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IMPROVING NURSE STAFFING LEVELS IN NURSING FACILITIES: STRATEGIES, APPROACHES, RECOMMENDATIONS

Toby S. Edelman

Senior Policy Attorney

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NURSE STAFFING IN NURSING FACILITIES

- No dispute: sufficient numbers of professional nurses and well-trained, well-supervised, well-compensated paraprofessional nursing staff are essential for achieving high quality of care and quality of life for residents.
  - Importance of staffing is confirmed during coronavirus pandemic: more staff means fewer cases and fewer deaths.
- How do we actually achieve the goal?

THIS WEBINAR

- Federal law sets limited staffing standards.
- Various state approaches (legislation, regulation, reimbursement) to improve staffing levels.
- Public and private litigation.
- Recommendations to achieve our goal.

THIS PROJECT

- This project began with funding from a CyPres award in *Lavender v. Skilled Healthcare LLC* (Calif. Super. Ct. Humboldt Co.), to explore these various approaches – strengths, weaknesses, effectiveness – and to write a series of papers, available at https://www.medicareadvocacy.org/?s=nurse+staffing&op.x=0&op.y=0/
- This webinar summarizes what we learned.

BEGIN WITH DISCUSSION OF FEDERAL LAW

- What federal law says, how it is implemented, whether it is adequately enforced.

FEDERAL LAW

- Nursing Home Reform Law (1987) sets federal requirements for numbers of staff:
  - RN, at least 8 consecutive hours, 24 hours/day.
  - Licensed nurses (RN, LPN) 24 hours/day.
  - Otherwise, “sufficient staff” to meet residents’ needs.

42 U.S.C. §§1395i-3(b)(4)(C), 1396r(b(4)(C), Medicare and Medicaid, respectively.

FEDERAL REGULATIONS

- Federal regulations repeat the requirements of the statute for staffing numbers/levels and, in 2016, added new language.

now at 42 C.F.R. §483.35.

NEW LANGUAGE IN FEDERAL REGULATIONS (2016)

- "The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e)."

  42 C.F.R. §483.35

- New language in federal regulation is underlined.

FEDERAL REGULATIONS

- Federal regulations also address staff competency:
  - Director of Nursing must be RN.
  - Certified nurse assistants (CNAs) must complete a training and competency evaluation program and demonstrate competency before providing care to residents.

    Now at 42 C.F.R. §§483.35(b)(2), (c), (d).

NEW FACILITY-ASSESSMENT REQUIREMENT

- New Requirement of Participation (RoP) (2016), created facility-wide assessment, "to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies."

42 C.F.R. §483.70(e).

FACILITY-WIDE ASSESSMENT

- With respect to staffing, the assessment must "address or include"
  - "(ii) The care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity, and other pertinent facts that are present within that population;
  - (iii) The staff competencies that are necessary to provide the level and types of care needed for the resident population;"

42 C.F.R. §483.70(e) (1)(ii), (iii).

FACILITY-WIDE ASSESSMENT

- In preamble to revised RoPs, CMS gave contradictory and ambiguous explanations of this new RoP:
  - Requirement is central to its revisions.
  - Facilities already do assessment as a common business practice for strategic planning and capital budget planning.
- Consequently, it is unclear how significant the 2016 revisions will be (if the RoP survives planned revisions to RoPs).

FACILITY-WIDE ASSESSMENT HOLDS POTENTIAL FOR BETTER STAFFING LEVELS

- 2017 settlement of former residents' lawsuit against 12 Golden Living nursing facilities in Arkansas for $72 million for understaffing (discussed later in webinar) relied on, among other evidence, testimony by directors of nursing about their lack of authority to adjust staffing levels upward, as authorized by state law.
- Settlement illustrates the importance of both professional standards of practice in determining staffing needs at nursing facilities and the new facility-wide assessment process (if implemented and enforced).

