

Elder Justice Coordinating Council
Remarks of Susan Carney Lynch, JD, DrPH, Senior Counsel for Elder Justice
United States Department of Justice, Civil Division, Elder Justice Initiative
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Good morning Chairwoman Barkoff and members of the Elder Justice Coordinating Council. I am Susan Lynch, Senior Counsel for Elder Justice at the United States Department of Justice, where for the past 23 years I have civilly prosecuted skilled nursing home chains, individual facilities, and owners and operators who provide grossly substandard care to their residents. I appreciate the opportunity to appear before you today to discuss the importance of nursing home enforcement and elder justice professional training at this critical time in our nation's history when many of our nursing home residents are not receiving the quality care that they desperately need and are not being treated with the basic human dignity that we all deserve. As a result, some of our mothers, fathers, sisters, and brothers in this nation's nursing homes are getting sicker, are being abused, neglected, and are even slipping into premature death.

In my role leading the Department's National Nursing Home Initiative, I have heard some tragic stories and have seen some gut-wrenching facts in the grossly substandard care cases that we investigate and prosecute. I want to be clear – we are not painting the nursing home industry with a broad brush and many nursing homes work hard to provide quality services to those entrusted to their care. But, I can tell you, members of the Council, that today, across this country, in urban, rural, and frontier communities, some nursing homes do not have adequate numbers of trained nursing staff to care for their residents, which includes enough staff to feed and turn and reposition vulnerable residents, do not have adequate nursing supplies to care for their residents, do not follow required infection control protocols in their facilities, do not keep their nursing homes clean and safe, and some nursing homes overuse antipsychotic medications in an effort to keep their residents compliant. Some of these same nursing homes continue to admit residents to their full census capacity despite knowing that they lack adequate staff and resources to care for these residents. With some of these poor-performing nursing homes, the nation watched in horror as the challenges of the COVID-19 pandemic quickly exacerbated poor quality of care conditions, with devastating consequences for our nation's vulnerable

residents. There were also devastating consequences for some nursing staff as they worked tirelessly and heroically through the pandemic all the while navigating impossible working conditions brought on by staffing and census choices made by owners and operators.

For over two decades, the Department of Justice has brought civil and criminal cases against the nation's largest nursing home chains, small regional chains, single facilities, and against nursing home CEOs and executives who provide grossly substandard care to their residents and commit criminal financial fraud. The Department has brought these entities and individuals to justice through its National Nursing Home Initiative, announced in March of 2020, and through the ongoing work of the Department's Elder Justice Initiative. The Department's Nursing Home Initiative coordinates and enhances civil and criminal efforts to pursue nursing homes that provide grossly substandard care to their residents and is focused on some of the worst nursing homes around the nation. The Initiative reflects the Department's larger strategy and commitment to protecting our nation's seniors through the work of multiple departmental components, including the Civil Division's Elder Justice Initiative, the Consumer Protection Branch, the Criminal Division, and the Civil Rights Division in conjunction with the United States Attorney's offices.

We have done this important work with the help of and in partnership with many federal, state, local, tribal, and non-governmental partners who include the Department of Health and Human Service ("HHS), Centers for Medicare and Medicaid Services ("CMS"), some of the agencies at the Council table today, the Medicaid Fraud Control Units, state and local prosecutors' offices, state Adult Protective Services agencies, state Long-Term Care Ombudsman programs, law enforcement, and emergency medical services nationwide, to name a few.

Through its Initiatives, across the United States Attorneys' offices, and with the help of its ninety-four Elder Justice Coordinators, the Department has dedicated prosecutors in every judicial district who are focused daily on protecting America's elders in nursing homes. I will share with this Council a few cases which highlight the important nursing home enforcement work that we are doing across the nation. Just last week, the Department's Elder Justice Initiative announced that it filed a civil False Claims Act case against American Health Foundation (AHF), its affiliates, and three affiliated nursing homes in Ohio and Pennsylvania. In its complaint, the United States alleged that three AHF nursing homes provided grossly substandard services that failed to meet required standards of care, such as by failing

to maintain adequate staffing, failing to follow infection control protocols, and by providing their residents with unnecessary medications, including antibiotic, antipsychotic, anti-anxiety and hypnotic drugs.

The United States' complaint also provides specific allegations of how this grossly substandard care harmed AHF's nursing home residents. For instance, the complaint alleged that one facility resident was admitted with a history of self-harm and was hospitalized after slashing his wrists while in the facility's care. Yet when this resident returned to the facility, nursing home staff again ignored warning signs and failed to provide this gentleman with desperately needed psychiatric services. Mere weeks after being readmitted to this AHF facility, this resident committed suicide by hanging himself from a bedsheet in one of the facility's shower rooms.

