

The hidden victims of Trump's deregulatory agenda: Nursing home residents

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In December 2017, President Trump, standing proudly beside several massive stacks of papers that represented the federal government's expansive regulatory regime, boasted that his administration had removed more than 22 times as many regulations as it had added. He punctuated his point by literally cutting some red tape to a smattering of applause. Hokey as that was, Trump's deregulation message has been core to his political agenda. What are we deregulating? How are we doing it? Doesn't matter. Just cut, cut, cut!

But those reams of paper contain essential protections for vulnerable Americans. Among them: regulations designed to protect residents at nursing homes.

Nursing homes are highly regulated under federal law, but for decades, those rules were poorly enforced and few administrations made them a priority. President Barack Obama attempted to change that late in his tenure by crafting policies to put pressure on poorly managed facilities. In 2014, he issued policy guidelines that urged regulators to issue daily fines against nursing homes for infractions until those violations were remedied. By 2016, that approach applied to two-thirds of cases. He also issued a rule that would have barred facilities from requiring that disputes with residents be settled in private arbitrations that limit the companies' public exposure and allow the residences to resolve complaints in venues over which they have more control.

To no one's surprise, Trump rolled back these policies soon after entering office. The number of per-day fines plummeted. The ban on mandatory arbitration was blocked. Trump even delayed the enforcement of new health and safety requirements by 18 months, much to the delight of the nursing home industry.

"They were fighting it, and they got a lot of what they wanted," said Toby Edelman, a senior policy attorney and expert on nursing home regulation at the nonprofit Center for Medicare Advocacy.

The result? Less accountability for nursing homes that treat their residents poorly. The Kaiser Family Foundation recently published an analysis that found that under the Trump administration, the average fine levied against nursing homes that have endangered or injured residents dropped from a high of \$41,260 in 2016 to \$28,405 in the first quarter of 2018. That may not look like an enormous dip, but that average likely reflects a shift back toward levying one-off fines for violations.

This is important because elder care is a multibillion-dollar field, and nursing homes — especially large chain operations — have revenue in the millions of dollars. Small, one-off fines barely register in this context. The daily fines the Obama administration levied could rack up quickly, resulting in higher average fines. The lower average under Trump suggests that offenders are being spared the harshest penalties.

The Centers for Medicare & Medicaid Services, which is responsible for overseeing the industry, defends itself by arguing that it has issued more total penalties under Trump than Obama. But the Kaiser analysis found that the administration has issued fewer penalties in cases in which nursing homes put residents in immediate jeopardy of harm. And the fines CMS did issue averaged 18 percent less than the ones levied at the end of the Obama administration.

CMS's record looks even uglier when it comes to how it's regulating the worst of the worst in the industry — nursing homes known as "special focus facilities." These are the nursing homes cited for a pattern of serious infractions: residents falling; medication not getting to patients; staff

slapping residents for not cooperating with treatment; bed sores neglected for so long that they become gaping, bloody wounds.

Edelman has been closely tracking these nursing homes, especially those that the federal government classified as having “not improved” since they were first listed as special focus facilities. She has found that the Trump administration has largely pulled back its enforcement of them, issuing increasingly small fines even though the government continued to cite them for serious violations, according to her most recent analysis of CMS data in January. If we can’t even trust the administration to hold these facilities accountable, how can we trust it to properly regulate less seriously troubled nursing homes?

In light of these details, Trump’s boasts of cutting red tape don’t just look hokey; they look ugly. Certainly there are examples of government overreach in some areas, but the administration seems to be deregulating for the sake of deregulation.

For some industries, especially elder care, that will have real consequences. And as usual, those hurt the most will be those unable to advocate for themselves.

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