



# Department of Justice

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**STATEMENT OF**

**ANTOINETTE T. BACON  
ASSOCIATE DEPUTY ATTORNEY GENERAL  
OFFICE OF THE DEPUTY ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

**BEFORE THE**

**COMMITTEE ON FINANCE  
UNITED STATES SENATE**

**FOR A HEARING ENTITLED**

**“NOT FORGOTTEN: PROTECTING AMERICANS FROM ABUSE AND  
NEGLECT IN NURSING HOMES”**

**PRESENTED ON**

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**Statement of**

**Antoinette T. Bacon  
Associate Deputy Attorney General  
Office of the Deputy Attorney General  
Department of Justice**

**Before the  
Committee on Finance  
United States Senate**

**March 6, 2019**

Good morning Chairman Grassley, Ranking Member Wyden, and distinguished members of the Committee. I am Antoinette Bacon, Associate Deputy Attorney General and Department of Justice Elder Justice Coordinator. I appreciate the opportunity to appear before you today to discuss this critical issue of our time, which is the quality of care that our elders receive in our nation's nursing homes and skilled care facilities. We have a legal and a moral obligation as a government to ensure that the elderly members of our society who raised us, guided us, and fought for our freedoms receive quality health care during their nursing home stays, which for many, is at the end of their lives when they are frail and most vulnerable.

The Department of Justice ("Department") has been bringing to justice nursing homes that provide grossly substandard care to their residents for over two decades through its Elder Justice Initiative. We have brought civil and criminal cases against the nation's largest nursing home chains, small regional chains, single facilities, and against nursing home CEOs and executives. As a career prosecutor, I have seen over the past 18 years the devastation and pain caused by these criminals. It can span generations and destroy communities.

And while the Department and our federal, state, local, tribal, and non-governmental partners have done so much great work in this area, there is still much work to be done as our population ages and as stories of victimization of our nation's elders in nursing homes reach our national headlines with unfortunate frequency.

The Department's commitment to nursing home cases spans multiple departmental components and includes actions that the Elder Justice Initiative, the Civil Division Consumer Protection Branch, the Criminal Division, the Civil Rights Division, and our U.S. Attorney's offices have pursued, and are pursuing, to combat abuse in nursing homes across the country. In addition, and significantly, the Department's commitment to nursing home matters is underscored by the infrastructure that the Department has put in place to combat elder abuse both in nursing homes and in community settings.

First, leadership has directed resources across the Department to focus on elder justice, including nursing home quality cases. Specifically, the Department named Marc Krickbaum, U.S. Attorney for the Southern District of Iowa, to Chair the Attorney General Advisory

Committee's subcommittee on Elder Justice, which advises the Attorney General on policies and strategies for combatting elder abuse and fraud. Second, he appointed me to serve as the Department's first National Elder Justice Coordinator. I also chair the Department's Elder Justice Working Group, composed of 12 components, which brings together diverse expertise to focus on a variety of threats to America's seniors. Last year, the Department ordered each of the 94 U.S. Attorneys' offices to appoint an Elder Justice Coordinator ("EJC") tasked with fulfilling the Elder Abuse Prevention and Prosecution Act of 2017's ("EAPPA") mandate of: serving as the legal counsel for the federal judicial district on matters relating to elder abuse; prosecuting, or assisting in the prosecution of, elder abuse cases, and particularly focusing on nursing home quality matters; conducting public outreach and awareness activities relating to elder abuse; and ensuring the collection of data required to be collected under the EAPPA. Having an EJC in every federal district allows the Department to work on the most pressing elder justice issues facing those communities, while also collaborating with state, local, and tribal partners to combat all forms of elder abuse and fraud.

The EJCs enhance and broaden the reach of the outstanding work done by the Department's Elder Justice Initiative ("EJI"), which for decades has been a leader in prosecuting nursing home cases and in promoting greater federal, state, and local coordination to resolve cases where nursing homes provide grossly substandard care to their residents. Under EJI's leadership, the Department, in early 2016, enhanced its commitment to nursing home matters by creating ten Elder Justice Task Forces located across the country, including in U.S. Attorney Krickbaum's state of Iowa and in my home state of Ohio. The Elder Justice Task Forces are led by representatives from the U.S. Attorneys' Offices, and most include on their multi-disciplinary teams state Medicaid Fraud Control Units, state and local prosecutors' offices, the Department of Health and Human Services ("HHS"), state Adult Protective Services agencies, Long-Term Care Ombudsman programs, law enforcement, and emergency medical services in their respective communities. The multi-disciplinary teams allow the Task Forces to focus on the most significant problems in their communities to identify needed solutions quickly and efficiently. These Task Force leaders serve as mentors to the EJCs and as a model for other districts to pursue providers that provide grossly substandard care to their residents.

The Department, through its many components, has prosecutors across the nation who are focused on protecting America's elders in nursing homes. We have brought so many cases like the ones that I am going to describe to this Committee. These few examples show the breadth and tragedy of the abuse we have identified. The facts of these cases are hard to listen to but were even harder to experience for the residents affected.