Last May, the Department's Elder Justice Initiative announced that it settled a civil False Claims Act case with Georgia-based SavaSeniorCare LLC and related entities for over 11.2 million based on allegations that Sava billed the Medicare program for rehabilitation therapy services that were not reasonable, necessary or skilled, and to resolve allegations that Sava billed the Medicare and Medicaid programs for grossly substandard skilled nursing services. This settlement resolved allegations that between 2008 and 2018, Sava knowingly submitted false claims for payment to Medicare and Medicaid for grossly substandard nursing services including, that Sava failed to have sufficient staffing in certain facilities, failed to follow appropriate pressure ulcer protocols, and failed to appropriately administer medications to some of the residents.

Given the particularly egregious nature of the resident harm at issue in some of these types of cases, nursing home defendants frequently enter into Quality of Care Corporate Integrity Agreements ("CIAs") with the HHS Office of Inspector General at the same time they settle their False Claims Act liability with the Department of Justice. For example, as part of the Sava settlement, Sava entered into a 5-year Quality of Care Corporate Integrity Agreement with HHS-OIG, where Sava is required to have a comprehensive compliance program with systems in place to address the quality of resident care including specific staffing provisions.

In the most egregious cases, the Department has and will pursue criminal prosecutions of nursing home owners and operators who commit financial fraud and/or provide grossly substandard care to their residents. In January of this year,

the U.S. Attorney's Office for the District of New Jersey and the Department's Tax Division charged Joseph Schwartz with failing to collect, truthfully account for, and pay over \$38 million in payroll taxes owed to the IRS on behalf of his employees as required by law. Schwartz owned and operated the New Jersey-based Skyline Management Group LLC and several related Skyline companies, which in turn owned and managed 95 health care and rehabilitation facilities operating in at least 11 states. If convicted, Schwartz faces a maximum penalty of five years in prison for each count of willful failure to collect and pay employment taxes, five years in prison for each count of tax evasion, and ten years in prison for each count of failure to file a benefit plan report.

And in February of this year, the United States Attorney's Office for the Western District of Pennsylvania indicted Susan Gilbert, the former administrator of a Mount Lebanon skilled nursing home on charges of conspiracy to defraud the United States, health care fraud, and obstruction of a federal audit. According to the indictment, between 2018-2020, Gilbert and co-conspirators deprived seniors of needed resident care by using inflated nursing hours, falsifying timecards and other schemes that they concealed with two sets of records. According to the indictment, Gilbert and/or other co-conspirators directed administrative and management-level nursing staff and other employees to "clock in" for shifts but not actually work those shifts and paid bonuses to staff if they clocked in as instructed. This alleged conduct put facility residents at risk by only providing a dangerously low level of nursing staff just before COVID began to surge across the country – resulting in paper compliance that left residents without sufficient staff to care for their basic needs.

The Department is committed not only to its work in nursing home enforcement but also to training elder justice professionals to prevent, identify, and report elder abuse in this nation's nursing homes. Through its programmatic efforts, the Department has trained federal and state prosecutors, law enforcement, emergency medical service providers, and nursing home staff in an effort to identify the red flags for suspected elder abuse in nursing homes, how to document this abuse, and where and how to report thru the most appropriate and effective channels.

In closing, the Department is actively engaged in bringing to justice those who provide grossly substandard care to our nation's vulnerable nursing home residents and we remain committed to using all appropriate tools and pathways to investigate, prosecute, and prevent abuse of our nation's elderly in nursing homes. We also remain committed to training elder justice professionals to prevent, identify, and

report elder abuse and neglect. As one government, we all have an obligation to ensure that the nation's most vulnerable receive quality care and enjoy quality of life during their nursing home stays, which for many residents, is at the end of their lives when they are most dependent on others for their most basic care needs. Ensuring that nursing homes meet care quality regulatory and physical plant requirements falls within the mission of many of us at the Council table today. At the Department, we look forward to working with each of you on the Council and your agency designees in service of our collective mission to combat elder abuse in our nation's nursing homes, at a time when the lessons of COVID-19, the urging of the Biden Administration, and the work of the National Academies are all pointing to the fact that our collective action is urgently needed. Now is the time to work together – we have the opportunity, and critically - we have the responsibility.