in fact two different pieces of legislation were passed and put a moratorium on putting those changes in effect. As you might imagine, there was some concern in the administration about what they wanted to propose. You have congress on the other side saying let's wait, and the compromise that came out of that was actual legislation to ask the Institute of Medicine to put together this report and I'll bet I'm one of the few that still has a copy of it, or carries it around, or finds it in her basement at 11:30 last night. In any event, what was so special about this report was not simply that it had representation from the consumer point of view, the for profit, not for profit point of view, academics, everybody that you could possibly imagine that you would want on this committee but the report actually turned out to be a blueprint for action. It had some very specific recommendations that for those of us who were charged with the task of actually drafting up the legislation, we had a blueprint to go to and so the point was made that it took less time to pass the legislation than to put it into effect. That is true because we have a terrific document to work with.

ED HOWARD, J.D.: Chris, your old boss, Senator Mitchell, was talking about the clash between the Reagan Administration and some others, how much was that debate about the role of government and how much government there ought to be in this situation?

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

CHRISTINE WILLIAMS: Well I think from Senator Mitchell's point of view, I just want to correct one thing you said. He was not the majority leader at the time, he was the chair of the health subcommittee of senate finance which gave him sort of the appropriate position to champion the legislation and the senate and we were also very fortunate to have Greg Paulson as Robert Wood Johnson fellow. Greg is a geriatrician and did a lot of drafting of the bill on the senate side but we really felt that and the senator as you can see from the video felt that there was a responsibility of government since we, government, was now a major payer for nursing homes both on the medicare and the medicaid side in particular that we had a fiscal responsibility not only to see that the reimbursement of the money was well spent but that we were getting good quality of care and I think a few people know this but not too many, the senator's mother was in a nursing home for eight years and I think that experience for him personally and the fact that his family was really responsible gave him a true interest in this issue and so working with Ruth and with Henry Waksman, we attempted to both draft the bills and then had some negotiations over some of the provisions.

ED HOWARD, J.D.: Let me just follow up. Was your experience that there was an area bipartisan cooperation on this topic either in the committee or on the floor?

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

CHRISTINE WILLIAMS: Definitely. I mean the senate finance committee, there was pretty broad bipartisan cooperation on senate finance and of course Senator John Chafee was the ranking republican on the health subcommittee. He was a strong supporter of the legislation so there was a lot of bipartisan support. It was as I recall we may have had tougher negotiations with Henry Waksman than we had in the finance committee.

ED HOWARD, J.D.: Thank you Chris. To pull this together and tell us how those negotiations came out, let's turn to Josh Wiener. Can you Josh give us a sense of what actually emerged as the law?

JOSH WEINER: Thanks. First before I go into that I just want to say that the Institute of Medicine report is still available from the National Academy of Science as a .pdf for \$85 dollars, well worth spending your money on. OBRA '87 changed the federal system of regulating nursing homes really in three important ways. First the law established new, much more rigorous standards that were more resident focused than the previous requirements. For example, OBRA '87 [inaudible] in law a number of important resident rights including freedom from abuse, mistreatment and neglect, physical restraints which were quite common prior to OBRA '87 were allowed only under very narrow circumstances and the law required that residents who were restrained be released and exercised every two hours.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

Facilities were required to assess all residents, not just medicare and medicaid residents but all residents and develop care plans using a federally specified assessment instrument which came to be known as the minimum data set. Minimum staffing levels were increased, requiring facilities to have more nursing staff, although a nursing ratio was not established and finally in terms of standards established minimum training requirements for certified nursing assistants requiring that there be 75 hours of training. The second major area was having to do with the inspection and enforcement system. The law required that states conduct unannounced surveys, that facilities be inspected at least once every 15 months, and that the state on average inspect facilities once every 12 months and the law said and [inaudible] in many ways a number of sanctions for facilities that were out of compliance that were much broader than just in certifying facilities from the medicare and medicaid program and so there would be things like civil [inaudible] and a freeze on admissions to nursing homes by medicare and medicaid residents. Third, OBRA '87 merged what had been very separate medicare and medicaid standards and enforcement processes and these new standards were substantially higher than had existed under medicaid for intermediate care facilities which were the vast bulk of medicaid facilities. So, in sum, OBRA '87 made changes in the way standards were set, the was inspections and enforcements

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

were done, and the relationship between medicare and medicaid in terms of nursing home standards and it is those building blocks that are in place today and they have been essentially unchanged for 20 years.

ED HOWARD, J.D.: By the way I should say to everybody on the panel that to the extent that we can within the constraints of time, we would love to get people to whom we don't directly ask these questions to comment if they have something that they think would help us get at some of the niceties of this debate so if we can all be brief we can hear from a bunch of people on some of these things beyond the person to whom the question was addressed. Let me turn next to Paul. Paul Willging, you were heading one of the two major nursing home trade associations at the time, as the piece in the video quite clearly pointed out, what was the industry worried about when we started talking about this legislation and what did you do in the course of that debate?

