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Issue Brief

Supporting Culture Change: Working Toward Smarter State Nursing Home Regulation

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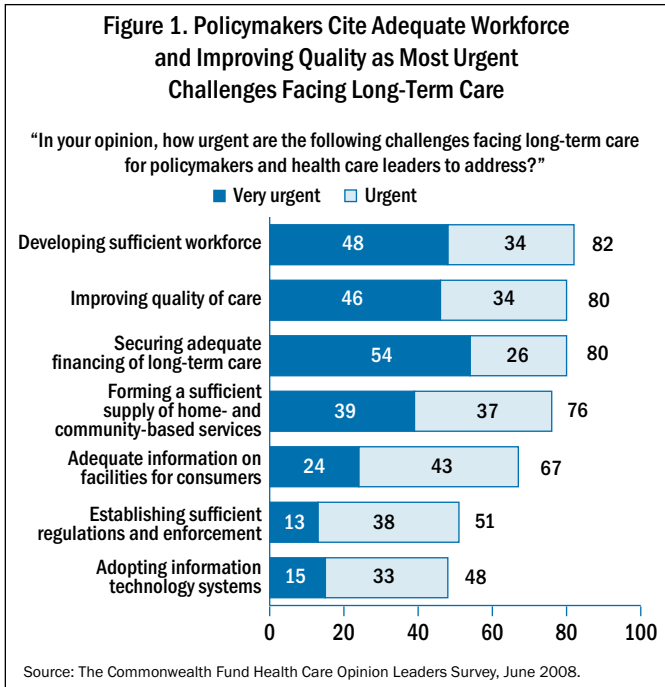
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ABSTRACT: The traditional nursing home regulatory approach, which uses survey and enforcement to achieve performance improvement, has created tensions between providers and surveyors. It has had limited success in improving quality overall and not necessarily allowed innovation to flourish. This has been the perception of many homes wanting to undergo transformative “culture change” reforms. To move toward a new model of nursing home regulation, the states and federal government must strike a balance between the traditional regulatory approach to weed out substandard facilities and a partnership model aimed at promoting high performance. This issue brief highlights the importance of how such a model is structured, as well as the need to adequately train and educate regulatory staff and providers about culture change. Regulators, providers, consumer groups, residents, and their families also will need to commit to the principles of person-centered care to ensure the success of the new collaborative approach.

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OVERVIEW

The Pioneer Network—an advocate for person-directed care in the long-term care community—defines culture change as: “a transformation anchored in values and beliefs that returns control to elders and those who work closest with them. Its ultimate vision is to create a culture of aging that is life-affirming, satisfying, humane, and meaningful. Culture change can transform a ‘facility’ into a ‘home,’ a ‘resident’ into a ‘person,’ and a ‘schedule’ into a ‘choice.’”¹ Over the past decade, the culture change movement has begun to attract many nursing home providers, beyond those who were among the early adopters of the reforms. As more nursing homes engage in culture change efforts, providers have raised concerns about federal and state regulations and practices that they view as barriers to successful implementation. Some argue that the regulatory approach, which they view as primarily legalistic and enforcement-based, creates an environment in



which administrators and staff are afraid to pursue culture change activities that they believe may put them in jeopardy. Others indicate that specific regulations actually get in the way of culture change, particularly those that prevent necessary changes to the physical environment, staffing patterns, and training requirements.

A recent study of state culture change initiatives funded by The Commonwealth Fund found substantial evidence of perceptions by providers that regulations can impede culture change. It also identified several states that have developed a more collaborative relationship between regulators and nursing home providers to facilitate successful culture change efforts. This issue brief highlights issues related to the real and perceived tensions between regulation and culture change and examines how the federal government and states could move toward a relationship that combines a traditional regulatory role with a complementary technical assistance and partnership role. The brief begins with an overview of various regulatory approaches, how nursing home regulation fits within these different approaches, and the evolution toward resident-centeredness and quality of life, as well as quality of care. This is followed by a discussion of federal and state efforts to create a more responsive regulatory system, highlighting the experiences of

Kansas and Oregon. It concludes with a review of the key issues that must be addressed as states attempt to develop a collaborative approach to regulation that supports culture change and maximizes the potential for success.

