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## New Rule Enacted by Bush Administration Impedes Cases Against Nursing Homes

By Cindy Skrzycki  
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The Bush administration shut off a source of information last fall about abuse and neglect in long-term care facilities that people suing nursing homes consider crucial to their cases.

The change, which affects the \$144 billion nursing-home industry, was enacted with no public notice or attention.

"This is pretty stunning," said Mark Kosieradzki, a plaintiff attorney in Plymouth, Minn. "Nobody was told. It was just done."

The rule designates state inspectors and Medicare and Medicaid contractors as federal employees, a group usually shielded from providing evidence for either side in private litigation.

The restrictions affect about 16,000 nursing facilities and 3 million residents in the United States. The practical effect is to force litigants to go to greater lengths, including seeking court orders, to get inspection reports or depositions for cases they are pursuing or defending.

"This change hurts nursing-home residents and their families by allowing bad practices to be kept in secret by nursing homes and inspectors," said Eric M. Carlson, an attorney with the National Senior Citizens Law Center in Los Angeles. "Government inspectors have the right to go into nursing homes and investigate, and they learn things that residents and families otherwise could never find out."

The new rule, which was issued in September, generally prohibits state health departments and contractors from participating in private lawsuits involving facilities that are in the federal assistance program without approval by the head of the Department of Health and Human Services.

The rule was justified as being necessary to accommodate the hiring of new contractors to make Medicare payments to providers, perform audit and fraud reviews, and do survey, certification and enforcement work for the program.

Requests for these employees to participate in private cases "divert employees from their federal survey, certification and enforcement responsibilities," the Bush administration said in a supporting document. "The cumulative effect of these requests can impede these activities."

The effect of the directives has started to play out in the nation's courtrooms. Requests for information, once fairly routine, now are stalled between state and federal officials.

Anne Marie Regan, an attorney with the Kentucky Equal Justice Center, a nonprofit poverty legal advocacy and research center, said the change has slowed a case she is pursuing on behalf of an 85-year-old man who was evicted from a nursing home in 2007.

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Priscilla Shoemaker, legal counsel for the American Health Care Association in Washington, said nursing homes "are in the same boat" because they also have difficulty getting information on how state inspectors determine penalties, citations and orders to shut down homes.

*Cindy Skrzycki is a regulatory columnist for Bloomberg News. She can be reached at [cskrzycki@bloomberg.net](mailto:cskrzycki@bloomberg.net).*

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