PAUL WILLGING: Well interestingly enough, the issue was not necessarily, this button here? It is on, at least there is a nice little light blinking at me. It's probably telling me I have already exceeded my time limit. [Laughs] I think the enactment of the nursing home reform provisions in OBRA '87 were somewhat unique in the history of health policy development in Washington. The amount of consensus that existed was somewhat surprising I think to all of us, both in

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

the congress, within the consumer advocacy community as well as within the industry. If I recall this document, and we all had our own copies at the time, we didn't have to use Ruth's back in 1987. The American Health Care Association disagreed probably with only about three or four of the hundred and some recommendations and largely because of the nature of the constraints proposed by the environment itself, be it financing or be it the ability within the work force community to garner the kinds of support we knew we needed. I guess my only embarrassment then and my continuing embarrassment today is not in terms of the standards proposed. It is that it took an act of congress to do it. I mean, I agree 100-percent with Elma that the most critical part of this legislation was the requirement for assessments. Anyone who works in long term care knows that the whole process has to begin with an assessment from which is developed the plan of care. Why did we need congress to tell us that? Somebody who was selling shoes yesterday and is going to be turning patients today probably should have at least 75 hours of training and I think the nursing home probably should have a nurse on staff periodically. That is my biggest concern but we had some problems, too. I think my biggest concern then and now was with respect to enforcement which is indicated in the video. I have got problems philosophically with the enforcement approach. I have got problems definitionally with the

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

enforcement approach. I think enforcement as it has evolved over the 20 years has changed the very philosophy of a system whereby we try to effectually change within nursing facilities. The definition of quality based on this enforcement approach is now not the enhancement of life but the avoidance of harm and I don't think that is the right definition for quality in a nursing facility. It has become a confrontational not a collaborative system. The very use of the word penalty rather than remedy I think is suggestive in terms of what has happened to that system. So it is in the past, let's move to the future. We still have a major issue. I am always amazed with the congress when it gets to an issue which is really going to cost money. Suddenly they become very quiet. Nursing homes are understaffed. I think even the industry is willing to recognize and I very much appreciate the work done by APT back in 2001 which tried to quantify the understaffing of nursing facilities at a minimum 10-percent if you look at the current plateau of 3.7 hours versus the required optimal staffing of four hours per patient day. We have got to work together to deal with that issue and yes it is going to cost the country some money but nursing homes are a monopsony which the economist will tell you is an economic system in which there is essentially one purchaser of the service. Public funds purchase nursing home care and I thought the document put together by Josh and his colleagues was excellent but there was

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

one phrase that sort of caught my attention and that is that government when it is spending the bulk of the dollars going to the nursing home industry has a responsibility to make sure they are spent wisely, direct quote Josh? I think government also has a responsibility to make sure there are sufficient dollars to achieve the goals establish by government and that is I think an issue we all have got to deal with. The issue of staffing within nursing facilities has got to be our next great challenge and if we can pull together the same consortium of interested parties that were able to develop this monumental piece of legislation called OBRA '87, then we may in fact see some real progress on today's major issue.

ED HOWARD, J.D.: Thank you Paul and actually you raise a question that makes me want to circle back to close out this discussion of the past if you will by asking Ruth and Chris to talk about what they were trying to do in the law that they weren't able to get. What were the missing pieces when you finally got to the end? Any big disappointments?

CHRISTINE WILLIAMS: Well, I would say the more that Senator Mitchell got involved with the legislation the more he began to think about the larger issue of the financing of the long term care system and that led to subsequent legislation that redrafted for more comprehensive long term care reform so I think that the financing side was something that he felt needed to be addressed at some point. One of the issues that

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

we really struggled with in the conference with Ruth and Mr. Waksman was the level of nurse staffing and I would say that was the area of the most serious disagreement between Mitchell and Waksman and it was a tough compromise and so I think that in the end we felt that we needed to make a compromise because of the lack of financing and the financing issues and trying to balance that with the legitimate needs for staffing.

RUTH KATZ, J.D., M.P.H.: This will make you happy, Ed, because I know you've got a lot of other issues to cover. I agree with Chris completely. The biggest issue was the staffing issue as Paul I think has so eloquently stated. It still is the big issue. This was an issue that had nothing to do with republicans and democrats because you just heard Senator Mitchell and Congressman Waksman had a difference of opinion but it really had a lot to do with where you lived, what the capacity was at the state level to pay for these services and to train these people. This was not an issue that broke out by which side of the aisle you sat on. It really had to do with resources and it was by far and away the biggest issue we had to grapple with.

ED HOWARD, J.D.: And is today. Yes, John?

JOHN ROTHER: Just one little comment on that, it is not only the level of staffing but I believe the IOM found that it was the turnover that was key to quality and so with many homes exceeding 100-percent per year of turnover it almost

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

didn't matter how many people were there, you weren't going to have good quality care so that I think is the one thing I would add.

ED HOWARD, J.D.: Thank you. Let me turn now to Diane to carry this discussion further.

DIANE ROWLAND, SC.D: Well let me turn to Janet and say Elma has given us the history and the consumer involvement at the beginning, do you agree with the challenges that have just been put forth and what would you say the major challenges are today facing consumers in your group?

JANET WELLS: Can you hear me? I think the video did a wonderful job of laying out the issues that are before us, the history and the issues that are still before us. I remember the day we first saw the bill that had been passed, we knew we were getting a law. We didn't even know what it would be called and when we saw this and saw that it was called the Nursing Home Reform Law we were very excited. We weren't anticipating it. We also I don't think were anticipating the language about the responsibility of nursing homes to provide the highest practical level of care to maintain a resident's health and well being. It was a wonderful and exciting moment and as I look around the panel I think how much Americans are indebted to the people here who helped to pass this law. As the video said, some battles have been won. Some are still being fought and just to address some of those that are still

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

being fought I don't think we really understood how politically difficult it would be to get the law enforced in the way that we envisioned and the way that we think Congress envisioned. In our day to day work, we still talk daily to members of, nursing home family members, nursing home residents, Ombudsmen, other advocates who are extremely disappointed in the enforcement of the law, family members who see serious problems affecting their family members and yet can't get their complaints resolved. This has been very disappointing and there is a reference to the most recent GAO report that does string out over a number of years and they all have a similar title, in spite of the law we still are having serious problems in nursing homes.

