Karen Tam

Nursing home resident Rachel Taylor.

Carrots, Sticks, and North Carolina's Nursing Homes: Regulatory Program Satisfies Few

by Tinker Ready

This article explains how nursing homes are regulated, with a particular focus on the penalty process administered by the state Division of Facility Services. It documents the number and amount of fines levied against nursing home operators from January 1988 through July 1991, and takes a close-up look at the problems confronting nursing home care providers.

The state has beefed up its enforcement of nursing home regulations in recent years, with fines assessed for rule violations increasing from 101 total fines in 1987 to 383 in 1990. Many of these fines were assessed against the same homes for multiple or repeat offenses, but 52 percent of the 290 homes included in the Center analysis received some level of fine during the three-and-a-half-year period studied.

Nursing home operators say they are up against two separate sets of rules—state and federal—that are continually changing. And they complain of a regulatory system that offers not so much as a thank-you for a job well done. Yet some say the state still isn't tough enough on chronic offenders. Seven of the state's nearly 300 homes accounted for almost a third of the fines assessed during the period studied, but only two licenses were revoked.

How far should the state go to assure that nursing home residents receive high quality care? Are further reforms needed, or has the balance already shifted toward too much regulation? These are among the questions policymakers must wrestle with as they chart a course for the future for a financially strapped industry that must be depended upon to serve more and more North Carolina citizens.

When Hampton Woods Board and Care nursing home opened in Northampton County early in 1990, its operators, a nonprofit community-based group, had all the best intentions. They wanted to provide high quality care to the elderly residents of a poor, rural county.

They had no corporate parent or group of investors to answer to. They had a brand new building and a well-trained and highly committed staff. But by September 1990, the state Division of Facility Services in the Department of Human Resources refused to grant the home a permanent license and fined the operators $400 for a series of technical violations of the state's nursing home regulations.

Hampton Woods was only one of 74 nursing homes that drew a penalty from the state Division of Facility Services in 1990 for violating health and safety standards. And while inspectors are less likely to find problems at nonprofit homes like this one, no particular type of home—from those owned by large chains to family-run operations—has a perfect record.

Since 1988, more than half of the state's nearly 300 nursing homes have been fined for violations ranging from sloppy paperwork to elderly abuse, according to an analysis by the North Carolina

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Tinker Ready covers health care issues for The News and Observer *of Raleigh. N.C. Center intern and law student Paul Barringer provided extensive research for this article.*

Center for Public Policy Research.[1] The Center research project examined how nursing home care has been monitored since sweeping legislative reforms were enacted by the 1987 General Assembly.

Using annual reports, Penalty Review Committee minutes, and other Division of Facility Services documents, the Center tabulated the number and amount of fines assessed against nursing homes from January 1988 through July 1991 (See Table 1). The Center also looked at which homes were the most frequent violators and examined fines by ownership type to see if there was a difference in the number and amount of fines assessed against for-profit and nonprofit providers.

Among the findings were these:

- The total number of fines assessed against nursing homes each year increased nearly fourfold over a three year period, from 101 in 1988 to 383 in 1990.
- The average *amount* of each fine assessed dropped during the period, from $327.82 per violation in 1988 to $175.12 per violation in 1990. But the $67,070 in penalties assessed in 1990 still totaled more than twice the amount assessed in 1988. In 1991, average fines began to increase as rules allowing higher penalties for repeat violators took effect.
- Seven homes accounted for nearly a third of the total amount of fines, yet only two licenses were revoked in the entire three-and-a-half year period.
- Homes owned by for-profit providers were twice as likely to be fined during the period studied as their nonprofit counterparts.

New Rules for Nursing Homes

Particularly striking is the increase in the number of fines during the period—an increase that can be attributed to a series of changes in the regulatory system. Still, no one is saying that a high number of fines means the system works well. "The whole system is based on negative features," says Craig Souza, President of the North Carolina Health Care Facilities Association, a nursing home trade group. "The system is there to try to catch you." Many questions remain about the state's capacity to regulate homes in a way that takes into account both the rights of residents and

Table 1. Fines Recommended Against Nursing Homes by Penalty Review Committee, Jan. 1988–July 1991*

Year	Number of Fines	Average Fine	Total
1988	101	$327.82	$ 33,110
1989	174	273.05	47,510
1990	383	175.12	67,070
1991 (1/2)	107	328.69	35,170
Total	765	239.03	182,860

*Includes fines assessed by the Licensure Office and recommended by Penalty Review Committee through July 1991. Figures are not adjusted for results of any appeals because of the difficulty of tracking the results of more than 760 cases. Total includes multiple violations against individual homes.

Table by Paul Barringer, N.C. Center intern

the rights of home operators.

Until 1987, the state's authority to fine nursing homes was limited to $10 per patient per day. But advocates for the elderly felt regulators needed a bigger stick and lobbied for changes in the regulatory system. Souza says industry, too, felt there was a need for wholesale changes and pressed for reforms. "Everyone in the process agreed this was an antiquated system," says Souza. "It was a $10 fine for a paperwork violation or for poor care." As a result, the current system—approved by the General Assembly in 1987—allows fines of up to $5,000 for a single violation.[2]

The new system has been in place for more than four years, and despite constant efforts to fine-tune it, the debate over the state's nursing home review process continues. Nursing home reformers remain unsatisfied because they believe the state is still unwilling to take strong action against problem homes. At the same time, home operators feel beleaguered by a system that they say stresses paperwork compliance over the actual care provided to patients.