Harrington and Edelman, "Failure to Meet Nurse Staffing Standards: A Litigation Case Study of a Large US Nursing Home Chain," *Inquiry: The Journal of Health Care Organization, Provision, and Financing*, Vol. 55: 1-12 (2018).

STATE OPERATIONS MANUAL

- Appendix PP, guidance to surveyors, is the official CMS interpretation of law and regulations.

https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf

SUFFICIENT STAFFING, F725

- In Procedures and Probes, CMS suggests, among other recommendations, that surveyors review
  - Workload assignments;
  - Resident and family reports of insufficient staffing;
  - Indications of residents "who are subdued or sedated;"
  - Whether "use of overtime hours [has] increased."

P. 431 of Appendix PP (pages are unnumbered)

DEFICIENCIES FOR STAFFING (F353, SINCE NOV. 2017, F725)

- Few deficiencies are cited.
- Almost all deficiencies are called no-harm.

DEFICIENCIES FOR STAFFING QCOR.CMS.GOV (9/22/2020)

- CY 2011: 413 deficiencies in staffing (F353) (2.1%)
  - 9 substantial compliance, 374 no harm, 19 harm, 11 immediate jeopardy (0.1%)
- CY 2012: 524 deficiencies in staffing (F353) (2.6%)
  - 8 substantial compliance, 484 no harm, 14 harm, 18 immediate jeopardy (0.1%)

DEFICIENCIES FOR STAFFING QCOR.CMS.GOV (9/23/2020)

- CY 2018: 1265 deficiencies in staffing (6.1% of facilities) (F725)
  - 3 substantial compliance, 1206 no harm, 30 harm, 26 immediate jeopardy (0.1%)
- CY 2019: 1465 deficiencies in staffing (6.9% of facilities) (F725)
  - 8 substantial compliance, 1401 no harm, 36 harm, 20 immediate jeopardy (0.1%)

DEFICIENCIES FOR STAFFING QCOR.CMS.GOV (9/28/2020)

- CY 2020: 280 deficiencies in staffing (1.5% of facilities (F725)
  - 0 substantial compliance, 263 no harm, 5 harm, 12 immediate jeopardy (0.1%)

NURSE STAFFING DEFICIENCIES SINCE NOVEMBER 2017 (AS OF 9/23/2020)

- Since new uniform survey system implemented (Nov. 2017), 3075 deficiencies have been cited at F725 (sufficient staff):
  - 62 substantial compliance (B, C): 2.0%
  - 2880 no harm (D, E, F): 93.6%
  - 72 actual harm (G, H, I): 2.3%
  - 61 immediate jeopardy (J, K, L): 2.0%

LIMITED ENFORCEMENT FOR IMMEDIATE JEOPARDY DEFICIENCIES IN STAFFING

- Limited enforcement, even for immediate jeopardy deficiencies.
- 2012: 10 jeopardy deficiencies for staffing
  - Only 5 had civil money penalties (CMPs) imposed; only 5 had denial of payment for new admissions (DPNA) imposed.
- 2013: 3 jeopardy deficiencies for staffing
  - Only 2 had CMPs and DPNAs imposed.

LIMITED ENFORCEMENT FOR DEFICIENCIES IN STAFFING

- Limited enforcement.
- 2017-2018: 17 jeopardy deficiencies for staffing, but as of Dec. 18, 2018,
  - No CMP or DPNA for 10 of the facilities.
  - 1 facility, DPNA; 6 facilities, CMPs.
  - Only 2 facilities had CMPs exceeding $100,000.
- 2017-2018, 6 actual harm deficiencies, but as of Dec. 18,
  - 2 facilities had neither DPNA nor CMP.
  - 2 facilities had DPNA only.
  - 2 facilities had CMPs only (averaging $28,586).