Last year we did a book called Faces of Neglect that looked at case studies of nursing home residents across the country who had been severely neglected or abused in nursing homes and what was so discouraging about that is in the majority of those cases, as bad as those cases were, their state survey agencies are not taking any action against the facilities and neither have professional licensing boards. Very, very serious neglect and abuse was going un-penalized. We have come to realize more and more that OBRA is a wonderful law but the goals can't be achieved through regulation alone. We also need to look at the medicare and medicaid funding and bring more accountability and transparency into that process.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

The video referenced the *New York Times* article of September 23rd about private equity firms purchasing facilities and the decline in quality of care and the decline in nursing in those facilities. There have been a couple of other research studies showing a similar decline in these facilities. I don't think there is anything new. It has simply been an acceleration of some of the problems that we have been seeing and for profit corporate owned facilities. More than half the nursing homes are now owned by chains, some of them quite large chains and one of the problem that comes up is often consumers don't know who owns the facility that their loved one is living in and often the state regulatory agency doesn't know who owns that facility. The Florida Regulatory Agency came up with a report challenging the *New York Times* study and its finding of decline in the private equity companies but at the same time admitted that it simply didn't know who owned Florida facilities and whether they were owned by private equity investors. There is a lot of outright corruption in the industry and what is concerning about this, whether something illegal is happening or whether it is simply a decline in care, we are not catching facilities that are in trouble. They are not paying their bills. They are not providing supplies. They are understaffed and in many cases the quality of care declines drastically before they are caught because of our lack of transparency and also the failure of state survey agencies to respond. Right

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

now there is a case going on in Connecticut where millions of dollars were diverted into private investments including a recording studio and then the staffing issues have been raised here but extraordinary concern. We have a substantial body of research now from the government and private researchers showing the level of staffing that we need in nursing homes. You can't provided minimum quality care with less than 4.1 hours of care per day but we still haven't addressed how to get to that staffing level that is needed.

DIANE ROWLAND, SC.D: With staffing and payment clearly continue the issues, but I would like to turn to you for a moment, Mary Jane, from your perspective at the state level and survey and certification how has the enforcement worked? What are some of the challenges continuing in that area?

MARY JANE KOREN, M.D., M.P.H.: Well, first a disclaimer, I haven't been working with the state survey agency for 15 years so a little bit out of date but I think certainly in touch with people who are doing it.

ED HOWARD, J.D.: Mary Jane is your microphone working?

MARY JANE KOREN, M.D., M.P.H.: The light is on. The light is lit.

ED HOWARD, J.D.: Maybe you can lean in a little or use another microphone.

MARY JANE KOREN, M.D., M.P.H.: Okay when I was working for the state health department, I had been there for a scant

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

six months when OBRA '87 was enacted and it landed on my desk to basically implement it for the state of New York and one of the things that was amazing about it was that as you read it, it was a map to a new territory. It was a map to a way of thinking about nursing homes and nursing home care that we haven't really even imagined and literally it took providers ten years to sort of catch up with that and we had sort of the pioneers who started to realize the potential for what was in that piece of legislation with the pioneer network coming on board in about 1997 and as a regulatory process it has probably taken more than 15 years to catch up with what was really in that legislation. It took us to new places because basically what it said was that you can't provide the kind of care that OBRA expected which looked equally at care, and rights, and at quality of life with the kind of institutions that we at that time had and if you think about sort of what has transpired in the mean time I think that CMS has really taken major steps forward to try to provide for survey agencies not just training on the process of survey but also on the content of what high quality care should be, numbers of web casts, webinars, other training sessions, looking at culture change and looking at how to maintain high quality of life and also respect resident rights has been going on. They have also improved the communication that goes on between the central office at CMS and the survey agencies, having quarterly meetings, trying to

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

improve that kind of discussion that is going on and I think the other thing they are doing that is going to be very exciting relative to utilizing the statute even more is that they are developing systems to capture survey processes, to look to see what states are doing because one of the complaints obviously is inconsistency and the high variability between states and regions and this will be a system that lets states know where they stand whether or not they are actually outliers in terms of the number of citations that they are doing, what kinds of remedies they are applying so will also enable better management for the survey processes, it will improve consistency and the other thing it will do is it will shed some light on whether or not political pressure is being brought to bear on survey agencies to down play the severity of findings for the surveyors when they are in the facilities.

In terms of the enforcement, I think one of the big problems is that while we are I guess improving is the word, we are seeing more remedies being applied and more nursing homes having imposed remedies, we are not using what we have. Josh mentioned some of the remedies that had been laid out in OBRA '87 so that there was something between a slap on the wrist and termination. We are not using those effectively. Things like temporary management, I think only five or six times has that been used nationally in the last year. We are really not using plans of correction the way we could and right now I know that

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

we are working with Thomas Hamilton and others at CMS to start to think about how we can have what we would have resident center regulation and that is being done through a pilot study in Rhode Island where the state health department is starting to think about doing what they are calling the individualized care pilot and that will include not just what can you do on survey but how can you use a plan of correction to start to get people to think about root cause analysis and really delving down to change things at the system's level within the facility.