Marlene Chasson, the head of Friends of Residents of Long Term Care—a statewide reform group based in Raleigh—is frustrated with the process. Serious breaches in health and safety standards are met with relatively small fines, she says, and problem homes are allowed to continue operating.

When it comes down to the home's word against the inspector's, she says the home always gets the benefit of the doubt with the state. "I think they bend over backwards to accommodate the facility," Chasson says. "Compromises have resulted in residents' rights being undermined."

Nursing home operators agree that there have been cases in which the state has failed to take action against homes with long-term problems. But they also argue that homes with good records are often fined for relatively minor violations of the standards.

Souza says some nursing home inspectors take a Barney Fife approach to their work, their pencils poised to cite the least violation. "I do think at times inspectors are motivated to cite deficiencies," says Souza. "In some instances, that's their nature. With homes that have a history of substantial compliance, and have a breakdown, they are pretty quick to recommend penalties." And the state fails to recognize this, he says. "It's very hard for DFS [the Division of Facility Services] to buck one of their employees, for management to overrule their staff," he says, adding that some homes feel "they are not getting what they consider to be a fair review."

Odds are, there is going to be a breakdown, and the system's got to allow for that.

— Craig Souza, President
N.C. Health Care Facilities Association

Nursing homes face a wide range of requirements, including serving special diets, providing medical care, monitoring complex drug regimens, keeping patients clean and groomed, and offering various kinds of therapy. With that broad charge, there is no way any home can avoid isolated violations of state standards, Souza says. "Odds are, there is going to be a breakdown, and the system's got to allow for that," he says. "For some of the advocates out there, we couldn't please them if we had an RN [registered nurse] in every room."

Lynda McDaniel walked into the middle of this debate in November 1990, when she was appointed chief of the licensure section of the state Division of Facility Services and became responsible for enforcing nursing and rest home regulations. "I thought perhaps we had not come down hard enough on those homes that really had serious problems," says McDaniels, who has since been promoted to deputy director of the Division of Facility Services. "But on the other end of the spectrum, I can see some things that were nitpicking on the lower end of the scale."

How the Process Works

There are two primary layers of nursing home regulation—federal and state. A total of 26 state inspectors focus on licensing and complaints investigations, while 53 certification surveyors visit the homes a minimum of once a year and usually twice or more to monitor their compliance with federal rules and certify them for participation in the Medicaid-Medicare program. Yet another team of inspectors focuses on the physical plant, conducting safety inspections and making sure systems such as heat, air conditioning, and back-up generators are operating properly.

The *certification* process—performed by state employees under contract with the federal government—is crucial to most North Carolina nursing

Karen Tam

Francies Richardson claims a seat by a window at Hampton Woods nursing home in Northampton County.

homes because about three-quarters of the state's nursing home residents are Medicaid patients. Teams of surveyors spend hours in each facility examining nearly every aspect of its operation.

Surveyors typically observe such operations as medication administration and treatments and meal preparation, as well as examining charts on patient care, interviewing patients, and commenting on nearly every aspect of the nursing home's operations. Shortcomings are recorded as deficiencies, and the operator is required to address how those deficiencies will be met. A thorough financial audit also is required of homes participating in the Medicare-Medicaid program.

Homes with particular problems may be subjected to return visits, and information about problem homes is often shared with the *licensure* office in the Division of Facility Services. This office not only performs inspections for initial licensing but investigates the hundreds of complaints received against nursing homes each year. Of 26 state inspectors, 18 investigate complaints. The federal government picks up half of the cost of these complaint investigators, and they look for violations of state and federal rules. An additional eight perform a full survey which is required for initial licensing and survey problem facilities as scheduling permits. Neither certification and licensure surveys nor complaint investigations are announced to nursing home operators in advance.

Every time a nursing home licensure or complaint inspector finds a violation at a home and proposes a fine, it lands in the licensure office, which is part of the Department of Human Resources. The agency acts as a middleman by collecting information from both the home and the inspectors in an attempt to put the cited problems in context.

The agency's staff completes a follow-up investigation and determines whether the home should receive an A or B penalty and the amount the home should be fined. If the home faces a B penalty, it may pay the fine and end the process. A B violation is defined by statute as a violation "which presents a direct relationship to the health, safety, or welfare of any resident, but which does not create substantial risk that death or serious physical harm will occur."[3] Homes rarely agree to pay fines without contesting them, however, for fear that this will be seen as an admission of guilt in any future civil action. (For more, see "A Road Map to North Carolina Nursing Home Regulation," pp. 25–28.)

Any contested penalties and *all* A penalties—those creating "substantial risk that death or serious physical harm to a resident will occur"[4]—are sent to the Penalty Review Committee. The nine-person committee was created in 1988 to make

non-binding recommendations on proposed fines against homes. Although recommended penalties can be appealed by homes, they are generally upheld in the administrative process and ultimately paid, says Ken Hamilton, deputy chief of licensure for the Division of Facility Services.

The committee is required by statute to include representatives of the nursing and rest home industries, a public representative, a nurse, and a pharmacist.[5] It also includes officials from the divisions of Aging, Social Services, and Facility Services, and a representative of the Secretary's Office in the Department of Human Resources.

The types of problems inspectors cite at nursing homes vary from minor paperwork violations to serious cases of abuse and neglect. Often, homes are cited for poor record-keeping. For example, staff must make note each time they give medication to a resident. They also must record any change in a resident's condition, such as the appearance of a bedsore or a significant weight loss.

