OBRA - *What Does It Mean To The Nursing Industry?*

Don't Become Complacent With OBRA Surveys, Warns Provider Group

By Herbert F. Weiss

-- Herbert F. Weiss is a Washington, D.C. based free-lance writer who specializes in health care and aging topics.

With the enactment of the 1987 Omnibus Budget Reconciliation Act (OBRA), nursing home providers must gear up to comply with new survey and certification requirements. The new federal law mandates the most comprehensive overhaul of the nation's nursing home regulatory system since the passage of Medicare and Medicaid.

While OBRA's sweeping nursing home reforms (see box) became effective in October 1990, the Health Care Financing Administration has yet to publish final regulatory guidance on many of the law's key provisions.

Nursing homes can be put in financial jeopardy if they violate any of the new law's provisions, warn nursing home provider groups. Even without HCFA's release of it's final regulations, nursing homes will still be penalized for noncompliance, they note. Facilities may be subject to civil penalties of up to $10,000 a day if they violate patients' rights or federal requirements relating to service.

THE HONEYMOON MAY BE OVER

Provider groups are patiently waiting for OBRA's final regulations to emerge from HCFA's regulatory pipeline. States are in the precarious position of enforcing OBRA without HCFA's final regulations.

But the OBRA survey process appears now to be in its "honeymoon phase" says the American Association of Homes for the Aging (AAHA), in a recent OBRA update memo to its state association executives.

The survey and certification process is generally more focused on outcomes than in the past, the memo says, noting that surveyors tend to focus on residents' rights and physical and chemical restraints. There are generally few surprises at the exit conference because surveyors brief facilities at the end of each day.

But AAHA members flag some emerging problems identified at their facilities during surveys. In some facilities, surveyors have accepted residents' allegations without validating that they are true. Other facilities report that surveyors cite "outcomes as negative, without determining whether there was any link between the outcome and the facility practice, as OBRA requires."

So far, many facilities seem to be doing well under OBRA, notes the memo. Preliminary agency data for the first quarter beginning October 1, 1990 indicates that deficiencies decreased by 50% from the same quarter of the previous year. Terminations from Medicaid have also decreased. However, AAHA staff believe that the decrease in deficiencies may be due to the surveyors unease with the new requirements.

Don't become complacent with OBRA, warns AAHA. "Surveyors are likely to get tougher as they become more comfortable with the requirements and as more regulations become final."

THE NUTS AND BOLTS OF OBRA NURSING HOME REFORM

Effective October 1, 1990, nursing home amendments in the Omnibus Budget Reconciliation Act of 1987 require facilities to:

- *Provide quality of care and quality of life to nursing home residents.*
- *Comply with residents' rights, ranging from protection against Medicaid discrimination to wrongful transfer and discharge.*
- *Give ombudsman full access to nursing facility.*
- *Establish mandatory nurses' aide training and competency evaluations.*
- *Provide 24-hour nursing care, with an RN on staff every day. Waivers may be obtained under special situations.*
- *A new level of care, nursing facilities, replaces skilled nursing facilities and intermediate care facilities.*
- *Employ a full-time social worker if the facility has more than 120 beds. Social services must be provided for each resident.*
- *Perform a comprehensive needs assessment and care plan for each resident.*
- *Review, prior to admission and annually after admission, all mentally ill or retarded residents to assure they are appropriately placed.*
- *Establish a Quality Assurance Committee in each facility to assure quality of care.*
- *To be surveyed by staggered, unannounced inspections, which focus on actual care provided rather than on paperwork.*

Also:

- *State agencies can increase staffing to monitor nursing home complaints and have more enforcement options to use against facilities not meeting OBRA standards.*
- *States are required to adjust Medicaid rates to pay for new requirements and must make available to the public what items and services are covered by Medicaid.*
- *States must supply cost reports to the public which document how a nursing home spends its Medicaid payments.*

Source: National Citizens Coalition for Nursing Home Reform.

Minimal Long Term Care Coverage

to be Part of Clinton's Health Care Reform Package, Says Senior White House Staffer

by Herbert P. Weiss

Twice delayed, the long-awaited health care reform package is temporarily placed on the back burner while the White House lobbies Congress to pass its 5-year reconciliation package.