The last thing I would like to say briefly is there are different ways to ensure quality. I think one of the questions that I have been asked is how is the best way to enforce quality and I would like to turn that and say how is the best way to ensure it? First of all, we have a lot of evidence not just about clinical practices. I think Dr. Jack Schnelly has also given testimony on several occasions about better ways to provide care and good care processes. Secondly we need to align incentives and several people have talked about that, the regulatory incentives, certainly nursing homes are obsessed with the survey process and as people like to say they do what you inspect, not what you expect, so how do we use that system to get really what we would like? And then of course payment, aligning payment systems with performance, whether you call it pay for performance or value based purchasing, it is really to

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

start to say how can we use our payment mechanisms to ensure better quality? The last point I would make is that no one group owns quality and that points to an initiative that is currently underway called "Advancing Excellence" which is a coming together of all of the stakeholder groups in nursing home quality. It is a two year campaign. It is a voluntary effort but everyone is at the table and everybody is working on it. Unlike previous campaigns and initiatives that have been tried, this one requires nursing homes to actually select and set goals for at least three out of eight quality indicators and then their performance will be monitored over time. At this point about 40-percent of the nursing homes in the United States are doing that and we will be tracking the changes that happen. We are hoping also to use that network for other changes going forward so that it won't just stop at the end of a two year campaign but will become a vital resource for really looking at how we get better care. I should say that CMS has been very supportive of that not only in their participation but also in funding some of those initiatives.

DIANE ROWLAND, SC.D: Let me turn to you, Jack, and ask you how the industry is perceiving these issues and where you think other than as we know payment is always an issue. Other than payment, what else can be done to improve quality?

JACK MCDONALD: Thank you, Diane. Let me first say that as one of the individuals that was present at that meeting

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

in 1975 with Elma, on behalf of the industry at that time, we have come a long, long way and I think every speaker thus far has acknowledged that fact. At the same time, we have a long ways to go and I would say that both from having been on the industry association level and now for the last over 20 years with a nursing home provider organization and I think Diane one of the real telling slides that was in that presentation was where you did the study of looking at what the public is expecting and I think that the industry has gone through a 20 year period of education and involvement and if we can all have or share one common interest around this table here today it is on providing quality care. Anyone who feels that a business can afford not to address quality in today's society is just plain wrong, every business, whether you are non profit or for profit, large company or small company, you have to address quality. The other thing that I think the industry today totally shares without Elma, with Janet, with what Mary Jane was just saying, is transparency, whether we are talking about the survey process, whether we are talking about staffing. I will tell you that today and it is a product of not only OBRA but subsequent laws that have been passed, the staffing information on a particular facility is collected. It is available. One of the problems that both the industry and I believe the consumer has is access to that and the posting of the data and part of the initiative that Mary Jane has just

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

spoken to in terms of the CMS initiatives and the posting on their website, that data is available Now is it timely? Is it current? Is it 100-percent accurate? Those are all issues that I think we all have varying opinions on but the issue is how do we make that information available to the consumer, to government, to the enforcement agencies on a continuous basis and I think that will help both the industry and the consumers in terms of the concerns that you identified that they are asking about, the availability of the services in the long term. We have got to come together to figure out how we are going to meet the needs of the baby boomer generation, that everyone around this table right now we all have a vested interest in, whether we may need that service tomorrow or the next day or we have a family relative that needs it today. The quality, obviously, that has to be addressed. The role of government clearly has to be there and the appropriate staffing and I think that one of the real keys and we have all talked about it is staffing. The concern that I have and I think a lot of people within the industry share is the appropriate staffing. Our patient profile of a patient in a nursing home today is significantly different than that patient in 1987 and we are seeing that patient profile change every day. Yes we have a lot of the same types of patients we had in 1987 but I will tell you at the same time we are taking care of a lot of other types of patients that in 1987 were being taken care of

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

in hospitals or would be taken care of in other settings. We are seeing that in other parts of our business, in the home care, we are talking care of patients at home that formerly were in a nursing home or we are taking care of them in an assisted living unit. My concern is that we build standards and this is a debate that we had back in 1987 and it played into the whole discussion about what is the appropriate staffing? It has to be patient centered and I think that is the one commonality that we probably all share and as Paul said, the key thing that OBRA brought us in 1987 was patient assessment and if we can turn that into the positive then I think we will probably do the best job that we possibly can for our patients but I think we have got to avoid getting sidelined by some issues that are very divisive and I would even say and I am saying this as Jack McDonald and not as sitting in for Bruce Yarwood here but I would suggest that it is time for another IOM study, a study by a group that obviously has a track record that made a major contribution that we are all here today saluting to address some of these issues that were left on the table in 1987 that are still here today and some of the other issues that we all know around this table and those of you in the audience know very well we are going to be faced with. Let me just throw one out and Ed I'll turn it back or Jane but in the long term care field, one of the areas besides staffing that we have a major concern with and if you stop and

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

think about it has many, many implications for us are physician services. What is the role of the physician going forward? One of the areas that right now nursing homes are kind of locked out of is the use of telemedicine. It is not recognized. Now some of us are going to be doing some pilot programs in that area but in this age of the internet and of computers, data access, etc, why is it that we cannot introduce that concept into a nursing home and especially for the rural nursing homes where they have the problem of gaining access to certain specialities? We need to be able to do that. So that is why I say maybe it is time for another IOM study.

DIANE ROWLAND, SC.D: Let me ask John whether he thinks it is time for another IOM study or really time for congress to revisit standards and maybe expand the range in long term care facilities that are part of that.