NURSING HOME REGULATION: BACKGROUND

During the early 1960s, a wave of nursing home scandals attracted the attention of politicians, the media, and advocacy groups. In the decades since then, concerns about the quality of nursing homes have been periodically debated and addressed. The most significant response to nursing home quality problems was the passage of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) that required nursing homes to “attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.” To achieve this goal, standards were developed, enforcement mechanisms were expanded, and nursing homes were required to fill out a resident assessment instrument for each resident at admission and at specified times afterward. In response to this new regulatory approach, many nursing homes adopted a “quality assurance” orientation, which focused primarily on paper compliance with government regulations rather than on the actual quality of care and life experienced by residents.

Today, nursing home quality oversight is focused on deterrence. The federal government (and many states) relies on a rigorous survey and

North Carolina’s survey agency is trying to balance regulations and culture change to help facilities create a more “homelike” environment, yet comply with regulations for safety. For example, when nursing homes want to place plants and other decorations in the facility, these changes can violate regulations because they can obscure exits. The department tries to work with facilities to help them be code-compliant and still create environments for residents that are as much like home as possible.

certification process to set and enforce standards regarding every aspect of nursing home care. It is a model that combines two regulatory paradigms—deterrence and compliance.² In an attempt to eliminate chronic bad performers that flout the rules, deterrence takes a formal, legalistic, and sanction-oriented approach. The compliance approach, on the other hand, is generally less formal and more supportive, measuring improvement in developmental terms and using sanctions only as a last resort. Although nursing home providers, regulators, and advocates may disagree on where nursing home regulation falls on the deterrence–compliance continuum, most agree that deterrence alone is a blunt instrument that has had limited effects on the organizational performance of nursing homes or on resident outcomes.³

As the culture change movement has gained momentum among providers, consumers, and policy-makers, there has been increasing concern about the extent to which implementing physical redesign of nursing facilities—that is, putting the “home” (including plants and animals) back into the concept of the nursing homes—and changing the organizational structure and staffing patterns violates existing regulations.⁴ Some regulatory theorists have argued in recent years for a more contingent or adaptive approach to regulation. This “responsive” or “smart” regulation would seek to combine the benefits of both deterrence and compliance regulation.⁵ The main principle of responsive regulation is that regulatory methods and approaches should be adapted in response to the behavior of individual organizations.⁶ This paradigm encourages cooperation, information-sharing, and negotiated agreement between regulators and providers while retaining the powerful incentives and sanctions of deterrence regulation.

NURSING HOME REGULATION: THE SMART MODEL

A growing number of advocates, providers, and regulatory officials have recognized the need to shift the regulatory paradigm toward a more collaborative and cooperative model.⁷ Initiatives at the federal and state

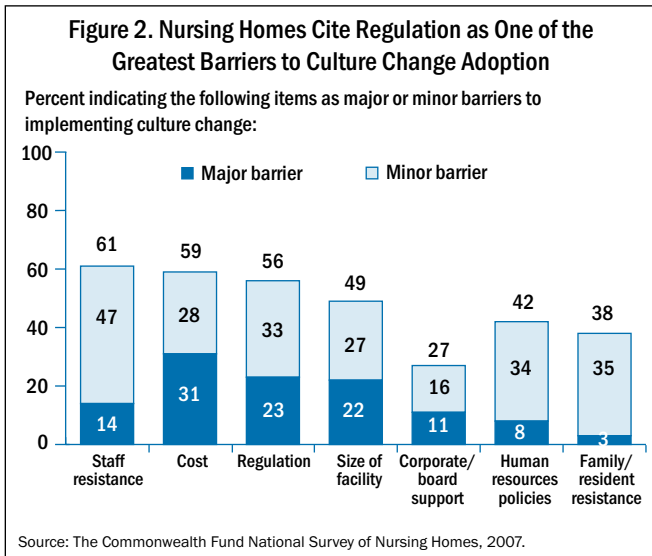
levels indicate a growing interest in developing more responsive regulation to help facilitate successful culture change efforts.

Federal Level Initiatives

At the federal level, the Centers for Medicare and Medicaid Services (CMS) has signaled its interest in moving toward more responsive regulation through a number of discrete initiatives. In 2002, the agency sponsored a satellite broadcast to all surveyors entitled “Innovations in Quality of Life—the Pioneer Network.” This program taught state surveyors about common culture change innovations and how compliance with federal requirements might be maintained within nursing homes that are at various stages of transforming their culture. In addition, CMS staff

In a Kansas nursing home, a surveyor saw a resident sitting alone in the hallway. A nursing assistant came by periodically to talk to the resident, but essentially, the surveyor saw no activity and perceived a “red flag.” However, the nursing assistant knew—through consistent staffing that had helped her get to know the resident well—that the resident was okay and was happy where she was and did not want to listen to the piano, the current activity.