While some Washington insiders expect the Clinton administration's reform package to emerge next fall, others predict that the proposal will be unveiled in Clinton's 1994 State of the Union Address.Critics say that Clinton must act soon to counteract a growing public impression that he is "indecisive."But the legislative process may well influence when he chooses to release his health care reform package.During the fall months the House and Senate must consider and pass all appropriations for the new fiscal year.By waiting until early 1994, the appropriations process is completed and Clinton can focus Congress on his health care agenda.

SUPPORT GROWING FOR LTC COVERAGE

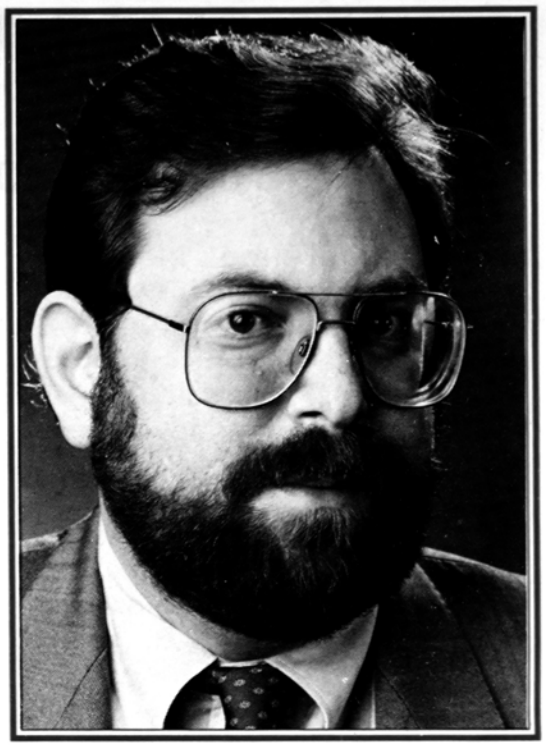
National public opinion poll results make it extremely clear to White House officials and Congress that the American public wants the impending overhaul of the nation's health care delivery system to include a long-term care (LTC) component.Support for health care reform has increased when LTC coverage is included, concludes a recent poll conducted for the American Association of Retired Persons (AARP).The consumer advocacy groups poll also found that about 46.5 percent of those surveyed said they would be willing to pay $50 a month in higher taxes for coverage of hospital, physician and LTC coverage.

To highlight the American Health Care Association's (AHCA) support for LTC insurance as a viable solution to paying for nursing-facility care,AHCA has announced the results of its gallop poll; three out of four Americans believe that the federal government should pay for LTC services only when people cannot afford their own coverage.

DIFFERENT STRATEGIES FOR LTC COVERAGE

The Leadership Council on Aging (LCoA), representing 17 national aging groups, urged administration officials to include LTC as part of national health care reform. In a May 3rd letter, the group called for the establishment of a national health plan that incorporates comprehensive LTC protection for people of all ages.Such a plan might be financed by a progressive, broad-based financing mechanism in which older Americans pay their fair share along with the working population, the LCoA proposal suggests.

Nursing home groups are flexing their political muscles through PAC contributions and grass root lobbying efforts to influence White House officials and Congress to include their specific prescription for LTC financing in the final health care reform proposal.Similar reform strategies have been hammered out and approved by the Board of Directors of the American Health Care Association ("Quality Care for Life") and the American Association of Homes for the Aging ("A Partnership in Caring").Both proposals call for a public-private partnership that encourages people to plan ahead for nursing-facility care needs by purchasing private LTC insurance; tightening of transfer of asset laws to close Medicaid loopholes; and finally, developing federal consumer protection and tax incentives to encourage people to buy LTC insurance.



Herbert P. Weiss

EXPECT MINIMAL COVERAGE FOR LTC SERVICES

Although Clinton Administration officials previously expressed doubts that costly LTC benefits (estimated to be $5 to $15 billion) would be included in a health care reform package, new signals of support are now emerging especially after positive poll results and intense lobbying efforts of consumer and provider groups.