JOHN ROTHER: That is a leading question and I'll take it and run. The time for another IOM study was probably years ago in recognition of all the changes that have taken place and the nature of the care delivered, the range of options in long term care, the needs of patients, so I'm vice chair of the national quality forum. We are trying to develop standards for long term care that can advance the patient centered philosophy so I think there is a lot going on here and so after 20 years yeah I think it is time to take a fresh look but for me it is important to be clear about what has changed. Number one,

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

nursing homes really aren't the center of long term care anymore, it is really home care and assisted living and we are trying to rebalance care in the states and rebalance funding and the extent that consumers have their wishes respected, it will continue going that way and to the extent that the pharmaceutical history developed some cures for dementia, for urinary incontinence or osteoporosis, we could be looking at the end of nursing homes as they have traditionally been defined and completion of their transition to post acute care facilities with a rehab mission more than long term resident mission so we are in the middle of that and it is completely different environment than 20 years ago. I think the quality movement has changed. OBRA '87 was based on the standard of minimum standards and [inaudible] and the quality movement today is about measurement and incentives. It is completely different and it is no longer good enough to say minimum. How many of us want to be residents in a facility that is at the minimum? We want to be if we have to be somewhere we want to be somewhere that is excellent and do we reward homes for providing excellent care. We should but we don't but if we measure an incent we can move it in that direction. The work force is a big issue. There are three factors in the work force. One is having to train people, two is turnover, and three is what country are they born in? Today increasing part of long term care is immigration and if we clamp down on

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

immigration we are going to be in big trouble, big trouble, so we have got to really think about this together on work force and then finally I just think that consumers whether it is our parents or whether it is ourselves we have more choices. We have more information. The nursing home, is that going to be the first choice for any of us? And to the extent that there are other choices, nursing homes are becoming, there are more empty beds, and it gives us more options about taking action where we need to take action so I applaud the decision of medicare to release what the 75 poor performing, worst performing nursing homes. We ought to be more aggressive about dealing with the persistent problems where we know they exist so I think there is a big agenda going forward but I think we are in a dynamic changing field. It is not longer adequate to look just at nursing homes. It is no longer adequate to just adopt a law enforcement philosophy and we have to be thinking about work force. We have to be thinking about consumer choice as the drivers just as much at other sites for quality in the future.

DIANE ROWLAND, SC.D: Thanks John. Susan let's just turn to you and what are the challenges you are seeing and some of the potential solutions. If you could do one thing to improve quality what would that be?

SUSAN WEISS: Could I address some of Jack's points and build on a few of those? And Mary Jane I think that was the

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

best summary of where we are in long term care I have heard in a long time. Everybody is talking about work force and you know what? What I want to clarify is that for us that is not just numbers of people and how many hours they work. It really is talent, availability and identification. For us, it goes from the boardroom all the way to the bedside, the boardroom being the accountability and transparency part which has to be done by very talented people and then everybody else in the facility that is responsible in one way or another to get care provided. There is a lot of talk when we talk about numbers and I appreciate Janet's part about we don't have enough. But when we decide how many is enough let's be thoughtful about it, okay, because there are a lot of things to consider. One is the acuity adjustment. Who are we taking care of? Have we got the managers in place to really guide a work force and put them in the right place and give them the empowerment that they need to really function optimally? How do we deploy them? What is the configuration of the facility so we know what is the most efficient use? And then technology, what does that mean? We have bright people as CNA's. They can manage technology and they do at home so what can that do to really reinforce and amplify the work force? On the clinical side, too, we have a lot of issues in long term care that will inform all the options that John is talking about on the outside and we ought to be learning from that. On the clinical side, I think end of

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

life is a major challenge for us now. On the senior side of long term care, I guess we could argue that everybody is at the end of life but hopefully that end is farther away for many people now but how we manage people clinically and how we manage people compassionately as they get to the end of life I think is something we haven't paid enough attention to. We need to work on public perception and John that will include every other alternative we have. Public perception is going to be very important to the success of those. It is really hard right now to get coverage of good nursing homes and I would say quality should not be news, okay, that is not the news if some place is good but senior citizens and where they live successfully ought to be news. They shouldn't stop having people pay attention to them and where they live just because they live in a nursing home and you know, not to do that does result in the kind of demoralization that we face amongst staff and you know we cannot be beat over the head. You know, the beatings will stop when moral improves. That is kind of the orientation we have there now. If people can't talk about what they do for a living, if they work in a nursing home, in a social setting without having people turn away, there is something terribly wrong about what we are doing to people and I think the recognition of excellence, the lack of it is extremely important. You know, all the innovations that we have heard about, with Well Spring, [inaudible], all the

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

culture change things, the restraint reduction - those were provider initiatives, okay. We can be creative and it does show people want to do the best that they can in this system and I want to say a word about money. You know, money is important but you know what? Money flows from these other things, good coverage, good understanding, good work force, good quality, but the problem with money in my mind is that you have to have more than one constituency that is providers arguing for more money and it is very hard to encourage people to argue for more money in a system that they do not want, okay, people do not want to be in a nursing home and you know what? We hope they don't be in a nursing home that is not good and that they don't have community alternatives but have consumer support for more funding for a system that they don't want to accept is extremely difficult so we are going to keep having those challenges. You know, I want to talk too about some of the alternatives. We have some tremendous options out there and assisted living isn't the only one. Assisted living just means setting and a different kind of services. We have housing the services that is a very exciting option and there it is no one else so that we really have something to do about quality. We really can look at what we have learned and bring housing and the services successfully. The other is home and community based services and people's own homes and the one thing we see coming there, we talked to some licensure directors recently

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

and what they said about what we should be watching as providers it is what is happening in home based care, not that professional care is something to watch necessarily, but seniors, frail seniors caring for frail seniors, people who don't have the physical strength to transfer, to turn, to toilet, to feed, and what happens in that and how we support them, how we train them, and how we reduce the fear that they have to feel in that kind of isolation.