OTHER FEDERAL INITIATIVES THAT MAY AFFECT STAFFING

- Five-Star Quality Rating System in *Nursing Home Compare*
  - Used by some hospitals in Hospital Readmissions Reduction Program; Accountable Care Organizations; Bundling Demonstrations
- Payroll-Based Journal
  - More accurate reporting of nurse staffing levels

OTHER FACTORS THAT AFFECT STAFFING LEVELS

- Nursing facilities' recruitment of direct care workers affected (and from facilities' perspective, made more difficult) by
  - Low unemployment rate (before pandemic).
  - States' increasing minimum wage for low-paid workers.

OTHER FACTORS THAT AFFECT STAFFING LEVELS

- During COVID-19 pandemic, staff not be working because they are
  - Sick with COVID-19 or in quarantine for possible infection with COVID-19.
  - Taking care of dependents at home.

STATE APPROACHES TO IMPROVING STAFFING LEVELS

- States have used various approaches to improve staffing – often, carrots instead of sticks.
  - Increasing reimbursement
  - Mandating staffing levels
  - Wage pass-throughs
  - Value-based purchasing (pay for performance)

INCREASING REIMBURSEMENT

- This approach increases reimbursement to facilities and assumes, expects (hopes) at least some of the additional money will go to staffing.
- Experiences with this approach:
  - Congress increased Medicare reimbursement.
  - CA and FL used this approach (Medicaid).

INCREASED MEDICARE REIMBURSEMENT

- Following two large corporate bankruptcies, Congress increased Medicare reimbursement in the Benefits Improvement and Protection Act of 2000 (BIPA), specifying that the reimbursement should go to nurse staffing.

GAO STUDY OF BIPA IMPACT ON NURSE STAFFING LEVELS

- GAO found
  - staffing levels remained virtually stagnant (1.9 minutes increase per day, when additional reimbursement should have added 10 minutes per day).
  - change in "skill mix:" increase in LPNs and CNAs; decrease in RNs.
  - staffing increased in states that explicitly made Medicaid payment or policy changes.

GAO, *Skilled Nursing Facilities: Available Data Show Average Nursing Staff Time Changed Little after Medicare Payment*, GAO-03-176 (Nov. 2002), https://www.gao.gov/assets/240/236339.pdf.

STATE INCREASES IN MEDICAID REIMBURSEMENT

- California
- Florida

CALIFORNIA

- 2004, Legislature increased Medicaid, effective May 2006, to encourage increases in staffing levels, higher wages and benefits, improved care for residents.

ANALYSIS OF CALIFORNIA'S INCREASED REIMBURSEMENT

- Small increase in nurse staffing
  - Biggest increase in LVNs
- Audit found only 24% of facilities complied with state minimum staffing ratios.
- Biggest increase in administrative expenditures.
- Conclusion: "no evidence" that reimbursement incentives are sufficient to encourage increases in nurse staffing and increased wages and benefits.

Harrington, et al, *Impact of California's Medi-Cal Long Term Care Reimbursement Act on Access, Quality, and Costs* (Apr. 1, 2008).

FLORIDA

- Beginning 1999 and continuing for 9 years, Florida changed nurse staffing requirements.
- 2000: $40 million add-on to Medicaid rates.

FLORIDA

- Research findings:
  - Total average hours per resident day did not increase until minimum staffing standards were established.
  - Decline in RN staffing levels.
  - As nurse staffing increased, decline in housekeeping and activity staffing levels.

Kathryn Hyer, et al, *Analyses on Outcomes of Increased Nurse Staffing Policies in Florida Nursing Homes: Staffing Levels, Quality and Costs (2002-2007)* (Sep. 2009), https://theconsumervoice.org/uploads/files/issues/Florida-staffing-study.pdf.

INCREASING REIMBURSEMENT: DOES IT WORK?

- No. GAO and researchers in California and Florida concluded that increasing reimbursement, without more, is not sufficient to improve nurse staffing levels.

MANDATING STAFFING LEVELS

- Seems like straightforward approach, used early on by states, but actually quite complex.

MANDATING STAFFING LEVELS

- 2003 report looked at 8 states that had established minimum nurse staffing levels since 1997 (Arkansas, California, Delaware, Minnesota, Missouri, Ohio, Vermont, Wisconsin).