Just last week, the Department announced that it settled a failure of care False Claims Act case against the Brentwood, Tennessee nursing home chain Vanguard Healthcare and several Vanguard companies for \$18 million in allowed claims. The United States, partnering with the State of Tennessee, brought to justice this company and its CEO and Chief Compliance Officer for allegedly providing grossly substandard care to its residents on basic care needs such as administering medications as prescribed, providing standard infection control, failing to prevent pressure ulcers, and using physical restraints. Our nation's elderly residents suffered such harm in the Vanguard facilities as residents faced pressure ulcers down to the bone, residents who

were not adequately provided with pain medications and as a result were screaming in pain in their rooms, and a resident who only received one real shower in five months.

Another example of the Department's failure of care False Claims Act matters focuses on the alleged overuse of antipsychotic medications such as occurred in a case brought in the Northern District of Iowa. On February 1, 2017, an Iowa nursing facility, the Abbey of LeMars, Inc., its ownership, and its management, agreed to pay \$100,000 to resolve allegations that the care provided to their nursing facility residents was grossly substandard. During this time, the nursing facility allegedly overused anti-psychotic medications to numb or sedate residents to keep residents from expressing their needs. Residents were allegedly not given adequate nourishment or bathing care and residents were subjected to physical and chemical restraints rather than other types of interventions.

Given the particularly egregious nature of the resident harm at issue in these types of cases, nursing home defendants frequently enter into Quality of Care Corporate Integrity Agreements ("CIAs") with the Department of Health and Human Services' Office of Inspector General at the same time they settle their False Claims Act liability with the Department of Justice. For example, in 2014, following an extensive federal-state investigation, the Extendicare Health Services, Inc. and its subsidiary Progressive Step Corporation paid the United States \$28 million for a civil False Claims Act failure of care settlement, the largest such settlement in the Department's history. The United States alleged that Extendicare failed to have a sufficient number of skilled nurses to adequately care for its residents and failed to prevent resident pressure ulcers. At the same time, Extendicare entered into a 5-year Quality of Care Corporate Integrity Agreement with HHS-OIG. Under this agreement, Extendicare was required to have a comprehensive compliance program with systems in place to address the quality of resident care. Indeed, this CIA had specific staffing provisions and is still in force today.

An additional example, on November 16, 2017, the Department settled a case with Hyperion Foundation, in which the entities and individuals agreed to pay the United States a total of \$1.25 million to resolve allegations of false claims to Medicare and the Mississippi Medicaid program for providing grossly substandard care to residents at the Oxford Health and Rehabilitation nursing home in Lumberton, Mississippi. The Department alleged that Hyperion lacked adequate nursing staff, failed to meet the nutritional needs of residents, failed to administer medications to residents as prescribed by their physicians, overmedicated residents, and diverted Medicare and Medicaid funds to other affiliated entities, leaving the facility unable to pay for its basic operations, including food, heat, air conditioning, pest control, and cleaning.

As a result of these care failures, residents suffered immeasurably, including one resident who lost over 14 pounds in the facility over sixty days and developed massive, foul-smelling pressure sores on the resident's buttocks, heels, and legs, and another resident who complained of leg pain only to discover the pain was caused by a live snake wrapped around her leg. The physical plant in which these residents were forced to live was truly horrific. This facility was frequently plagued by filth, mold, insects, snakes, and rodents. Roaches were found on food trays and in the ice machines.

Although the horrific description of neglect of care occurred in rural Mississippi, it is important to shine a light on the fact that our nation's rural elders are particularly vulnerable to abuse in nursing homes. In some rural communities, staff are not as available and people are often further from family members who can visit facilities and check on loved ones. The Trump Administration and this Department recognizes that we have a particular responsibility to ensure that our elderly residents in rural America are cared for in a way that retains their dignity and respect. In November last year, the Department held a Rural and Tribal Summit in Des Moines, Iowa, where we brought together federal, state, local, and tribal governments, as well as subject matter experts, to address, among other things, the health of our rural elder populations. We discussed care in long-term facilities and see this issue as a Department priority.

These cases make clear that the care that these residents suffered is not the care that our elders, our parents, relatives, and friends deserve.

The Department's enforcement reaches beyond false claims act cases. The Civil Rights Division is fully engaged in combatting elder abuse by pursuing relief affecting public and private residential health care facilities, including nursing homes. Civil Rights attorneys conduct investigations to eliminate abuse and grossly substandard care in Medicare- and Medicaid-funded public long-term care facilities, as well as the unnecessary segregation of individuals who require health care supports and services. For example, in 2018, the Department entered into an agreement with the State of Louisiana, whose nursing facilities have long been reported as among the worst for quality of care in the nation, to address its alleged overreliance on nursing facilities to house people with mental illness.