Do you want me to talk about the one thing I would do for nursing homes? All right the last thing I will say, the one thing to change, I think we have to start by admitting that while we talk about clinical indicators and those are very important, the standard for nursing homes is quality of life and another word for that is joy. We really want to be able to walk into a nursing home and see something so exciting there that we can say you know what? This is okay but everything we are doing now as a community is counter to that because over the last 20 years we have created a culture of fear that puts all of our energy on the defensive rather than the proactive and look at the cycle, okay, consumers fear nursing homes because of what they have heard and in some cases what they have seen. Nursing homes fear the state. States fear the feds. Feds fear congress and congress fears the consumers because ultimately they are voters. Fear and joy cannot coexist, okay, so if we want to be proud of the system that we

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

have created. We have got to attack the fear side of it, get out of this [inaudible] environment and do the right thing, acknowledge that we all want to do the right thing, even if we don't agree with what it is and you know what? This is going to be as much work as OBRA was and right now to tell you the truth I don't think that as a group we trust each other enough to get on with it. We think that if we change anything, the whole system is going to collapse and that is not true, but things have changed over 20 years. Residents have changed, we are changed, okay, we have to get out of our heads that OBRA is a shrine to the 80's. We are all really proud of it. I sat in that room with Elma every day for a year I think, working on this thing, but it is not what I consider the culmination of a career. It is bigger than that. We designed it to be a living document and I think it is up to the challenge of responding to what we have now. We just have to remember that.

DIANE ROWLAND, SC.D: Thank you. I am going to let everyone on the panel have one sentence of what they would do, the one thing they would do to improve the quality of care in nursing homes or in long term care and then we are opening it up to the very patient audience who has listened to everyone who has a lot to say as you can tell. Josh you can start.

JOSH WEINER: I would raise staffing levels in nursing homes, especially for registered nurses.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

MARY JANE KOREN, M.D., M.P.H.: I would ask that congress actually allocate adequate resources both for consumer information, for survey enforcement activities, and also to participate in quality improvement efforts.

MALE SPEAKER: It is a pleasure to follow Jane. I simply echo her thoughts. I think that the tying of the various parts together is what needs to be done at this point.

FEMALE SPEAKER: I vote with Josh. [Laughter]

MALE SPEAKER: I would go about trying to prove Josh wrong and the only other section of the report that I had some difficulties with that programs, culture change such as Well Spring, Pioneer Movement, Eden Greenhouses, are so isolated as not to be replicable. I would like to see them replicated as the norm for the industry.

CHRISTINE WILLIAMS: Speaking as someone at the agency for health care research and quality, I think that we need to have a new paradigm about quality in long term care, that is really moving to the future to being more proactive and really thinking about what quality means in the 21st century.

ELMA HOLDER: I would go for beyond the nursing crisis, solving that, having more local involvement in nursing homes by community people. Many years ago we raised the idea of having community advisory boards for every nursing home that was receiving government money so I would go for something like that plus increase and strengthening of the Ombudsman Program.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

MALE SPEAKER: Well what would make a nursing home a place where I would ever want to be, number one, change the model from medical to residential. Number two, privacy and dignity for the residents, and number three I would want to be in a place that was rewarded for doing the right things and I think that is the program.

FEMALE SPEAKER: I think I would accept Jack's challenge of whether it is time to look at new nursing home reform law and I think we do need research. We do need studies on how we have a reimbursement system that delivers quality of care. We have to get to adequate staffing. Again, we know what the minimums are and also would add some of these things we can start now. Some need research. Some we could do, even in this session of congress, to simply require nursing homes to report accurate staffing data. The CMS has a system already set that would collect accurate nurse staffing information on every medicare and medicaid facility in this country from payroll data and report it back to consumers as quality measures, ratio of nursing staff to residents and facilities and the turnover and retention rates. People really have to have this information about facilities and it can be the springboard for talking about what we need to improve the system.

DIANE ROWLAND, SC.D: You know we talked about a consensus in '87 of what needed to be done and I think this

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

panel has reflected the fact that there is quite a bit of consensus about the job isn't done but where we need to go in the future but now I know Ed is going to tell you about evaluation forms and we are going to open it up to questions.

ED HOWARD, J.D.: That is right. I get the exciting part. We have about ten minutes and I would urge you if you have a question to go to one of the microphones because by the time you write it and it gets up here the ten minutes will be gone and we want you to spend your time writing on the evaluation form while you formulate your question and listen to the answers. Please go to the microphone, ask your question, be as brief as you possibly can. Direct it if you want to one or another of the panelists and we will ask them to be brief as well. Yes, go ahead Tony.

TONY HOUSNER: Tony Housner, formally with CMS, working on quality of care in a number of settings and also now involved with board that covers a range of things like independent living and nursing homes, I guess several comments more than questions.

ED HOWARD, J.D.: You might want to make the single most important comment.

TONY HOUSNER: I'll make two. One is look at adequacy of reimbursement because I think that is something that you have all said but that needs to be more explicit. The other thing I think is that assisted living and independent living we

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

really haven't touched the service from a national perspective adequately and we do a lot in the nursing home arena but don't have much of a system for assessing quality of care in those arenas.

ED HOWARD, J.D.: Josh do you want to respond to that a little?