The surveyor may have asked the nursing assistant about the resident to learn more about the situation, but nursing assistants can be intimidated by surveyors and are not usually taught how to communicate with them. As such, the nursing assistant did not fully explain the situation. The surveyor only saw an unattended resident—not a resident whose needs were being met. The problem was not the regulations, per se, but the interpretation of the regulations. This example illustrates the importance of surveyors learning how to survey for person-centered care, even though some of the benefits of person-centered care are hard to capture.



funded, coauthored, and publicly disseminated a measurement tool, called the Artifacts of Culture Change, designed to help providers measure their success in achieving concrete changes. More recently, CMS and the Pioneer Network cosponsored “Creating Home in the Nursing Home: The National Symposium on Culture Change and the Environment Requirements.” The one-day conference brought together key stakeholders to review the range of environmental innovations (e.g., private rooms, higher quality and quantity of appropriate lighting, use of color for contrast, access to outdoor spaces, etc.) being implemented in nursing homes and how these changes relate to federal and state regulations and the life-safety code, a regulatory code. The following day a workshop for stakeholder organizational leaders, culture change experts, researchers, and regulators was also convened by CMS and the Pioneer Network to review findings and make recommendations concerning how the regulatory process can best support culture change efforts.

State Level Initiatives

In addition to federal regulations, each state has its own set of nursing home licensure regulations. There is significant variation in the nature and extent of these state regulations, which may affect how culture change efforts are implemented. For example, although the federal regulations do not require facilities to have nurses’ stations, some state regulations require this type

of structure while others do not.⁸ Given the intent of the culture change movement to make nursing homes more like homes, the nurses’ station has become a strong symbol of the institutional model that mimics a hospital. The surveyors’ interpretation of the regulation, therefore, has important implications for the implementation of culture change initiatives.

In interviews with stakeholders, state agency staff and providers talked about the perception that regulations were barriers to culture change.⁹ Some believe that while the director and upper level managers of a particular regulatory agency may be committed to culture change efforts, the frontline supervisors and, often, middle managers have not been educated about culture change and how to interpret and enforce the regulations in light of these activities. Several interviewees in Kansas, for example, noted that a subset of nursing homes would never apply for the Promoting Excellent Alternatives in Kansas (PEAK) culture change award because of their perception that if they are identified as a culture change provider, surveyors will target them for more intensive scrutiny.¹⁰

States have begun to explore a more collaborative model of smart regulation in which the surveyors and providers are viewed as partners in creating culture change in nursing homes. The following two examples illustrate significant efforts to shift the paradigm:¹¹

Promoting Excellent Alternatives in Kansas (PEAK), which began in 2002, is a culture change program initiated by the state. There are two components: recognition and education. The award component recognizes nursing homes that have initiated significant culture change in their organizations. The award program criteria are based on culture change measures of resident control, staff empowerment, home environment, and community involvement. Civil monetary penalty funds are used to provide cash awards of \$300 to each winning facility. The Kansas Department on Aging contracts with Kansas State University to develop and deliver the education component of the PEAK program.

Kansas. The multiple responsibilities of funding and regulating services to older Kansans are located in one department—the Kansas Department on Aging (KDOA). The KDOA administers Older Americans Act funds and Medicaid reimbursement for nursing homes and other long-term care settings, and has regulatory oversight of all long-term care settings. Prior to 2003, the state survey agency was housed in the Department of Health and the Environment. In 2003, the state legislature mandated that the survey agency be moved to KDOA to create more efficiency and to support KDOA’s efforts to improve nursing home care. One Kansas legislator noted that the movement of the survey agency to KDOA helped the survey team focus on outcomes rather than solely on compliance. This integration has allowed KDOA to recognize and eliminate regulatory barriers to culture change and to reward providers who have engaged in culture change efforts by giving the Secretary of Aging the ability to use nursing home payments and the regulatory process to promote culture change.

In addition, KDOA created a technical assistance program (the long-term care division) within the department that helps providers navigate the regulatory process in their attempts to implement culture change. This division is separate from the survey function and has four professional staff—two registered nurses, a licensed dietician, and an environmental specialist. According to the Secretary of Aging, the inclusion of the state survey agency within the KDOA umbrella and the creation of the long-term care division have enabled her to take a more unified approach to culture change. According to the current U.S. Assistant Secretary on Aging and Secretary of KDOA at the time of the study, Kathy Greenlee, “Regulations are not a barrier to culture change, more like a speed bump. The state does not have the power to demand providers do culture change but it can offer advice through this unit.”