Jane Tilly, Kirstein Black, Barbara Ormond, The Urban Institute, *State Experiences with Minimum Nursing Staff Ratios for Nursing Facilities: Findings from Case Studies of Eight States* (Nov. 2003), https://aspe.hhs.gov/system/files/pdf/72726/8state.pdf.

2003 REPORT ON MANDATING STAFFING LEVELS

- Tremendous variation in definition of staffing ratio, measurement of ratio, adjustment for case mix, monitoring, enforcement, payment.

DEFINITION OF STAFFING LEVEL/RATIO

- Hours per resident day? Staff-to-resident ratio? Both?
- Vary ratio with time of day?
- Adjust ratios by resident case mix?
- What is the period of time over which ratio is calculated? Week? 24-hour periods?
- Separate ratios by type of nurse (RN, LPN)?
- Treatment of agency staff? Different from permanent staff?

MONITORING AND ENFORCING STAFFING LEVELS/RATIOS

- Most states looked at staffing only at annual survey.
- AR and VT required monthly submissions of staffing ratios.
- Researchers found little information about states' actual enforcement of requirements for staffing ratios.

STATE DATA COLLECTION

- States used Medicaid cost reports, annual surveys
- Are data made public?
  - CA posted staffing data.
  - WI prepared annual report.
  - VT made information available to nursing home association.

OUTCOMES RESULTING FROM STAFFING LEVELS/RATIOS

- Staffing seemed to increase in CA and WI.
- States often simultaneously increased reimbursement to facilities.

LATER ANALYSES OF STAFFING LEVELS/RATIOS

- 2015 study looked at changes in California (2000) and Ohio (2002), found
  - Increase of about 5% in total nursing hours per resident day.
  - But number of RNs decreased, while number of LPNs and CNAs increased.
  - And decrease in hours of indirect staff (housekeeping, food service, activities).

Min M. Chen, David C. Grabowski, "Intended and Unintended Consequences of Minimum Staffing Standards for Nursing Homes," *Health Economics*, Vol. 24, No. 7, pages 822-839 (July 2015), http://onlinelibrary.wiley.com/doi/10.1002/hec.3063/abstract;jsessionid=D1C94F93FE069B7A5AAC7C44F6C202D6.f02t01 (abstract).

STAFFING LEVELS/RATIOS USED IN PRIVATE LITIGATION

- Arkansas law establishes direct care staffing ratios by shift, requires additional RN coverage outside ratios, posting of staff, monthly submission to state Office of Long-Term Care of written report indicating shifts where ratios were not met, enforcement. AR Code (Public Health and Welfare) 20-10-1401 through -1409.
- Private litigation (discussed later).

CONTINUED CALLS FOR STAFFING LEVELS/RATIOS

- Major researchers in the field, including Charlene Harrington and Jack Schnelle
  - Citing multiple research studies showing positive relationship between nursing home quality and staffing.

"The Need for Higher Minimum Staffing Standards in U.S. Nursing Homes," *Health Services Insights* 2016:9 13-19, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4833431/).

FEDERAL LEGISLATION TO REQUIRE STAFFING RATIOS

- H.R. 5216/ S. 2943, "Quality Care for Nursing Home Residents Act of 2019," requires
  - staffing levels/ratios (by category of nurse, by shift)
  - Secretarial authority to establish higher staffing levels
  - special enforcement
    - Mandatory denial of payment for new admissions
    - Mandatory per day civil money penalties (up to $10,000)
    - Prohibition on reduction of CMPs for certain deficiencies
    - Permissive appointment of temporary management, monitor

WAGE PASS-THROUGHS

- Defined as state legislation targeting increases in Medicaid rates specifically to increase wages of low-paid direct care workers, usually CNAs.
- 1999-2004: 23 states implemented some form of wage pass-through legislation for at least one year.