In other cases, homes are cited for poor housekeeping or for failing to have enough staff on duty. And since many residents are on special diets, food service is another commonly cited area.

The most serious violations involve the actual care and treatment of patients. Homes have been fined for failing to reposition residents to prevent bedsores or for improperly restraining difficult patients. Or, they are cited for allowing confused residents to wander from the home. In several cases, the state has fined homes for failing to call a doctor to examine ill patients, some of whom later died.

The Penalty Review Committee is the target of many of the reformers' complaints. While nursing homes can appeal an unfavorable PRC decision, there is no such avenue for patients, family members, or advocates. But former committee member Robert Byrd, the administrator of the nursing home at Alamance Memorial Hospital in Burlington, says most people don't understand that many of the cases that come before the committee are "not clear-cut" and require a judgment call.

In some instances, resident rights groups want

—continued on page 28

A Road Map to North Carolina Nursing Home Regulation

As Americans live longer than ever before, more and more people can expect to spend time in a long-term health care facility. Some will enter rest homes that offer only residential and personal care, but many will enter nursing homes, which provide convalescent care and medical supervision.[1]

One study predicts that 43 percent of those people who turned 65 in 1990 will enter a nursing home before they die.[2] The authors conclude that health care resources will have to shift more toward nursing homes in the future as more and more people wind up in long-term care. Other research has focused more on quality of care. A study published in the Feb. 27, 1991, edition of the *Journal of the American Medical Association* found failure to adequately diagnose and treat depression increases by 59 percent the likelihood that a patient will die within the first year of admission to a nursing home.[3]

And a massive study by the federal government showed nursing homes in North Carolina to be below the national average on six of 32 performance indicators applied to 15,000 nursing homes nationwide.[4] In introducing the report, Gail Wilensky, administrator of the Health Care Financing Administration, wrote that it represented "neither the final, definitive word on nursing home performance nor a comprehensive guide to the selection of a nursing home." Still, the study suggests the need to pay careful attention to the quality of care provided in North Carolina's long-term care facilities.[5]

The state is likely to have an especially large number of aged patients in such facilities, as its elderly population is growing at a rate

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At a meeting open to the public, the Penalty Review Committee reviews the recommendation of the internal review committee, and then decides whether to approve the penalty recommended. While the Licensure Section chief has the authority to overrule the Penalty Review Committee, current policy is to avoid such unilateral decision making.

If a fine is levied by the Division of Facility Services, the home has 30 days to appeal the penalty. In the event that a home decides to appeal a Penalty Review Committee judgment, it argues its case before an administrative law judge. This judge makes a verdict and sends it to the head of the Division of Facility Services, who has final agency approval. If the home still isn't satisfied with the judgment, it can initiate formal court proceedings by appealing to Superior Court. — *Paul Barringer*

FOOTNOTES

[1] There are three types of rest homes, or domiciliary homes. They are homes for the aged and disabled, family care homes, and group homes for developmentally disabled adults. Medical care at these homes is occasional or incidental (G.S. 131D-20(2)). Nursing homes, on the other hand, are for people who need regular medical attention but are not sick enough to require hospitalization (G.S. 131E-101(6)).

[2] Peter Kemper and Christopher Murtaugh, "Lifetime Use of Nursing Home Care," *New England Journal of Medicine,* Vol. XX, No. 1911, p. 595.

[3] "Long-Term Care: Two Studies Gloomy about Nursing Home Care," *Modern Healthcare,* March 4, 1991, p. 22.

[4] Tinker Ready, "Nursing Homes Survey," *The News and Observer* of Raleigh, May 24, 1990, p. 4B.

[5] The introduction also included a section on uses and limitations of the data which noted: information contained in the report comprises the individual judgments of more than 3,000 surveyors in 53 state survey agencies; deficiency findings are not a complete picture of the quality of care rendered by a nursing home; and findings are a snapshot of conditions found in a home at the time of the survey. For more, see "Medicare/Medicaid Nursing Home Information, 1988-1989, North Carolina," U.S. Department of Health and Human Services, Health Care Financing Administration, 1990, pp. I-III. Copies of the study are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

[6] *North Carolina Aging Services Plan,* Department of Human Resources, Division of Aging, 1991, p. 11.

[7] "Health Facilities Data Book, Nursing Home Summary Report—1990 Data, State Center for Health and Environmental Statistics, October 1991, p. 279.

[8] Rules for the Licensing of Nursing Homes, 10 N.C. Administrative Code 3H .0507(d).

[9] G.S. 131E-129(a)(1).

[10] G.S. 131E-129(a)(2).

[11] G.S. 131D-34(h).

to blame the homes for injuries or deaths that are not the homes' fault, Byrd says. "Sometimes, I think certain people are on a witch hunt," he says. "[They think] if there is a bad outcome, a violation must have occurred, but that's not always the case. Outcomes are a factor of many variables, and one of those variables is what the home did or didn't do."

Christine Heinberg, a lawyer with North Carolina Legal Assistance—A Mental Disability Law Project, agrees that some cases require a judgment call. But she also agrees with other residents' advocates who say the committee members tend to make the calls in favor of the home operators. "The people who watch [the committee] think they are more concerned with protecting the rights of the facilities than they are with protecting individual patients," she says.

Souza, however, takes the opposite view. "I absolutely disagree with that," he says. "The Penalty Review Committee almost all the time will take the recommended fine."

