



## Remarks of

### Attorney General Janet Reno Conference of State Nursing Home Fraud and Abuse Working Groups June 12, 2000

Good morning. I want to welcome all of you to this important meeting to discuss one of the most important issues confronting this nation and, indeed, our nation -- how to protect elderly Americans against fraud, abuse and neglect.

This meeting is extremely important because our nation is at a turning point: With baby boomers aging and medical advances allowing us to live longer, the elderly population of this country is burgeoning. Today, about 34 million of this country's citizens are over 65. Twenty five years from now, that number will almost double. It is difficult to overestimate the potential impact of this change on our society. One consequence will be that there will be a dramatic increase in the demand for quality long term care in nursing homes and assisted living facilities, as well as in our families. It is imperative that we ensure that elderly Americans relying on such facilities receive high-quality care.

Compounding the challenge, recent studies have found that, despite some improvements, seriously inadequate care persists at far too many of our nursing homes. Residents suffer from unnecessary pressure sores, malnutrition, and accidents. As many of you know first hand, most residents can not defend themselves from violence or other inappropriate contact. They can not leave to find a new nursing home. Often times, they do not have the physical capacity to give voice to their pain or suffering. The high

price of bad care is paid in human suffering and lost public resources. While care is improving in some areas, the current level of abuse and neglect in American's nursing homes is simply unacceptable.

Despite these daunting challenges, there is reason for optimism. President Clinton has made quality care for the elderly a priority. Secretary Shalala has implemented an extensive effort to strengthen the safeguards and care in nursing homes. And many states and communities are pursuing a variety of endeavors, some of which you will hear about during this meeting.

The Department of Justice launched its Nursing Home Initiative at an October 1998 meeting with the Department of Health and Human Services and our state and local partners, to begin drawing up an ambitious and far-reaching plan to protect the vulnerable residents of nursing homes and other residential care facilities. In February of 1999, the Office for Victims of Crime convened a focus group of experts to gain their insight on how to improve our efforts to protect nursing home residents against fraud, abuse and neglect. The group developed a number of promising recommendations, including a call for stepped-up enforcement, coordination and training.

As a result of these efforts, the Department's Nursing Home Initiative focuses on seven key areas:

- Stepped up investigations and prosecutions at the federal, state and local levels.
- Improved coordination and information sharing between DOJ, HHS, and our federal, state and local partners.
- New legislation to address gaps in current federal civil and criminal laws.
- Renewed efforts to work with industry to boost compliance efforts.
- Dissemination of a soon-to-be-released focus group

report containing broad recommendations that can serve as a helpful blue print for additional action.

- New efforts to train regulators, investigators, prosecutors, patient advocates and others in how to identify and respond to fraud, abuse, and neglect.
- Establishment of interagency working groups at the state and local level to bolster enforcement, prevention, training and coordination.

While each of these areas is important, I want to focus my comments today on the tremendous efforts of the State Working Groups, where we have achieved a great deal to date and which hold great promise for our overall Initiative.

Since last July, the Department has hosted four regional conferences to provide training to more than 1,000 federal, state and local officials. Participants at those conferences, in addition to DOJ and FBI, included our partners in the HHS Office of Inspector General and Health Care Financing Administration, the VA, as well as the Medicaid Fraud Control Units, the state Attorneys General offices, local District Attorneys, state regulatory agencies, medical experts and others. As you know, any successful effort requires a multi-disciplinary response. In any given jurisdiction, as many as 25 different law enforcement, regulatory, oversight, advocacy, medical and emergency entities have responsibility in these matters. Historically, there has been too little information sharing and cooperation among these agencies. Thus, during the regional conferences, we launched the State Working Groups that you represent here today. We have more than 40 states represented in this room as well as representatives of many of your leadership organizations.

A primary objective of our Nursing Home Initiative was to create the infrastructure for broad-based coordination where the real work is done -- at the state and grass roots level. By you and your colleagues. And we need to bridge the historical gap between those on the front lines who see the problems first hand and those charged with enforcing

laws intended to prevent those problems.

Of course, law enforcement is only part of the puzzle and not the only answer. The first line responsibility for providing quality care remains with the providers themselves. Law enforcement is only necessary when other systems have broken down. But law enforcement can be a crucial back-stop, making your efforts on the front lines more effective. If unscrupulous nursing homes know they will be prosecuted for lying to a surveyor or falsifying records, if they know they will be prosecuted for abusing or neglecting those entrusted to their care; if they know that the ombudsman, the firefighter, and the emergency room nurse will pick up the phone and call the licensing entity or the prosecutor when they see problems, if they know that you all are meeting regularly to identify and pursue the worst actors, then the presence of law enforcement can have a strong preventive impact.

Our commitment to aggressive but fair enforcement efforts have already provided results. Where failures of care and violations of law lead to egregious outcomes, we will take appropriate enforcement actions.