Ira Magazine, a senior White House advisor heading the reform effort, told health specialists and lobbyists at a Families USA-sponsored May 11th meeting that they should expect limited LTC benefits that emphasize home and community-based care.The plan would also reduce the amount a person must spend down before becoming Medicaid eligible. The LTC benefits would be set outside the basic benefit package to keep costs down, Magazine noted.Finally, prescription drugs would be covered under the existing Medicare program, he said.

The President's Task Force on Health Care Reform completed its work on May 30th and presented Clinton with drafted options.While no final decisions have been made yet as to specifics, look for further trial balloons to fly over Capitol Hill to help the administration finalize its plans.Whether Clinton's health care package comes out in three or six months, most agree that it could take years to implement.

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SURVEY SAYS...

by James H. Keeley, Director of Education, and Herbert P. Weiss, NHA

Business Decisions and Quality Drives Nursing Homes to JCAHO Accreditation

Sixty-eight out of 303 nursing facilities, or **22%,** responded to Clean Sweep's survey on JCAHO accreditation.

Thirty-six out of 68 facilities **(53%)** told Clean Sweep that they had sought JCAHO accreditation. The majority **(65%)** accredited their skilled nursing facility. In addition, some pursued JCAHO's "seal of approval" for their subacute units **(15%),** dementia programs **(11%)**, home care organizations **(2%)**, and extended care facilities **(2%).** Respondents from a rehab facility and acute facility also sought JCAHO accreditation **(5%)**.

JCAHO Makes Good Business Sense

Of these JCAHO accredited facilities, **17%** tell us that their motivation was to improve quality of care within their nursing facility. Interestingly, for the majority, accreditation was strictly a sound business decision, a way to enhance reimbursement from managed care groups or third party payors **(22%)**; a marketing tool to fill beds **(16%)**; a way to lower liability insurance premiums **(5%)**; or to meet certain Medicare certification criteria **(5%)**. Moreover, pressure from corporate office **(15%)** or managed care groups **(2%)** influenced the facility to seek JCAHO accreditation. One teaching hospital also sought accreditation **(2%)**. Sixteen percent **(16%)** did not respond to this question.

One of the most popular methods to prepare for JCAHO was to assign facility staff to prepare specific areas before the survey. Only eight respondents brought in outside consultants to lead facility staff. Finally, eight facilities received corporate assistance and resources to prepare for their JCAHO survey.

Twenty-two percent **(22%)** received JCAHO's highest marks - Accreditation with Commendation. (see page 7 for definitions of accreditations) Thirty-six percent **(36%)** received Accreditation, and 36% received Accreditation with a Type 1 Recommendation. (Per JCAHO: this is the most common accreditation, at a rate of **66%**). Six percent **(6%)** did not respond to this question.

Sixteen percent **(16%)** spent less than three (3) months to prepare for the survey. About **37%** tell us that they spent four to six (4-6) months to prepare for the JCAHO survey; finally, **45 %** from seven to twelve (7-12) months. Only one (1) facility spent more than twelve (12) months on survey preparation **(2%)**.

Characteristics of Survey Respondents:

Clean Sweep conducted a non-random survey of 303 LTC facilities in 38 states. The survey had a 22% response rate. Here is a profile of the survey participants:

Respondents:	**75%**	Administrators
	15%	CEO/Executive Directors
	10%	Facility Owners, DONs, Department Heads
Number of Beds:	**25%**	50-99 beds
	55%	100-199 beds
	20%	200+ beds
Type of Facilities:	**25%**	skilled nursing facilities
	74%	skilled nursing facilities offering a range of services *(e.g., assisted living, day care, home health care, special care units, subacute units)*
	1%	retirement communities, acute care facilities, intermediate care, pediatric medical centers

Other Clean Sweep Findings:

JCAHO Survey Increases Cost for Some Facilities. Interestingly, **44%** found no increase in operational costs to meet JCAHO's high standards; however, **35%** told us their costs had increased. (21% no response.)