Lower Fines, But More of Them

Since 1988, the state has prepared annual reports based on the minutes of the Penalty Review Committee. The Center's examination of the reports and minutes of Penalty Review Committee meetings through July 1991 shows that 149 of the state's 290 homes have been fined since 1988 (See Table 2, p. 30 for more). The remaining 141 homes operated the entire three-and-a-half year period without a single penalty.

The records examined by the Center indicate which homes were fined and by how much. They do not indicate the outcome of any appeal, nor do they reflect informal agreements by homes to pay B-level fines without subjecting themselves to the penalty review process. Still, the number and amount of fines provides a solid indicator of where licensure officials thought there was enough of a problem with a nursing home's operations to institute an administrative penalty.

While the number of fines has risen dramatically during the three-and-a-half year period, from 101 in 1988 to 383 in 1990, the average fine dipped from $327.82 to $175.12 before swinging up again in 1991. One factor in the rising number of fines was new funding from both the state and the federal government in 1989, which boosted the number of nursing home complaint investigators from five to 18 and increased the state's ability to follow up on complaints.[6]

In addition, the state agreed in March of the same year to a settlement in a lawsuit filed by Pamlico Sound Legal Services and Carolina Legal Assistance involving University Nursing Home in Greenville. The suit alleged that the home was not meeting state standards, in part because the state was not enforcing its own standards. The settlement produced a more explicit definition of the standards and a pledge from the state to enforce them.[7]

Hampton Woods administrator Ken Reeb with Resident Annie Branch.

Karen Tam

Table 2. Fines Against Nursing Homes by Ownership Type, Jan. 1988–July 1991*

Type of Home	No. of Homes	No. of Homes Fined	Percent of Total Fined	No. of Fines	Average Fines Per Offender	Total Fines in Dollars	Avg. Fine
Nonprofit	56	14	25 %	43	3.07	$ 7,090	$ 165
Government-owned	5	2	40	2	1	400	200
For-Profit	229	133	57	720	5.41	175,370	244
Total	290	149	52 %	765	5.13	$ 182,860	$ 239

*Includes fines assessed by Licensure Office and recommended by Penalty Review Committee through July 1991. Totals are not adjusted for results of any appeals because of the difficulty of tracking the results of more than 760 cases.

Table by Paul Barringer, N.C. Center intern

The changes appear to have had an impact on the state's ability and willingness to document violations. In 1989, the state confirmed a total of 174 health and safety violations at nursing homes, a 72 percent increase over the 101 fines logged in 1988. The total dollar value of all fines imposed also rose substantially, although the average amount of each separate fine already was beginning to drop. The state levied a total of $33,110 in fines in 1988 and that figure rose to $47,510 in 1989.

Fines totaled $67,070 in 1990, with an average fine of $175.12. Through July 1991, 107 fines had been imposed, but the average jumped to $328.69 as inspectors began to focus more on repeat offenders. "We have tried to put more emphasis on problem facilities," says McDaniel. "That results in doing a few less fines but the average being higher."

A variety of different factors can lead to problems at nursing homes. In some cases, homes fail to meet standards out of sheer incompetence. Or, they have good intentions but simply cannot find and keep aides willing to care for the elderly for little more than minimum wage of $4.25 an hour.

And while a shortage of unskilled labor makes it difficult to hire aides and other service workers, the homes also have trouble attracting nurses. In many cases, they must compete with hospitals that offer the same employees better wages, flexible working conditions, and higher status.

"The two places experiencing the most severe nursing shortage right now are long-term care facilities and public health agencies," says Joy Reed of the North Carolina Nurses Association. Reed says changes in service delivery, such as the increase in home health care, have allowed nurses to become much more selective, and certain sectors have been less able to compete. "Probably a big part of it is that hospitals have been much more responsive in changing salaries and changing conditions in the work setting," Reed says.

Souza acknowledges that nursing homes have trouble competing with other health care providers for staff, both because of reimbursement rates and regulations. "We don't have any control," says Souza. "We have no flexibility." Reimbursement rates are set for individual homes, but are closely tied to operating costs for the industry as a whole. Homes with a high percentage of Medicaid and Medicare patients cannot afford to pay nurses so much that personnel costs outstrip the reimbursement rate for Medicare and Medicaid. Regula-

tions also set strict staffing requirements, so homes cannot hire fewer nurses at higher salaries.

For these and other reasons, many nursing homes are not earning the profits they once enjoyed, according to industry officials. An analysis of 1989 Medicare and Medicaid cost reports—the most recent publicly available—indicated that the median profit margin for nursing homes nationwide was 1.61 percent.[8] Often, industry officials say, these financial pressures translate into patient care problems.

The situation is fueled, in part, by the inability of North Carolina and other states to increase payments under the Medicaid program, the state and federal health plan for the poor that pays the bill for the majority of the nation's nursing home residents. "If a facility has problems, they are going to be tied to one of three things—finances, staffing, or management," says Souza.[9]

Still, Souza says operators *can* provide high-quality nursing home care on the reimbursement rates offered by the state. One way to accomplish this is to mix in private-pay patients at higher rates. Another is through management efficiencies. "We don't equate lack of reimbursement with quality of care," says Souza. "It's not an excuse. We have some reimbursement problems, but we don't apologize for poor care because of lack of money."

Who Owns the Homes?

The state's nursing home industry includes just about every type of organization—from mom-and-pop operations to church-run homes to corporate chains that operate more than five homes. The corporations, including some nationwide chains, operate more than 40 percent of the state's homes, according to DFS records, while so-called mom-and-pop homes, those owned by individuals or partnerships, represent just under 40 percent.