IMPLEMENTATION QUESTIONS IN WAGE PASS-THROUGHS

- Paraprofessional Healthcare Institute identified seven issues with pass-throughs:

  1. Size of increase: should state look at competing employment opportunities for workers, neighboring states' wages, cost-of-living in own state?

  2. Equity: who gets wage pass-through? Is the amount determined by the percentage of Medicaid residents in facility? If so, what about workers in facilities with low number of Medicaid residents?

IMPLEMENTATION QUESTIONS

3. Voluntary or mandatory for facilities? If voluntary and facility chooses not to participate, its workers will not benefit. Are facilities ineligible if they already paid higher wages?

4. How much detail is set out in how funds used? Facilities want flexibility; workers and advocates want detailed rules.

5. Auditing and enforcement mechanisms? Are facilities required to submit detailed plans for pass-throughs? Do states audit how the money was actually spent?

IMPLEMENTATION QUESTIONS

6. Is pass-through temporary or permanent? Some states allow facilities (concerned about possibly temporary nature of state-funded pass-throughs) to offer workers bonuses or one-time compensation increases.

7. How much time do providers need to implement pass-throughs? Different calendars for legislative appropriations, provider fiscal years, labor contracts make implementation complex.

Paraprofessional Healthcare Institute (PHI), "*State Wage Pass-Through Legislation: An Analysis. Workforce Issues: No. 1*" (April 2003), http://phinational.org/sites/phinational.org/files/clearinghouse/WorkforceStrategies1.pdf

IMPLEMENTATION ISSUES

- WA state found 19 of 79 facilities did not use pass-throughs for wage increases; some facilities raised wages for RNs and LPNs (not CNAs, the intended beneficiaries).
- WI audit found more than 25% (113 of 407 facilities) did not use all the money as intended.

Paraprofessional Healthcare Institute (PHI), "*State Wage Pass-Through Legislation: An Analysis. Workforce Issues: No. 1*" (April 2003), http://phinational.org/sites/phinational.org/files/clearinghouse/WorkforceStrategies1.pdf

EVALUATIONS

- Paraprofessional Health Care Institute conducted comprehensive analysis of 21 states; concluded (2003) that current data do "not support the efficacy of wage pass-through programs."
  - MI more positive: evaluation of 13 years' experience found wages for CNAs increased 61%, turnover declined 21%.

Paraprofessional Healthcare Institute (PHI), "*State Wage Pass-Through Legislation: An Analysis. Workforce Issues: No. 1*" (April 2003), http://phinational.org/sites/phinational.org/files/clearinghouse/WorkforceStrategies1.pdf

CONTINUED STATE INTEREST IN WAGE PASS-THROUGHS

- MA: 2016, nursing home industry successfully lobbied for wage pass-through legislation ($35.5 million); facilities given broad discretion in spending.
- State found (2017) that wage increases or bonuses went to higher-paid employees, not CNAs, cooks, laundry workers (as intended).
- Legislature approved pass-through for 2018.

Kay Lazar, "Distribution of Mass. nursing home aid questioned," *Boston Globe* (Dec. 23, 2017), https://www.bostonglobe.com/metro/2017/12/23/distribution-mass-nursing-home-aid-questioned/fHRKdLsCMdmCkJh13RsVBM/story.html/

VALUE-BASED PURCHASING (VBP)

- Earlier known as Pay for Performance (P4P).
- Demonstrations at federal and state levels.
- Theory: pay bonuses for better performance.

FEDERAL VALUE-BASED PERFORMANCE DEMONSTRATION

- CMS demonstration of budget-neutral VBP, 2009-2012.
- Four measures, including nurse staffing, could result in bonus payments.

L&M Policy Research, *Evaluation of the Nursing Home Value-Based Purchasing Demonstration*, (Aug. 23, 2013), https://innovation.cms.gov/files/reports/nursinghomevbp_evalreport.pdf.

EVALUATION OF FEDERAL VBP DEMONSTRATION

- Evaluation found
  - Volunteer states were randomly assigned to demonstration or control group.
  - Extremely complex payment and reward system.
    - Limited potential payment for scoring well.
    - Bonuses for facility only if all facilities in demonstration generated Medicare savings relative to comparative facilities.