JCAHO Surveyors Constructive in Feedback. Every respondent told us that JCAHO surveyors were constructive in their assessment of the facility during the survey.

JCAHO Accreditation Attracts Managed Care Patients. Fifty-six percent **(56%)** found that JCAHO accreditation did not change their payor mix. But **36%** saw a change. These facilities were able to attract more managed care patients. (8% did not respond.)

JCAHO Experience Improves Staff Morale. Fifty percent **(50%)** noted that staff morale was boosted after JCAHO accreditation, while **36%** found no difference. (14% no response).

JCAHO Highly Recommended to Others. A whopping **91%** would recommend JCAHO accreditation to their colleagues; **5%** won't. (4% no response)

JCAHO Survey is a Learning Experience. A large majority, **91%,** also found that going through the JCAHO survey process was a very educational and beneficial experience; **5%** did not. (4% did not respond).

JCAHO Experience Increases Quality of Care. By meeting JCAHO standards, **85%** believe that the quality within their facility improved, while **11%** noticed no change. (4% did not respond.)

Increased Access to JCAHO Accredited Networks. Sixty-six percent **(66%)** of respondents were able to become part of an accredited network of providers with JCAHO accreditation. Eleven percent **(11%)** weren't able to find an affiliation. (23% did not respond).

Managed Care Contracts Increase. More than **56%** were able to obtain additional managed care contracts with JCAHO accreditation; **35%** weren't able to. (9% no response.)

Barriers to Becoming JCAHO Accredited. Cost and commitment of staff time were frequently cited reasons for facilities deciding not to become accredited.

James H. Keeley is Director of Education for Healthcare Services Group, a company that provides contract housekeeping and laundry services to over 1,000 healthcare and long-term care facilities in 43 states. Herbert P. Weiss, NHA, is a Pawtucket, Rhode Island-based writer who covers health care and aging issues.

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Published Quarterly

Laughter Is as Good as Chicken Soup

by Herbert P. Weiss

The grandfather of laughter therapy, Norman Cousins knows the value of a good laugh. In his book, ***Anatomy of an Illness,*** *Cousins tells how he beat medical odds and baffled the medical establishment by curing himself from a muscle-wasting disease. Laughter was his penicillin. Around the clock, Cousins watched classic comedies, including the Marx Brothers movies, and read humorous books to "beat his devastating disease".*

In the late 1970's, Cousin's book became the bible for health care providers who recognized the positive benefits of laughter and humor. "Warning — Humor may be hazardous to your illness," a motto of the organization, Nurses for Laughter, has become the battle cry for advocates of laughter therapy.

Every year, conferences and symposiums are sponsored by both national organizations and medical schools promoting the positive benefits of laughter. Recently, Johns Hopkins Medical Institution sponsored a symposium on "Comedy as Catharsis: The Therapy of Laughter." One of the speakers, syndicated columnist Art Buchwald, reminded a packed auditorium of the power of humor in cheering up depressed hospital patients, "even when they have stitches and are not supposed to laugh."

"Laughter and tears are two human safety valves that nature has given us to reduce the pressure associated with stress and emotion," says Dr. Virginia Trooper, founder of Laugh Lovers and workshop leader on laughter therapy in the San Francisco Bay area. Trooper teaches older adults in nursing homes and hospitals to choose laughter instead of tears to cope with life's trials and tribulations. She strongly supports Kurt Vonnegut's philosophy, "I myself prefer laughter to tears because there is less cleaning up to do afterwards."

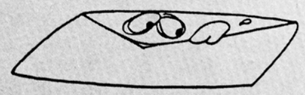
Trooper believes that miserable young people often grow up to become miserable older adults. However, this does not have to occur. Humor and laughter can assist an individual change his or her negative attitudes about growing older. She reflects, "in the San Francisco Bay area, four 70-year-old women meet weekly to compare notes on the pitfalls of growing older. The woman who tells the best humorous story, gets a free lunch. Who says "There's no such thing as a free lunch"?