Nonprofit homes, which make up about 20 percent of all the state's homes, garner fewer fines than their for-profit counterparts, but the industry's problems don't discriminate. Nonprofit operators, as in the case of Hampton Woods, also can run afoul of the rules.

When Hampton Woods opened in early 1990, it was a cause for celebration in the community. Even though developers rush to build nursing homes in affluent counties, none seemed interested in Northampton County, where most of the residents would likely be poor and covered by Medicaid.

But the Rural Health Group Inc., a nonprofit health care consortium, saw long term care as an unmet need in the community. The group, which has successfully recruited doctors to the area, decided to build the home itself.

Still, Hampton Woods faced the same forces that have left the entire nursing home industry in a slump—low Medicaid payment rates and difficulty attracting and retaining nurses and unskilled workers. Medicaid reimbursement rates are based in part on the direct cost of providing care, but there is a ceiling. The average daily rate for skilled care in a nursing home for the 1991–92 fiscal year is $78.66, with a maximum of $84.64. For intermediate care, the rate averages $59.60 a day with a cap of $63.84. Indirect costs are fixed at $17.92 per patient per day.

Direct reimbursement covers costs such as nurses and nurses' aides, medical supplies, and food. Indirect costs cover land, buildings, other capital equipment, and administrative costs which are not directly related to patient care. The Division of Medical Assistance in the N.C. Department of Human Resources requires annual cost reports for each home. For direct costs, the reimbursement rate is capped at 80 percent of the statewide average. That means a fifth of the state's nursing homes typically have some costs that go unreimbursed. And homes cannot be reimbursed beyond actual direct costs, so most do not receive the maximum reimbursement rate.

The system provides a strong incentive for homes to keep costs in line, without stinting on patient care to provide higher profits. Homes can, however, realize a net gain on their indirect reimbursements.

Costs periodically are refigured for the entire system, and the state makes inflation adjustments each year. Still, the nation has averaged annual double-digit increases in health care costs for more than a decade, and rising personnel costs have helped drive those increases.[10] Because of lingering budget difficulties, the state made a one-year decision for 1991–92 to limit service providers to no more than a 4 percent increase in Medicaid reimbursement.

Souza says personnel costs represent more than 60 percent of direct costs for nursing homes, and nursing homes are more dependent on Medicaid than other health-care providers. The tight reimbursement rate, Souza says, means the homes must be cautious about paying too much. Combined with the rigors of a job that may include such duties as keeping incontinent patients clean and

changing bed pans, the result can be difficulty in attracting and retaining workers.

Since it was fined in September 1990, Hampton Woods has received an additional $900 in penalties but has corrected most of its problems and now has a full license. Administrator Ken Reeb does not fault the state for doing its job, but he attributes the home's problems to the difficulty in attracting workers and the "learning curve" a new home faces while trying to get its protocols down. "It had nothing to do with intent," he says. "My people have put in long hours and stuck to it."

Although state officials are reluctant to say one type of home falls short of the standards more than another, they do admit that the nonprofit homes like Hampton Woods are fined less frequently. The numbers bear that out. Of the 56 nonprofit nursing home operators in the state, 14, or 25 percent, have been fined since 1988. Over the same period, 133, or 57 percent, of the 229 for-profit homes were fined, according to the Center's analysis (see Table 2, page 30 for more). Errant nonprofit homes received an average of 3.07 fines during the period, compared to an average of 5.41 fines for the for-profit offenders.

Hamilton, deputy chief of licensure for the state Division of Facility Services, speculates that it may be easier for the nonprofit homes to retain their staff. "My personal opinion is that it's a better work environment," he says.

Souza takes umbrage at this remark. "For a state official to say the work environment is better in a nonprofit facility is troubling to me," says Souza. "At the least, it indicates a prejudice, and I just think it's inappropriate."

But while for-profit providers clearly are capable of providing high-quality care, there are those who believe nonprofit providers have some advantages. Sarah Shaber, director of the North Carolina Association of Nonprofit Homes for the Aged based in Raleigh, says nonprofit homes have more resources. "Since we don't have to divert a lot of our revenues to profits, all the money goes into patient care," she says. For example, Shaber says many nonprofit homes have higher staffing levels than their for-profit counterparts. "I think that makes a lot of difference in quality," she says. "This isn't an attempt to put down the for-profits. We just have a little more flexibility."

Two researchers analyzing 1985 National Nursing Home Survey data concluded that nonprofit nursing homes pay higher salaries because their staff members typically have stronger qualifications and experience.[11] This could lead to longer staff retention and closer adherence to standards, which would mean fewer penalties.

But Souza of the North Carolina Association of Health Care Facilities, which represents both for-profit and not-for-profit homes, says the discrepancy in penalties may just be coincidental. "I

"He was a small-town doctor, and I have never asked a big-town doctor for his opinion of the small-town doctor's medical explanation. I am sure, though, that no big-town doctor ever said what the small-town doctor said to me next. He said 'You come to see me late tomorrow morning in my office, do you hear? If you don't come tomorrow, I'll charge you for tonight. If you come tomorrow, I won't charge you for tomorrow or tonight. All I want is to know that you are well.'"