Oregon. The Office of Licensure and Quality Care began training surveyors about culture change and their role in the process in the early 1990s. Continuing complaints from providers about surveyors “getting in

the way” of culture change catalyzed a more serious effort by the survey agency to develop a partnership model. In 2005, the agency partnered with Oregon nursing home members of the Pioneer Network to create culture change teams—one surveyor and one provider representative—that would jointly attend a culture change institute in Portland sponsored by the Pioneer Network. Following the conference, each team would work on a culture change initiative to ensure that the changes were in sync with specific regulations that might hinder successful implementation. With resources from the Civil Monetary Penalties fund, the state supported six teams in the program and awarded a \$2,500 matching grant to each nursing home to engage in a specific culture change activity. In 2008, six more teams were added and the state hired a part-time consultant to provide team support.

Civil monetary penalties are fines the Center for Medicare and Medicaid Services can impose on Medicare and Medicaid-certified nursing facilities that are found to be noncompliant with federal safety and quality-of-care standards. Some states use the fines to support a broad range of culture change activities.

The state survey office also has created a surveyor and provider forum that meets every other month to discuss regulatory issues and build relationships and trust among the stakeholders. Participants include representatives from the state agency, provider associations, nursing home and home care agency administrators and management staff, surveyor managers, and surveyors. Forum members develop an annual action plan with one concrete deliverable per year. One year, their work centered on the informal dispute resolution (IDR) that occurs when surveyors give facilities 10 days to respond to a deficiency or sanction. Forum members reviewed the process, determined it was fair and did not need to be changed. They did, however, choose to hold a series of trainings around the state to help providers learn how to prepare for an IDR.

In 2007, forum members developed an Innovative Practice Award that recognizes providers who have implemented successful culture change efforts.

MOVING TOWARD SMART REGULATION: ISSUES

There are a number of issues that must be addressed as states and the federal government move from a more traditional regulatory model to smart regulation that combines the best of deterrence and compliance through collaboration and coordination.

Striking the Balance Between Regulatory Models

Given the history of nursing home regulation, and in particular, the important role that consumer advocacy groups played in the development and ongoing implementation of OBRA 87, it is essential that policymakers strive to achieve a delicate balance between a traditional regulatory approach and a partnership model. Some surveyors and consumer advocacy groups are concerned that providers use the regulatory barrier argument as a smokescreen to relieve them of the responsibility for engaging in culture change activities in a meaningful way. Others worry that in the shift toward more responsive regulation, the federal and state governments will abrogate their responsibility to enforce OBRA 87—which is seen as the embodiment of resident-centeredness. Federal and state policymakers, therefore, must recognize that in their zeal to support culture change, they do not send a message to various stakeholders—including providers and consumers—that they have become soft on regulation. Kathy Greenlee, the Secretary of KDOA at the time, noted that Kansas has retained its reputation as a state with strict regulatory policies.¹² The technical assistance arm of the department provides assistance to high-performing organizations that are in a position to pursue culture change initiatives. This does not lessen the responsibility for ensuring that poor performers are scrutinized and penalized if they fail to comply with regulations.

Organizational Issues

One key issue is how to structure a partnership model. In Kansas, the traditional regulatory and technical assistance functions are both housed in the same agency (KDOA), albeit in separate divisions. State employees are hired specifically to perform the survey and technical assistance activities. State policy officials believe this organizational structure has sufficient firewalls to ensure that regulatory oversight and enforcement continues at the same time as technical assistance is provided to nursing homes interested in culture change. In Oregon, the culture change teams comprise both state-employed surveyors and nursing home staff. The state contracts with an independent consultant to provide technical assistance to the teams. Hiring an outside specialist may provide greater separation between the regulatory and technical assistance functions than in Kansas, where all functions are housed internally.

