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August 27, 2019

Antoinette Bacon

Associate Deputy Attorney General and National Elder Justice Coordinator

U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Ms. Bacon:

A recent Department of Health and Human Services Office of the Inspector General (HHS OIG) investigation revealed that many cases of substantiated abuse in nursing homes are not being reported to the state survey agencies or to local law enforcement.¹ I read with interest your March 6, 2019 testimony before the Senate Finance Committee in which you described the progress your agency has made in identifying and prosecuting cases of nursing home abuse.² Given the HHS OIG's finding that 20 percent of high-risk emergency department (ED) admissions from skilled nursing facilities (SNFs) are the result of abuse or neglect, I write to request more information on what the Department of Justice (DOJ) is doing to ensure that *all* potential cases of abuse and neglect of nursing home residents are reported to law enforcement, investigated, and prosecuted.

In its investigation, HHS OIG examined high-risk ED admissions from skilled nursing facilities (SNFs) to identify cases of potential nursing home abuse. They found that one in five of the 37,000 high-risk claims they examined (or approximately 8,000) were, indeed, the result of abuse or neglect of Medicare beneficiaries residing in SNFs. These were not minor or ambiguous incidents – they included staff-perpetrated broken femurs, cracked skulls, and sexual abuse.

HHS OIG also found that SNFs failed to report most of these horrible incidents to survey agencies. When OIG did an in-depth review of 51 high-risk ED claims that OIG substantiated as

¹ Department of Health and Human Services, "Incidents of Abuse or Neglect at Skilled Nursing Facilities were not Always Reported and Investigated. June 2019. A-01-16-00509. <https://oig.hhs.gov/oas/reports/region1/11600509.pdf>

² Statement of Antoinette T. Bacon before the Committee on Finance of the United States Senate for a Hearing Entitled, "Not Forgotten: Protecting Americans from Abuse and Neglect in Nursing Homes." Available at https://www.finance.senate.gov/imo/media/doc/CLEAN_119024_RD14%20Passback%20DOJ%20OT%20on%20Nursing%20Home%20Quality%20Cleared%20by%20OMB%203-5-19.pdf

abuse or neglect, they found that 85 percent were not reported to the state survey agency. Moreover, HHS OIG found that survey agencies are not reporting substantiated abuse to local law enforcement. Notably, survey agencies investigated and substantiated 69 incidents as abuse or neglect, but only two were reported to local law enforcement. These trends are unacceptable.

In light of this report, I seek additional information from DOJ on its tracking of cases of elder abuse in SNFs:

- 1) Please describe the work the Elder Justice Initiative, the Elder Justice Working Group, the Civil Rights Division, and the Elder Justice Task Forces have undertaken to identify, investigate, and prosecute unreported cases of abuse and neglect in nursing homes.
 - a. What methodology (including the data source) does DOJ currently employ to investigate and identify instances of abuse in SNFs?
 - b. To what extent does DOJ review data longitudinally to identify time trends in abuse and reporting?
 - c. Please explain the extent to which these approaches have been vetted and refined over time to account for trends in abuse and neglect cases.
 - d. Please provide data on year-over-year trends in the cases of abuse in SNFs that the DOJ has identified and the outcome of such cases.
 - e. Will DOJ consider using HHS OIG methodology of examining high-risk ED claims from SNFs to identify potential cases of abuse? Please provide an analysis of the feasibility of DOJ investigators using high-risk ED claims data to identify and prosecute resident abuse in SNFs.

- 2) What is DOJ doing to ensure that all cases of abuse and neglect in SNFs are reported to local law enforcement?
 - a. Please describe how DOJ communicates and collaborates with HHS and state survey agencies to ensure that all cases of potential abuse and neglect are reported to law enforcement. What types of communication protocols currently exist and how often does DOJ review its internal processes to ensure they are effective?
 - b. What actions will DOJ take to follow up on non-reporting of abuse occurring in SNFs? Please describe any educational efforts, monitoring, or oversight that will be conducted.

Every American has a right to live free of abuse and neglect. The HHS OIG report has clearly documented that Medicare beneficiaries are not being protected as they should be. The detailed accounts of unreported abuse in this report are unacceptable and should incite immediate action on the part of the DOJ. We must ensure all nursing home residents live in safe environments.

I know we all share the goal of improving patient care for residents in nursing home facilities, and I look forward to working with the DOJ to address this crisis. I ask that, within two weeks, you schedule a time to brief my staff and discuss a plan for developing written responses to the aforementioned questions. Please contact Amy Hall of the Committee on Ways and Means Majority staff to schedule the briefing at (202) 225-3625 or Amy.Hall@mail.house.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard E. Neal". The signature is fluid and cursive, with a large initial "R" that loops around the first part of the name.

Chairman Richard E. Neal