—NORMAN MACLEAN
A RIVER RUNS THROUGH IT

Karen Tam

Administrator Ken Reeb with residents at Hampton Woods. At the bingo table are Annie Branch, Robert Boone, and Inez Underdue.

think down the road it would equal out," he says. Souza says even nonprofit homes must generate reserves for operations and expansion. "If it were a for-profit, a lot of that would go to profits," Souza says, adding, "I think the staffing is comparable in qualifications and experience."

The violations at Hampton Woods were minor, mostly involving paperwork. After meeting with the operators, licensure chief McDaniel asked the Penalty Review Committee to consider rescinding the $400 fine.

In a Nov. 14, 1990, memo to the committee, she noted that the home had passed its most recent inspection, had voluntarily limited admissions while addressing problems, and had used the inspection report to alert employees to problem areas. But the committee chose to let the fine stand.

An Operation Gone Awry

McDaniel's request came at a time when the panel was still stinging from the case of Jolene's Nursing Home, which was under indictment for Medicaid fraud and had been fined repeatedly for two years, but allowed to continue operating.

Unlike Hampton Woods, Jolene's—a for-profit, family-owned home—was a case of an operation gone awry. While Hampton Woods was able to correct its problems, Jolene's just kept getting worse. From 1988 until October 1990, when the committee pulled its license, Jolene's racked up 27 fines for a total of $8,395. The home ranked third among all the state's homes during the period for both the number and the amount of its fines. (See Table 3, p. 36 for a list of the state's 10 most heavily fined homes.)

The violations were serious and ongoing. In one case, the home was cited for failing to obtain medical treatment for a resident with an infected wound on her leg. The leg eventually had to be amputated.

At the same time, the home's operators, Cherrathee Hager and her mother, Josephine Weaver, were facing charges of Medicaid fraud. The charges included incidents in which the women charged the program for a babysitter and yard work done at their private home. In the first ever

nursing home fraud case in the state, Hager was sentenced to six months in jail for fraudulently collecting more than $50,000 from the program, and Weaver received a suspended sentence.

Jolene's was a case of bad management that started with small problems and eventually spiraled out of control, says Christopher P. Brewer, the head of the state Attorney General's Medicaid Fraud Unit. "The problem with Jolene's is that they never really got the qualified people in there and tried to do everything themselves," he says. "Toward the end, they crossed the line from bad judgment, to not giving their patients adequate care, to out-and-out stealing from the Medicaid program."

While the operators were dealing with their criminal charges, the quality of care at the home suffered. When the home came before the Penalty Review Committee in August of 1990, it had already been fined twice that year—in one case, for "overall non-compliance with licensure standards." It had been operating on a provisional license for four months, the final step before license revocation—and had been on a provisional license for seven months in 1989. Still, the committee declined an inspector's recommendation that the home's license be revoked. Instead, it temporarily barred the home from accepting new residents and levied $1,500 in fines.

The case of Jolene's marked a major turning point in the state's regulatory process. Before the case came before the committee, advocates charged that the changes in the system and the higher number of fines were doing little to bring problem homes back into compliance. In addition, they were unhappy with the state's reluctance to revoke the licenses of homes with long-standing, uncorrected problems. The Jolene's case, which came at a time when the media coverage of the regulatory system had intensified, gave life to the advocates' complaints and triggered more changes.

After reading news reports about the case, David T. Flaherty, Secretary of the N.C. Department of Human Resources, decided that Jolene's and homes like it had run out of chances. He created a task force to study whether the state was capable of dealing with chronic violators. "That's what really brought it to a climax," says Flaherty. "They had been having problems continuously, and it was never brought to a conclusion so as to protect the patients."

Jolene's, which lost its license in October 1990, was one of seven homes that have racked up more than $7,000 in fines over the past three years. The amount of the fines levied against the seven homes accounted for 32 percent of all the fines collected by the state in that period.

"From the house of pain there come moans so muffled and ineffable and so overflowing with so much fullness, that to weep for them would be too little, and yet to smile would be too much."

— CÉSAR VALLEJO
THE WINDOWS SHUDDERED . . .

From the beginning of 1988 until the state revoked its license, Jolene's was fined $8,395 for 27 cited violations of patient care standards. Two other nursing homes had higher fines than Jolene's during the same period. Autumnfield in Gaston County was fined more than any other home in the state in 1988, and the fines continued into 1989 until the state threatened to revoke the home's license. The home was then sold, the name changed to Royal Crest Health Care, but the problems have continued. The home got $1,450 in fines in 1990 and racked up $7,000 in fines during the first seven months of 1991, for a total of $8,450 since the new management. Souza says a change in ownership or management often obviates the need to revoke the license of a problem home. Still, it doesn't always happen.

A Disturbing Case—And More Changes

Hillhaven-Orange, a Durham home operated by the second largest nursing home chain in the country, racked up more fines than any other home in the state in 1989, with $6,250. In 1990, the home continued to have some problems, with fines totaling $2,150, but seemed to be headed back to compliance.

Then, in December 1990, the home came before the state on a particularly offensive charge—that an aide found maggots in an elderly resident's vagina. When the home drew only a $250 fine from the committee, residents' advocates were

—continued on page 37

outraged. Operators of the home, on the other hand, still dispute the state's findings. "It was never proven what, if any, organisms were found in the resident's vagina," says Rita Carter, an administrator with the Hillhaven chain. Nonetheless, the case, like Jolene's, brought more changes.

By that time, the task force had completed its report and forwarded it to Flaherty. They had recommended a system that would make it harder for state officials to impose fines for violations cited by their own inspectors. But when the maggot allegation hit the news, Flaherty sent the panel back to the drawing board and asked for stronger recommendations.