In the most egregious cases, the Department has and will continue to pursue criminal prosecutions. One example is a case prosecuted by the U.S. Attorney's Office for the Eastern District of Missouri, the United States Department of Health and Human Services, Office of the Inspector General, and the Missouri Medicaid Fraud Control Unit. Between 2013 and 2016, John Sells, CEO of Benchmark Healthcare of Festus and a number of long-term care facilities in Missouri, Kentucky, and Tennessee, stole Medicaid funds, which were intended to provide care for the elderly and disabled residents at Benchmark. Because Sells diverted funds to his own use, the residents did not receive medication, food, and needed dietary supplements. On one occasion, the residents were given only a clear bowl of broth soup and a very small cookie, which was not substantial and failed to meet their nutritional needs. The facility's staff resorted to using their own money to buy food for the residents, because in some instances there was little to no food provided by Benchmark. Additionally, the facility was dirty, as trash piled up and flies infested the surrounding area in the absence of pest control services, and due to a lack of routine maintenance and repairs, the facility was also unsafe. In October 2017, Sells was sentenced to 41 months in prison, and ordered to pay over \$667,000 in restitution.

Our nation is in the midst of an opioid crisis. Tragically, seniors in nursing facilities are not immune to its devastating effects. In the Fall of 2018, the United States Attorney's Office in the Southern District of Iowa and the Iowa Medicaid Fraud Control Unit ("MFCU"), identified a troubling trend in Iowa nursing homes. MFCU was investigating numerous allegations of nursing care facility employees, ranging from nurses to certified nursing assistants, who diverted controlled substances from elderly patients who had valid prescriptions, to their own illegal use,

leaving the patients in pain because their caregivers stole their medication. Six nurses and certified nursing assistants have been indicted, and so far one has pleaded guilty. Let me emphasize that the charges are merely allegations and each defendant is presumed innocent until proven guilty.

The Criminal Division's Medicare Fraud Strike Forces, in conjunction with HHS' Centers for Medicare and Medicaid Services ("CMS") and the Office of Inspector General of HHS ("HHS-OIG"), have been a strong team working together to combat elder abuse. Recently, the team identified a provider unnecessarily prescribing powerful opioids to residents. As part of a guilty plea in January 2018, Yasser Mozeb admitted that he conspired with the owner of the Tri-County Network, Mashiyat Rashid, along with other co-conspirators, to prescribe medically unnecessary controlled substances, which allegedly included oxycodone, hydrocodone, and oxymorphone, to Medicare beneficiaries, many of whom were addicted to narcotics. He also admitted that co-conspirators directed physicians to require Medicare beneficiaries to undergo medically unnecessary facet joint injections in order to obtain prescriptions for the narcotics. Some of these beneficiaries were also then referred to specific third party home health agencies, even though those referrals were medically unnecessary.

It is likely that because of these health care fraud schemes, at least some of these beneficiaries never received the medical attention and treatments they actually needed, or suffered through medically unnecessary procedures. Additionally, some elders in nursing homes are also not receiving the appropriate medication as prescribed by their physicians, because the staff or visiting relatives and friends are instead stealing the medication to sell or to maintain their own addiction. This undoubtedly causes these seniors to be in excessive and preventable pain. This Administration will not tolerate this type of abuse.

While the focus of today's hearing is nursing home enforcement, I would like to expand my discussion of the Department's work done on elder justice issues to focus on the Department's efforts in combatting financial exploitation and bringing scammers to justice. On February 22, 2018, the Attorney General announced the largest coordinated sweep of elder fraud cases in history. With help from our partners at all levels of government and in the private sector, the Department brought civil and criminal actions against more than 250 defendants from around the globe who victimized more than one million Americans, most of whom were elderly. The cases included criminal, civil, and forfeiture actions across more than 50 federal districts, with losses exceeding \$500 million.

These scams imperil older adults as they steal their money, life savings, and their pride. Studies show that older adults suffering financial exploitation are more likely to suffer other forms of elder abuse. Sometimes the pain from having been scammed is more than some elders can bear. At last year's Elder Fraud Sweep, we heard from the granddaughter of a victim of multiple financial fraud schemes. The perpetrators were persistent, and eventually defrauded the victim of everything she had. After realizing what had happened, the victim felt embarrassed, and, hopeless, her sense of self-worth at an all-time low, she took her own life. This is a clear example of the tragic effects these crimes can have on an individual. Financial scams can be deadly and at the Department we are pursuing these scams with unparalleled vigor. Because of situations like this, and others, the Department's Office for Victims of Crimes has given \$18 million in grants for senior victims this past year and we will continue to support victims while continuing to pursue their perpetrators.

Clearly, elder justice is a Department priority. We are actively engaged in pursuing and combatting abuse and exploitation of our nation's vulnerable senior citizens, and through coordination with our partners, the Department remains committed to using all appropriate tools and paths to investigate, prosecute, and prevent abuse of our nation's elderly in nursing homes. Our many dedicated public servants have elder justice as their daily mission and we support them in their efforts on this priority issue.

Again, thank you for this opportunity to speak before you today. I look forward to further discussions on these issues, and I am pleased to answer any questions you may have.