EVALUATION OF FEDERAL VBP DEMONSTRATION

- Evaluation found
  - Reward payments were small and not made for 18 months.
  - Facilities did not know what to do to make improvements.

EVALUATION OF FEDERAL VBP DEMONSTRATION

- Evaluation concluded "NHVBP demonstration did not directly lower Medicare spending and improve quality for nursing home residents."

STATE PAY FOR PERFORMANCE DEMONSTRATIONS

- Evaluation of 13 state programs that made incentive payments for specified outcomes (some included a staffing measure), 1980-Aug. 2007.

Becky A. Briesacher, et al, "Pay-for-Performance in Nursing Homes," *Health Care Financing Review*, Vol. 30, No. 3 (Spring 2009), https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/HealthCareFinancingReview/Downloads/09SpringPg1.pdf

STATE P4P DEMONSTRATIONS

- Study found
  - Detailed information on most programs lacking.
  - Incentive payments may have been too small to influence change in behavior.
  - States terminated their programs.
  - Need for rigorous evaluation, which most programs did not include.

STATE P4P DEMONSTRATIONS

- Study concluded: “little empirical evidence that pay-for-performance programs increase the quality of care of residents or the efficiency of that care in nursing homes.”

LITIGATION

- Public: State Attorneys General (PA, NM) sued nursing home chains for understaffing.
- Private: Residents and former residents have also sued chains and facilities for understaffing.

PENNSYLVANIA LITIGATION

- PA Attorney General sued Golden Living for chronic understaffing (2015), in violation of state's Unfair Trade Practices and Consumer Protection Law.
- Commonwealth Court dismissed most claims, describing marketing materials as "puffery." (Mar. 2017).

PENNSYLVANIA SUPREME COURT

- Unanimously reversed Commonwealth Court; held that
  - AG has authority and standing to investigate and prosecute fraudulent or deceptive conduct.
  - Unlawful conduct under Unfair Trade Practices and Consumer Protection Act includes fraudulent or deceptive conduct that creates likelihood of confusion for consumers (not just marketing materials).

  Commonwealth of Pennsylvania v. Golden Gate National Senior Care, J-35-2018 (S.C. of Pa., Sep. 25, 2018)

POSSIBLE UNINTENDED CONSEQUENCE

- Golden Living sold nursing facilities in Pennsylvania (and elsewhere), many, to Skyline Healthcare (New Jersey company), which went bankrupt about a year later and abandoned more than 100 facilities across the country.

NEW MEXICO LITIGATION

- State Attorney General sued Preferred Care, Inc. (privately-held Texas company) for inadequate care at 7 New Mexico nursing facilities; Attorney General used industrial simulation methodology to document that facilities were inadequately staffed.

State of New Mexico ex rel. King v. Preferred Care, Inc., Case No. D-101-CV-2014-02535 (First Jud. Dist. Ct., Santa Fe Co., Dec. 5, 2014).

NEW MEXICO LITIGATION (CONT'D)

- 116-page Complaint alleged omissions of care, billing to Medicaid for care not provided.
- Attorney General based allegations on review of staffing and workload data; interviews with former employees, residents, families; complaints to Attorney General's office; deficiencies cited by state.

NEW MEXICO LITIGATION (CONT'D)

- Legal theories:
  - NM Fraud against Taxpayers Act
  - NM Medicaid Fraud Act
  - NM Unfair Practices Act
  - Breach of contract
  - Unjust enrichment

NEW MEXICO LITIGATION (CONT'D)

- Nov. 14, 2017: Preferred Care filed for bankruptcy.
- State's case was stayed as result of bankruptcy; AG still concerned and advocating.

Attorney General's annual report 2018, https://www.nmag.gov/uploads/files/AnnualReports/2018%20Annual%20Report.pdf.