The final report included a number of changes that nursing home reformers felt would strengthen the review process. It recommended that DFS begin seeking higher fines for facilities that have a history of significant compliance problems and consider using *suspension of admissions* more frequently as a means of protecting patients from substandard care. In addition, the report recommended revocation action for homes that have been operating on a provisional license for nine months with no significant improvement in conditions.[12]

It also retained its initial recommendations aimed at preventing the chief of the licensure from making unilateral decisions regarding fines proposed by inspectors.[13] That change, which has been implemented, addresses a major complaint of advocates and inspectors—that Darius Wells, the former head of the licensure section, would meet privately with home operators and then reduce fines, without seeking input from the home inspectors who had recommended the penalties.

Wells, who says he changed proposed fines to assure consistency in each case, left his position in October and was replaced by McDaniel. The new system seeks to assure that one person, the chief of licensure, does not set fines without consulting inspectors.

Now, inspectors cite the type and severity of the violation and gather documentation to back their recommendation. Before the fine amounts are set, the inspector and the home operators are invited to meet with an internal review committee made up of three state officials—the assistant chief of licensure, the section planner, and a representative of either the nursing home or rest home compliance branches. Following the meeting, the internal committee decides whether the home should be fined. For repeat offenses and A-level violations, the committee's recommendation goes to the Penalty Review Committee. B penalties can be paid without review.

Low Medicaid Payments and Low Wages

While the state has taken action to respond to advocates' complaints, it has done less to address a major complaint of nursing home operators—low payments from Medicaid. Most homes can't rely solely on Medicaid payments, so they open with the hope that they can attract enough private-paying patients to make up for slim payment from the government program, says Ellen E. Lentz, a Raleigh nursing and rest home consultant. But increasingly, she says, that's getting harder.

In North Carolina, nearly 75 percent of the state's nursing home residents are on Medicaid, compared to about 60 percent nationwide. Bill Lamb, a planner in the Department of Human Resources Division of Aging, says the higher percentage probably reflects the fact that North Carolina has a higher percentage of elderly residents in poverty than the nation as a whole.[14] "Most farm states are like that," says Lamb. "Also, we're a low-wage manufacturing state. When those folks retire, they don't become rich. They have limited reserves. At the point you hit a catastrophic illness, you exhaust your assets pretty quickly."

Combined with the shortage of employees willing to work for nursing home wages, the lack of private-pay patients is leaving many homes scrambling just to meet basic standards. "You can't get the private-pay patients, and there is not enough reimbursement from Medicaid to get qualified staff," Lentz says.

Up until 1988, the six homes op-

I don't think I could find a job that's harder than being an aide in a nursing home. There are job opportunities at McDonald's and Hardee's that are more pleasant.

— Nolan Brown
Owner of Six Nursing Homes

erated in North Carolina by Triad Medical Services of Yadkinville were able to operate with little problem, even though many of their residents were covered by Medicaid. Then, according to owner Nolan Brown, the labor shortage hit. Not only did he have a hard time attracting unskilled aides, but at some of his homes, he had to compete with nearby hospitals for nurses. "For years, we were able to do an adequate job and have a low-cost operation," Brown says. "All at once we couldn't control our costs, and it caused a lot of problems."

"They scanned and probed in room after room, each cubicle appearing slightly smaller than the one before it, more harshly lighted, emptier of human furnishings. Always a new technician. Always faceless fellow patients in the mazelike halls, crossing from room to room, identically gowned."

— DON DELILLO
WHITE NOISE

The problems started at his Pinehurst Nursing Center, which drew $1,260 in fines in 1988. Brown also began having problems at Louisburg Nursing Center that year. These problems were brought under control only to re-emerge in 1990.

In 1990, the Louisburg home had to pay over $7,000 in fines, more than any other home in the state that year. In April of 1990, Brown had three homes—in Louisburg, Roxboro, and Southport—come before the Penalty Review Committee at the same time, while a fourth was under investigation.

In two cases, the home was cited for failing to notify doctors of patients with medical problems. In Roxboro, inspectors found "heavily soiled and stained" sheets on some made-up beds and in Louisburg, an inspector found that 19 patients had not been bathed regularly. In Pinehurst, a surprise inspection found staff tying the doors shut with sheets because the lock was broken. The home's fire alarm was not working at the time.

Brown blamed his problems on the labor shortage, which sometimes left his homes understaffed, and the subsequent financial burden it created for his company. "I don't think I could find a job that's harder than being an aide in a nursing home," he says. "There are job opportunities at McDonald's and Hardee's that are more pleasant."[15]

Because he was forced to increase his wages, Brown says his costs rose far faster than his reimbursement level from Medicaid. Since 1988, the company has lost $1 million, he says. Brown's homes have since been awarded a payment increase from Medicaid and he thinks his operation is back on track. Still, through July 1991, two of his homes already had been fined.

Brown says he is doing his best under difficult circumstances. "Perfect care is not available and if it were, I don't think the society could afford it," he says. "I don't think I can do any better."

Better Monitoring by the State?

McDaniel is confident that state is now prepared to monitor problem homes more effectively. Since the recent changes went into effect, she's been meeting with industry groups to bring them up to speed. "I think they're all on notice," she says. "They realize that there is a focus and determination on our part to try to take care of the problem facilities."