- In Philadelphia, we have brought four cases charging nursing homes under the False Claims Act including one matter also filed under the Civil Rights of Institutionalized Persons Act. In one case, a resident was scalded to death in hot water and others died from poor care. In another case, a profoundly malnourished man arrived at an emergency room suffering with 24 pressure sores and died a few months later. In all of the cases, the problems were systemic. The nursing homes were forced to pay fines and -- perhaps more importantly -- to make sweeping changes to improve patient care, under strict monitoring provisions.
- In Arkansas, a team including the state police, the FBI, United States Attorneys Office and other agencies investigated a case where a nursing home resident had wandered from a facility and was found bleeding in a nearby ditch. The nursing home falsified the records to show that the woman had fallen out of bed; the woman

died within 24 hours. The administrator and assistant Director of Nursing responsible for falsifying the records were prosecuted and pleaded guilty.

- We also are pursuing numerous cases where nursing homes are alleged to have defrauded government programs - sometimes of tens or hundreds of millions of dollars. In one recent case, working with HHS, we obtained a \$175 million settlement - the largest nursing home case the Department has ever prosecuted.

We will continue to work closely with the HHS Office of Inspector General in these cases to put in place rigorous compliance agreements that require the facilities to take concrete action toward improvement. We are absolutely committed to not only holding nursing homes and their executives accountable, but also to demanding appropriate care for their residents.

These nursing home cases raise complex and difficult, new issues, particularly where there is a potential for nursing home closures. Our aim is to fashion remedies that balance enforcement goals -- recouping lost funds, and punishing and deterring wrongdoing -- with the public health goals of protecting the welfare of today's and tomorrow's beneficiaries.

This is a difficult time for nursing homes. Four of the ten largest chains have filed for bankruptcy and others are experiencing financial distress. Nursing homes perform a tremendously important and difficult task. Most have a sincere desire to provide decent care and there are many top-flight providers. But the entire industry is given a black eye by the misconduct of those who don't play by the rules -- whether it be abuse by an individual or decisions from a corporate boardroom that preclude well-meaning staff from rendering adequate care. I invite the industry to join our efforts in ferreting out the wrongdoers for the good of the rest. And I urge nursing homes to avail themselves of the voluntary compliance guidance issued by the Inspector General of HHS a few months ago.

A handful of states had working groups prior to the conferences. Many more states and communities have formed

them since then. The early returns of these -- your -- very newly formed groups are impressive. During the next two days you will hear examples, such as -

State Working Group members are meeting regularly to share information, identify problems and solutions, and develop best enforcement practices;

New federal cases have been opened based on referrals by surveyors, ombudsman, and others to federal prosecutors who first met at State Working Group meetings;

Groups are identifying experts; prosecutors are discussing various approaches to these matters, and several states now have multi-disciplinary teams that conduct unannounced visits, for example Florida's "Operation Spot Check;"

A hospital is pursuing development of a forensic center that would provide expert medical opinions in cases of suspected elder abuse or neglect, similar to an existing program that evaluates cases of suspected child abuse and neglect;

Groups are bringing together and reaching out to police, emergency room staff, firefighters, EMTs, medical examiners, investigators, surveyors, ombudsman, Adult Protective Services, professional licencing and/or social service entities to meet with federal, state and local law enforcement and regulators;

Groups are creating referral committees to review each entities' worst cases, data showing problem facilities, and the most appropriate type referrals - whether for federal, state or local law enforcement and/or administrative action; and

Groups are discussing legislative proposals to close gaps in state laws and provide new tools to address abuse and neglect.

This is tremendous progress in a very short period of time and I applaud you for it. The leadership that you exercise

in your individual and collective capacities can impart a sense of mission to others.

I know that your participation in these working groups has required many of you to take on unfamiliar roles -- to wear new hats. This is not always easy. Those of you who are career prosecutors, must add to your already demanding case load, time-consuming meetings, consensus building, and creative efforts toward prevention, education, and coordination. But your involvement in these groups is pivotal. One person who works with Adult Protective Services put it succinctly when she said, "it really helps to have the leadership of an agency with clout." As you know, I believe that law enforcement should focus on prevention as well as prosecution in just this sort of way.

Though much has been accomplished, we have more to do.

In partnership with the HHS Administration on Aging, we are planning a symposium for this October that will show case federal, state and local promising approaches on how to empower older people to live healthy and safe lives and how coordinated public safety, health, and social services can provide effective prevention and intervention strategies and reduce victimization. In addition, we are funding an action partnership between the National Association of Adult Protective Services and the National Organization for Victim Assistance. The project is reviewing how best to respond to the needs of victims of crime and abuse in domestic settings including by working with residential care facilities to respond to the needs of those victims.

Now that millions of baby boomers have received their AARP cards, it's time to focus the considerable resources of the Department of Justice on the elder end of the age continuum and to study what steps we should take to prepare for their aging.

In conclusion, I want to welcome you. Together we can accomplish what no single one of us could accomplish on our own. We must unite in our commitment to justice and human dignity through the entire span of a life, particularly

when it is frailest.

What my predecessor Robert Kennedy said in another context is particularly applicable to your work here today:

Each time a [person] stands up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current that can sweep down the mightiest walls....

That is your task -- our task -- today, tomorrow and into the future.

Thank you.