JOSH WEINER: I just wanted to comment that there is surprisingly little research, recent vintage, looking at the relationship between costs and quality. Most of it has been done by David Grubosky at Harvard and what he finds is that there is in fact a relationship between cost and quality but it is a modest relationship and so if you're just increasing the reimbursement rate or the cost you have to increase it quite a lot to get a fairly modest increase in quality so we need to be smarter in how we spend our money if we are going to use that strategy to improve quality.

PAUL WILLGING: I would only make one brief comment, it's the same one I make to my students at Hopkins, that as we look at quality in assisted living, we remember George Santiana's dictum: He who forgets his history is doomed to repeat it. So let's remember the good things that came about as far as the process visa vie nursing homes is concerned but also let's remember the mistakes we made and not replicate them.

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

FEMALE SPEAKER: I think that is part of the perspective of our members. Assisted living was a great promise to have a non medicalized environment for long term care and what we have seen is I think a lot of that promise has been lost as assisted living facilities are having the same problems that nursing homes were having 20 years ago, particularly with under staffing and under trained staff.

ED HOWARD, J.D.: Let me apologize. My cracker jack staff has just pointed out to me that those evaluation forms I wanted you to fill out were in the packets that you didn't get. [Laughter] We will have one on our website within an hour of the termination of this program and if you would go to allhealth.org and fill it out we would be deeply indebted. Yes, Mike?

MIKE HASH: I am Mike Hash with Health Policy Alternatives here in Washington. I have a quick comment, that is I am disappointed that your panel doesn't represent anyone who currently is in the leadership in this area at CMS and I am sure you might have tried to have that but it is disappointing that there is not someone who can address some of the initiatives that are underway there. Secondly the question really is I have been perplexed ever since the September article in the *New York Times* about the interest in private equity investment in nursing homes, nursing home chains to be specific, and it is to me somewhat counter intuitive because

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

much of the conversation we have had here about financing and the inadequacies of it and yet people who are in the business of making judgements about good investments and good return on investments, I seem to find that there is a great opportunity here, whether it is in the real estate that is owned by these chains or whether it is also a combination of trying to make these organizations operate more efficiently and effectively. I realize there is no one here who represents private equity either but maybe someone would like to talk about why they think this seems to be such a promising area for private equity investment.

JACK MACDONALD: Let me respond from the standpoint of our particular case. We went from being a publically held company, Beverly Enterprises, to now being privately owned and our primary ownership is a pension fund. It is not what you would traditionally view as a private equity Wall Street firm, so I am speaking somewhat in a differential perspective. But I will tell you that our investors' pension fund sees this as a primary area for their own members. They are focused in terms of our business on expanding it. So far we have received about \$142 million dollars or 8-percent of their original investment in our business. We are expanding our scope of structure in terms of the businesses. We are not just a nursing home company anymore. We are expanding our home health, our therapy business, our rehab business, and I think that the driving

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

force to do that is they see this as a significant interest of their own members in the pension fund. They also see it as a major opportunity to provide a service that is going to be in more demand as the aging population expands itself but let me go to one other point, going back to a comment that John made, and it ties back to this, this comment about nursing homes being the center is clearly not the model of tomorrow. The nursing home is a part of a continuum that all of us have talked about at one point or another in terms of this industry and I think that one of the other areas that we need to look at, we should not just be focusing on that 54 or 60 nursing homes that got identified in this by CMS but go to John's point. Think and that is what about the best 64 or the best 200 nursing homes in that CMS scoring?

JOHN ROTHER: Those homes are near the Canadian border and they are all non profits I think.

MALE SPEAKER: Not necessarily John.

JOHN ROTHER: I do agree that people should look at them but let me just say one thing about private equity. I am agnostic, so far I think the jury is out, but the one thing that really concerns me is the move to separate out the operating entity from the real estate and have no assets behind the operating entity which means that it is basically not accountable, can't sue it, cannot be held accountable legally for any kind of quality problems and I think that is a negative

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

development for consumers and for the industry and to the extent that is what is driving private equity, then I think we have got a problem.

JACK MACDONALD: Can I just respond to that? I don't want to get into the debate here but I think let's also understand that type of structure has been present within the industry in the past, as publically held companies have set up rates and other entities to hold the real estate. Now in our case that is not the case. We are 100-percent owned on the real estate side and 100-percent owned on the operating side.

ED HOWARD, J.D.: Okay yes go ahead.

HEIDI SPLEET: Hi, I am Heidi Spleet with Internal Medicine News. Thank you all for being here today. I was wondering whether any of you could elaborate a little bit on how the role of having a physician medical director in long term care can make a difference in some of these reforms going forward? Thanks.

PAUL WILLGING: Interesting issue and I will address it from my other half which is as associate director of the division of geriatric medicine at Johns Hopkins Medical School, I think and I wrote an article to this effect at one point. We are like Don Quixote tilting at windmills when we think we can enhance the numbers of physicians involved in long term care, particularly board certified geriatricians. They are not out there. In fact, the number is declining rapidly as I think

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

Ruth can probably attest to as well. I think we are overlooking a real opportunity and that is not that we don't need more and more medical direction in both nursing homes as well as assisted living who are beginning to look more and more like the nursing home patient of 20 years ago but we are not going to find that many of them in terms of physicians because they are responsible to the patient but they are paid for by the medicare program and it does not cover their costs. We know that. So who do we go to if we need that medical direction? I think we need to look to advanced practice nurses. I think there has got to be a way to develop a business model where we can bring in the medical direction but utilize that increasingly scarce resource, the geriatrician or the geriatrics trained internist for the more complex cases as the leader team, not the person who sees everyone in the facility, everyone in the community, everyone with any kind of a problem. That would be a solution I think warrants a little bit of exploration.