In addition to the changes on the state level, new federal regulations went into effect in October of 1990 for nursing homes, which, among other provisions, require training for nurses' aides and limit the use of restraints at the homes.[16] Nurses' aides must now receive 75 hours of training and pass a competency test before they can work in a home. But the changes have done little to bring about agreement between resident advocates and the nursing home industry.

Souza, of the nursing homes association, says the new system has not been in place long enough for him to gauge its effectiveness. But, he feels that the state officials are reluctant to question inspectors who may have been overzealous. "I do get frustrated when I see a nursing home that has never been penalized get a $50 or $100 fine for something that is an isolated incident," he says.

Chasson says she is not unsympathetic to the problems faced by the industry. For example, she realizes that the homes are having a hard time finding qualified staff. She also agrees that some residents' family members are too demanding. But she disagrees that the inspectors are too aggressive.

And despite the recent changes, she still feels that the system is not adequately punishing problem homes. "Part of the problem with the new system is that they are not implementing it like they should," Chasson says.

Her group plans to continue pushing for more aggressive action from the state. They want a system to allow the state to revoke a home's license and send in a temporary manager, thus avoiding the problem of moving residents to a new home. This idea has won the support of both Flaherty and the nursing home industry, although a bill that would have created it, SB 731, stalled in committee during the 1991 session of the General Assembly.

In addition, advocates want the ombudsmen —federally funded nursing home monitors who operate in 18 regions that cover the entire state— to have more input into the penalty process. In the meantime, Chasson has a new motto—"no more task forces."

State officials don't seem to share her urgency. McDaniel says it is unfair to judge the state's ability to weed out problem homes by the number and level of fines.

In many cases, she thinks the state should use a carrot rather than a stick and help homes resolve their problems before they ever make it to the penalty stage. "My philosophy is, if a home is basically doing a good job and providing essentially good care and has a minor problem, then we need to work in a consulting role to try and help them take care of that and not race in there with a penalty," she says. "Negative reinforcement is not the best way to change behavior."

—footnotes/recommendations begin on page 42

Turning Around an Ailing Home: The Fritts Prescription

In 20 years as an Air Force pilot, Allen Fritts learned to make snap decisions and live with the consequences. But Fritts says leading a squadron of KC135-A Tankers on a mission to refuel supersonic jets over the North Atlantic is nothing compared to the challenge of running a North Carolina nursing home.

"This is a lot more challenging," says Fritts. "There's nothing repetitive about being a nursing home administrator. It's something new every day. You learn something every day. If you don't, you're getting behind."

If your orientation is toward providing quality of life things for your patients, I don't think you can help but succeed.

— ALLEN FRITTS

But the task Fritts has taken on is a difficult one, even by nursing home standards. In November 1990 he worked out a lease-purchase agreement to take over Jolene's Nursing Home in Salisbury. The owners had been convicted of Medicaid fraud and were facing revocation of their license by the state. By April 1991, Fritts and partner Linda Howard had assumed full ownership of the ailing home.

The challenge was to transform Jolene's from a problem spot for state regulators to a place where residents

—continues

FOOTNOTES

[1] Through July 1991, 290 nursing homes were operating in North Carolina. In January 1992, the number exceeded 310.

[2] G.S. 131E-115.

[3] G.S. 131E-129(a)(2).

[4] G.S. 139E-129(a)(1).

[5] G.S. 131D-34.

[6] A complaint investigation might result in several penalties against the same home, so the total number of fines is larger than the total number of homes cited.

[7] *Frank House et al. v. Hillhaven Inc. and the State of North Carolina,* 86CVS528, Pitt County Superior Court, final settlement agreement, March 16, 1989, p. 3.

[8] Figures are taken from "The Guide to the Nursing Home Industry," Health Care Investment Analysts, Inc. and Arthur Andersen, Baltimore, Md., 1992, p. 14. The median profit margin for investor-owned homes was slightly higher, at 1.82 percent.

[9] For more on the role of Medicaid in financing nursing home care, see Robert Conn, "Long Term Care for the Elderly: What Promise for the Future?" *North Carolina Insight,* Vol. 8, No. 1, September 1985, pp. 60–78.

[10] For more on ballooning health care cost increases, see Nina Yeager and Jack Betts, "Health Care Cost Containment: Does Anything Work?" *North Carolina Insight,* Vol. 13, No. 3–4 (November 1991), pp. 48–66.

[11] Alphonse Holtmann and Todd Idson, "Why Nonprofit Nursing Homes Pay Higher Nurses' Salaries," *Nonprofit Management & Leadership,* Vol. 2, No. 1, Fall 1991, pp. 3–12.

[12] *A Task Force Study of Enforcement Practices and Procedures Related to Domiciliary and Nursing Homes,* North Carolina Division of Facility Services, April 1991, pp. 13–14.

[13] *Ibid.*, p. 10.

[14] Lamb says many of the state's elderly were self-employed farmers who did not have to pay into Social Security taxes for the bulk of their earning years. North Carolina also has consistently ranked near the bottom among the 50 states in manufacturing wages. These are two key reasons that 1990 Current Population Survey estimates put the state's poverty rate at 20.6 percent for people over 65 compared to an 11.4 percent rate for those 65 and over in the nation as a whole, Lamb says.

[15] A 1990 survey by the North Carolina Association of Long Term Care Facilities found a turnover rate in domiciliary homes of 242.45 percent, with fast food the third most frequently cited source of employment competition.

[16] 42 CFR 483.70–483.75

A clean, well-lighted nursing home.

Karen Tam