PRIVATE LITIGATION

- Residents/former residents sue nursing home chains and individual facilities for understaffing and providing poor care.

ARKANSAS LITIGATION

- Former residents at 12 Golden Living nursing facilities in Arkansas sued, alleging chronic understaffing, Dec. 2006 – Jul. 2009, in violation of Arkansas Long-Term Care Residents' Rights Act, Arkansas Deceptive Trade Practices Act, and residents' admissions contracts.

GGNSC Arkadelphia, LLC v. Lamb, Ark. Supreme Court affirmed class certification, No. CV-14-1033 (Ark. S.C. Jun. 4, 2015).

ARKANSAS LITIGATION (CONT'D)

- Case settled (after five years)
  - Settlement (Sep. 15, 2017),

    https://lambvggnsc.com/Portals/0/Documents/Settlement%20Agreement.pdf

    Settlement website summarizes case, describes rights and options for class members.

ARKANSAS LITIGATION (CONT'D)

- Harrington and Edelman, "Failure to Meet Nurse Staffing Standards: A Litigation Case Study of a Large US Nursing Home Chain," *Inquiry: The Journal of Health Care Organization, Provision, and Financing*, Vol. 55: 1-12 (2018).
  - Discusses theories, evidence, Settlement ($72 million for class; $19 million for attorneys fees, $4.2 million for litigation expenses).

PRIVATE LITIGATION AGAINST NURSING FACILITY

- Lawsuit against James Square (Syracuse, NY nursing facility, now renamed Bishop Health) for understaffing settled for $500,000. Bishop Health agreed to hire more employees.

"James Square Lawsuit Over Poor Conditions Settled," *Spectrum News* (Dec. 11, 2018), https://spectrumlocalnews.com/nys/central-ny/news/2018/12/12/james-square-syracuse-nursing-home-settlement

PRIVATE LITIGATION AGAINST NURSING FACILITIES

- At least 15 separate class action lawsuits were filed in 2018 against California nursing facilities owned by Shlomo Rechnitz, California's largest nursing home owner, for insufficient staffing/poor care.

Hannah Holzer, "Lawsuit alleges Roseville nursing home and others understaffed on purpose – to increase profits," *Sacramento Bee* (Aug. 3, 2018), https://www.sacbee.com/news/local/health-and-medicine/article215947390.html

CALIFORNIA LITIGATION

- E.g., *Bechtold v. Rechnitz*, Case No. BC711983 (Superior Court, Los Angeles County, Jun. 28, 2018), alleges understaffing; violations of
  - Consumer Legal Remedies Act, Civ. Code §1740
  - Residents rights, Health & Saf. Code, §1430, subd. (b)

SURVEY OF EXPERTS

- Small sample
- More experience with state approaches than with litigation (public and private).

SURVEY OF EXPERTS

- Concerns with state approaches:
  - Facilities won't spend increased reimbursement on staff, need to earmark the money for staff.
  - Combine mandated staffing levels with wage pass-throughs.
  - Control profits and administrative costs.
  - Mandate staffing levels at federal level.
  - Need for surveys, audits, enforcement.
  - Difficult to find staff in some areas.

SURVEY OF EXPERTS

- Concerns with Attorney General litigation:
  - Need clear standards for filing lawsuits.
  - Lack of sufficient staff in AG's office, lack of expertise.
  - Does litigation identify "bad actors" or "low resource actors"?
  - Look at chains.

SURVEY OF EXPERTS

- Concerns with private litigation:
  - Random, may not target worst facilities, does not get at broader systemic issues.
  - Facilities have insurance to cover.
  - Attorneys are not motivated by concerns about quality of care for residents.
  - Recommend class actions against chains.

SURVEY OF EXPERTS

- Additional recommendations:
  - Better training for nurse aides.
  - Enforce existing regulations.

SUMMARY

- Current standards are not sufficient to assure appropriate staffing.
- No single response to staffing crisis is sufficient.
- Need multiple responses, used simultaneously.

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