AL MILLICAN: Al Millican, Washington Independent Writers, how have the major concerns of nurses today including forced overtime, scheduling and job expectations change from 1987?

JACK MACDONALD: I think John has pointed to the real issue which is not so much recruiting as it is retention. Yes it is true we don't see the kind of turnover among nurses that

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

we see among nurses' aides but it is higher than anyone could possibly accept in an industry this important. Remember we are long term care and when you have turnover every few months, and I think nursing now the turnover is somewhere around 30 to 40-percent, is that about right for those who follow this stuff? That is unacceptable and we have got to recruit for retention, not just to fill a position with a warm body but to fill a position with somebody who has got to stick with the facility, who is going to stick with the community, that is our challenge.

MICHELLE NOWER: Hi, my name is Michelle Nower. I am with the service employee's international union which represents 150,000 nursing home workers across the country. First I just want to back up what Janet Wells said in terms of there are certain reforms that we believe that can happen immediately, particularly with transparency and accountability and she already mentioned some of the stuff about staff reporting which of course we support, so actually [inaudible] also has had some concerns about the private equity issue which we have been public on and in terms of that *New York Times* article I know Dr., forgive me I am not sure I am going to pronounce your name correctly, is it Willging? I know that you wrote a letter to the *New York Times* after that article and I would just be curious from your perspective and also John Rother's perspective in terms of are there reforms that can be

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

done in terms of accountability both for the real estate issue that is not necessarily specific to private equity but that addresses the whole industry but would at least maybe address some of those concerns?

PAUL WILLGING: I think my *New York Times* letter which I probably would not have written given the publicity it garnered was an attempt to suggest not the problem with private equity but my ongoing personal problem with publically traded long term care companies. Forgive me Jack but I have to say it, when your primary customer is the Wall Street analyst and not the customer I think you have inevitable problems but I don't think the issue is private equity per say, just as I've never thought that the issue was profit within the nursing home industry. If indeed the end result of private equity taking over a company or a company going publically traded is in fact enhanced care and there are some advantages. I think bringing capital into the industry is critical. I think Rosy Arwood in the video suggested the capital requirements in this industry are tremendous and they are not being adequately reimbursed by the funding agencies. I think the issue is whether or not the allegation in that article and I am not saying it is true or not true that in fact the end result was reduced staffing so as to make a profit for the investors. If that is the case, I think that is reprehensible but I think quite frankly the issue is still subject to some debate as to whether that is the

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

inevitable result of private equity taking over these companies and I don't think the results are in yet.

JOHN ROTHER: To the extent that we ever thought that malpractice was the way to guard against substandard quality, I think that we are seeing the end of that road and we have to have a new mechanism and maybe it is something along the lines of medical courts but it has got to be based on better measurement and incentives and I think that in a private equity it could provide capital. I think that the real question is what incentives are there to also provide better care?

DIANE ROWLAND, SC.D: We have one question remaining and then we will finish up and this relates to the old concept that consumers can vote with their feet when they don't like the care they are getting and go elsewhere and as we talk about more consumer involvement the question is but aren't the vacancy rates fairly low so that you can't really get into a nursing home so how can people really use that mechanism and what are the vacancy rates in nursing homes?

FEMALE SPEAKER: I think the vacancy rates are fairly high now as people have voted with their feet and those who were financially able have gone to assisted living or have chosen to remain in their own homes. Our concern is with the people who can't afford to vote with their feet. They are relying on medicaid which will only pay for a nursing home bed when they need long term care. I really want people to be

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

aware of the research done by Vince Moore at Brown University showing that African Americans are clustered in the worst nursing homes. These are people with the fewest opportunities and in many cases go from a hospital into as other people do from a hospital into a nursing home because a placement director puts them there and so people really don't have the choices. We have to provide quality care at every facility in the country. And I would just like to reiterate from our members' perspectives, I appreciate so much what Susan said about working together and the atmosphere and so forth in nursing homes but we hear very serious problems every day from our members, things that are not addressed by the facilities and are not addressed by the state survey process and that is our disappointment in where we are today and as we move forward.

JOSH WEINER: I think the other thing to add is that while the vacancy rates were relatively high a few years ago, a number of facilities have closed in the interim and occupancy rates have gone back up so there isn't quite the play in the system that there was a few years ago. The other two issues is that placements are often made very quickly. Hospitals want people out of the hospital as quickly as possible so there is a lot of pressure to decide quickly so there may not be very much choice there and people generally make decisions about placement within a very narrow geographic area. They want to be able to visit their relatives easily and quickly and so the

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.

number of facilities within a small geographic area is likely to be fairly small.

ED HOWARD, J.D.: An authoritative last word. Thank you, Josh. We have run out of time. I have to say this has been every bit as rich and compelling discussion as we thought it was going to be in putting the program together. Just one thing, the virtual evaluation form that we are going to ask you to fill out, we are going to award a high value incentive. There was a lot of talk of incentives. If you fill out that evaluation form and send us an e-mail saying you did, we will enter your name in a drawing for an Alliance for Health Reform umbrella. [Laughter] Is that a deal or what? Okay let me just say thanks to Diane and the Kaiser Family Foundation for allowing us to construct this and helping very much to construct this unusual but I think effective forum. Thank you for staying with us on a topic that is tough sometimes to get people to pay attention to, both in this town and on this hill, and join me in thanking an incredible group of discussants.

[Applause]

[END RECORDING]

¹ kaisernetwork.org makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material and the deadlines involved, they may contain errors or incomplete content. We apologize for any inaccuracies.