Trooper concludes, "The jury is still out. Limited research data is available to scientifically prove its effect on illness." However, through her 10 years of promoting laughter therapy at the university setting and at health care facilities, she has observed that "laughter creates a positive attitude that gets people to take responsibility for their lives." For Trooper and thousands of health care providers, laughter is as good as chicken soup.

Herbert P. Weiss is a nationally known writer in the field of aging and health care. Herbert is an editor at St. Anthony Hospital Publications. He is former Washington Correspondent for ***Contemporary Long-Term Care*** *and former editor of* ***Aging Network News.***

Laughter Is As Good As Chicken Soup
(continued from page 2)

Next **CleanSweep** *Deadline:*



AUGUST 18th,1989

OSHA Remains a Mystery to Most Nursing Facilities, Survey Finds

by James H. Keeley, Director of Education, and Herbert P. Weiss, NHA

As the Occupational Safety and Health Administration (OSHA) gears up its regulatory efforts to increase its scrutiny of nursing facilities, a large percentage (majority) of facilities surveyed had little or no interaction with the federal agency.

Forty out of 280 nursing facilities, or 14 percent, responded to Clean Sweep's survey on regulatory issues.

Although 90 percent of the respondents told Clean Sweep that they had never been surveyed by OSHA, about 50 percent kept informed about regulatory issues by attending seminars sponsored by consultants or by OSHA itself. In addition, our survey respondents kept updated through association journals (60 percent); corporate education (20 percent); and consultants (10 percent).

OSHA STILL A MYSTERY TO FACILITIES

Even with respondents trying to keep informed about OSHA regulatory initiatives, a large majority (88 percent) still were not aware of OSHA's proposal for ergonomics. About 78 percent had never seen the agency's publication on workplace violence, with 66 percent not realizing that failure to implement violence prevention might lead to citations.

An overwhelming majority of the respondents stated that they had never been surveyed by OSHA. But many of these individuals viewed the agency negatively. Some considered an OSHA survey as "a fate worse than death" and others "intimidating".

Interestingly, **those who were surveyed by OSHA** (about 10 percent) **viewed the agency as helpful and the survey as a positive experience.** These respondents told us that when OSHA came into their facilities the surveyors focused on material safety data sheets, the physical plant, training and safety programs and lift training programs.

James H. Keeley is Director of Education for Healthcare Services Group (publishers of Clean Sweep and the largest provider of housekeeping and laundry services for the long-term and health care industries in the USA). Herbert P. Weiss, NHA, is a Pawtucket, Rhode Island-based writer who covers health care and aging issues (401-724-6441).

Editor's Note: Mr. Weiss was among those distinguished in McKnight's Long-term Care News (issue January, 1997) as one of the 100 most influential people in long-term care, under the heading Visionaries, Researchers and Analysts. Those surveyed in that issue were a cross section of recognized industry leaders.

Characteristics of Survey Respondents

Clean Sweep conducted a nonrandom survey of 280 nursing facilities in 16 states. The survey had a 14 percent response rate. Here is a quick snapshot of the survey participants:

Respondents

- ❑ 75 percent of those responding to Clean Sweep's survey were administrators; 10 percent were DONs; and 15 percent were CEO/executive directors.

Number of Beds

- ❑ 10 percent of those surveyed by Clean Sweep managed facilities with 50 to 99 beds; 75 percent oversaw facilities with 100 to 199; and 15 percent of the facilities had 200 plus beds.

Type of Facility

- ❑ 80 percent of the respondents were from skilled nursing facilities; 10 percent were in subacute facilities; and 10 percent came from assisted living facilities.

Editor's Note

A video on avoiding back injuries, plus a multipart training program encompassing issues like safety and health programs, workplace violence and safe medical equipment is being coordinated through the American Association of Homes and Services for the Aging.

In October, 1996 Mr. Sheldon Goldberg, President of AAHSA, was quoted in McKnight's Long-Term Care News under the article "OSHA Initiative", announcing the above programs. In speaking with their office in January, 1997, we learned that the video will be on display at AAHSA's booth at their Spring Conference in April, in Washington, DC. The training program should be available also in the spring.

To find out how to take advantage of these offers, call AAHSA (202-783-2242) in March or April.