

A Consumer's Perspective on Medical Errors

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“To err is human...”

**Medical errors are a
leading cause of death
in the United States.**

HealthGrades, 2006

“At least **44,000** people, and perhaps as many as **98,000** people, **die in hospitals each year** as a result of medical errors that could have been prevented...”

Institute of Medicine, 1999

2002 - 2004

- **1.24 Million** total patient safety incidents **among Medicare beneficiaries.**
- **\$9.3 Billion** of excess costs
- **304,702** deaths occurred among patients who developed one or more patient safety incidents. **250,246** were potentially preventable.

DRUG RELATED INJURIES

400,000 preventable drug-related injuries occur each year in hospitals resulting in at least \$3.5 Billion in extra medical costs.

800,000 occur in long term care settings.

530,000 occur just among Medicare recipients in outpatient clinics.

NURSING HOMES

1 out of 3 nursing homes were **cited for an abuse** violation between January 1, 1999 and January 1, 2001.

Abuse of residents is a Major Problem in U.S. Nursing Homes, U.S. House Committee on Government Reform Report, July 30, 2001.

The **percentage** of nursing home's **cited for abuse** violations is increasing, **tripling** since 1996.

Abuse of residents is a Major Problem in U.S. Nursing Homes, U.S. House Committee on Government Reform Report, July 30, 2001.

More than 92% of nursing homes have too few workers to take care of their residents.

Appropriateness of Minimum Staffing Ratios in Nursing Homes, HCFA (CMS) report, August 2000, p.E.S.-6. The HCFA (CMS) report is accessible online at:

<http://www.hcfa.gov/medicaid/reports/rp700hmp.htm>

Staffing levels are the single biggest **predictor of outcomes** for residents in terms of their skin integrity, nutrition and hydration.

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MALNUTRITION

DEHYDRATION

PRESSURE SORES

UNJUST ENRICHMENT

Hospitals and nursing homes are improperly charging Medicare for injuries they cause as a result of **substandard care, thereby unfairly **burdening taxpayers and jeopardizing** the fiscal integrity of the **Medicare** system.**

See CMS, "The Hospital Manual", Sect. 301.2
See also 42 C.F.R. 489.20(g)

The extra revenues received by the providers for care caused by their own neglect constitute “**perverse payment incentives**” according to CMS chief Dr. Mark McClellan.*

These payments not only represent added revenue to the negligent caregivers, they also provide “**windfall profits**” to their insurance companies.

* See Testimony of Mark McClellan, Senate Finance Committee, May 2006:

<http://www.cms.hhs.gov/apps/media/press/testimony.asp?counter=1860>

TAXPAYERS ARE GETTING SOAKED

Taxpayers should not bear the cost of care that patients need due to injuries caused by their own caregivers. By law, these costs should be borne by the providers of the substandard care and their insurance carriers.

See 42 C.F.R. 489.53(a)(4)

MSP ACT

Congress passed the **Medicare Secondary Payer Act**, which gives private citizens the power to protect taxpayers. **Private citizens** are encouraged to **act as “private attorneys general”** to take legal action on behalf of Medicare to recover payments made by Medicare when other parties should have paid.

See 42 U.S.C. 1395y(b)(3)(A)

DAMAGES RECOVERABLE

The **damages** in these cases are **calculated at twice the amount** that healthcare providers and their insurance companies failed to pay.

See 42U.S.C. 1395y(b)(3)(A)

BASIS OF MSP ACTIONS

“NEVER” Events, include but are not limited to:

- Surgeries performed on the **wrong limb.**
- Surgeries performed on the **wrong patient.**
- **Foreign objects** left inside surgical patients.
- Preventable **falls** and injuries associated with falls.
- Preventable **pressure ulcers**, stage 3 and higher.
- Preventable **infections.**
- Preventable **dehydration** and **malnutrition.**

“NEVER EVENTS”

The health care industry itself has identified these same incidents as evidence of negligence by the health care provider, and as events that do not occur in the absence of medical negligence.

See National Quality Forum, “Serious Events in Healthcare”, May 9, 2006: <http://www.qualityforum.org/docs/safe-practices/txSafePracticesforWeb05-10-06.pdf>

BENEFITS OF MSP ACTIONS

- Inject needed **accountability** into the health care system.
- **Better quality care** for patients.
- **Lower costs** for medical care.
- **Improved solvency** for the Medicare system.

Patients win and so do the taxpayers.

MAXIM

The **Medicare** program **should not be billed** by health care providers **to cover the costs of** services caused by **their own negligence**. Such payments not only violate the Medicare Secondary Payer Act, but they also reward health care providers for harming Medicare beneficiaries. They may also give rise to other forms of liability.