In recent testimony before the U.S. House of Representatives Committee on Energy and Commerce, Mary Jane Koren of The Commonwealth Fund argued that “the Quality Improvement Organization (QIO) be designated as the appropriate locus for technical assistance to providers rather than the survey agency.”¹³ She cited the Rhode Island Department of Health’s Individualized Care Pilot—supported by a grant from The Commonwealth Fund—as a collaborative model in which the state’s QIO provides technical assistance to nursing homes that have been identified by surveyors as having quality-of-life problems. Dr. Koren noted that this model warrants further examination since it “removes the surveyors from the role of consultant yet offers assistance to providers anxious to address problems.”¹⁴

There are some concerns about relying on the QIOs to provide technical assistance on culture change implementation to providers. First, although a number of QIOs are beginning to recognize the importance of culture change in helping to support and enhance quality improvement in nursing homes, most have focused primarily on clinical quality problems. Similar to most surveyors, QIOs face a steep learning curve in assisting

nursing homes in culture change activities. Perhaps more problematic, however, is the fact that CMS contracts with QIOs to do this technical assistance. Up until a few years ago, only a minority of these organizations worked on nursing home issues. The focus of the QIO contracts is highly dependent on the interests of the particular CMS administrator and political environment, in contrast to the ongoing role that survey agencies play at the state level. It may be risky, therefore, to assign the responsibility for culture change technical assistance to QIOs. It is clear that additional exploration and more rigorous research is needed to help federal and state regulatory officials decide how best to structure these types of partnerships.

Training Issues

In moving toward a partnership model, stakeholders from the public and private sectors need to have a better understanding of the training that will be required to prepare surveyors and other regulatory staff and providers to jointly support culture change. In conducting case studies of culture change at the state level, Bryant and colleagues found that having surveyors and nursing home staff attend conferences, workshops, or Webinars on culture change was not sufficient to expose them to the various viewpoints and challenges and to help them learn strategies to working together more effectively.¹⁵ The Oregon model, in which surveyors and nursing home staff are paired and receive more intensive team training, may be a promising approach. The curriculum should focus on culture change principles, how they are implemented in real-world settings, the identification of real or perceived regulatory barriers, and overcoming such obstacles. Regulatory and nursing home staff also must learn about each other's culture and how trust can be established to encourage partnerships. Finally, the training must occur in real-world settings where regulators and nursing home staff, residents, and families can problem-solve and achieve and sustain culture change. To the extent that QIOs are involved in the partnership, they also must be trained in a similar manner.

Stakeholder Responsibilities

The success of the partnership approach will depend, in a large part, on the extent to which the stakeholders buy into the process and assume responsibility for successful implementation. The regulatory agency staff at all levels—particularly midlevel managers and front-line surveyors—must be committed to this new paradigm and integrate their training in both culture change and new ways of communicating with providers into daily practice. The same holds true for all levels of nursing home staff—they must shift their mistrust of the survey process to a collaborative approach in which they share failures as well as successes. In many cases, organizations that have established rigid policies and procedures will need to move toward a more organic process that focuses on embedding culture change principles into policies and practice. Federal and state policymakers, as well as nursing home corporations and individual facilities, will need to establish incentives to hold the regulators and providers accountable and to reward successful partnerships.

Given the pivotal role that consumer advocates played in the creation of OBRA 87 and their ongoing efforts to ensure consistent oversight and enforcement, this group's buy-in of smarter regulation is essential. While some members of the advocacy community have recognized the importance of greater collaboration between regulators and providers in facilitating culture change, others have been resistant to shifting from the traditional regulatory paradigm. Continued evidence of poor quality among a subset of facilities and the failure of most nursing homes to engage in culture change undoubtedly creates skepticism among many consumer advocates. At the same time, a partnership model between regulators and providers will not work if consumer groups are not supportive and positively engaged.

It is also essential that the most important stakeholders—nursing home residents and their families—assume responsibility for the success of this approach. Resident and family councils must weigh in on how partnerships should be structured and implemented. Consumers and their relatives need to receive culture

change training together with surveyors and nursing home staff. To maximize the success of this collaboration, they must also be part of the facility-level teams that identify regulatory barriers, work to minimize these hurdles, and ensure the achievement of cultural transformation.

NOTES

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- ⁹ N. Bryant, L. Barbarotta, and R. Stone, *Assessing State Investments in Culture Change*, unpublished final report to The Commonwealth Fund, (Washington, D.C.: Institute for the Future of Aging Services, 2008).
- ¹⁰ Ibid.
- ¹¹ Ibid.
- ¹² Ibid.
- ¹³ Koren, *Moving to a Higher Level*, 2008.
- ¹⁴ Ibid.
- ¹⁵ Bryant, Barbarotta, and Stone, *Assessing State Investments*, 2008.

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