HEARING ON THE NATIONAL OMBUDSMAN'S 2000 REPORT TO CONGRESS AND THE REGULATORY FAIRNESS PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

WASHINGTON, DC, JUNE 15, 2000

Serial No. 106–65

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE
67–562 WASHINGTON : 2000

COMMITTEE ON SMALL BUSINESS

JAMES M. TALENT, Missouri, *Chairman*

LARRY COMBEST, Texas
JOEL HEFLEY, Colorado
DONALD A. MANZULLO, Illinois
ROSCOE G. BARTLETT, Maryland
FRANK A. LoBIONDO, New Jersey
SUE W. KELLY, New York
STEVEN J. CHABOT, Ohio
PHIL ENGLISH, Pennsylvania
DAVID M. McINTOSH, Indiana
RICK HILL, Montana
JOSEPH R. PITTS, Pennsylvania
JOHN E. SWEENEY, New York
PATRICK J. TOOMEY, Pennsylvania
JIM DeMINT, South Carolina
EDWARD PEASE, Indiana
JOHN THUNE, South Dakota
MARY BONO, California

NYDIA M. VELÁZQUEZ, New York
JUANITA MILLENDER-McDONALD, California
DANNY K. DAVIS, Illinois
CAROLYN McCARTHY, New York
BILL PASCRELL, New Jersey
RUBÉN HINOJOSA, Texas
DONNA M. CHRISTIAN-CHRISTENSEN, Virgin Islands
ROBERT A. BRADY, Pennsylvania
TOM UDALL, New Mexico
DENNIS MOORE, Kansas
STEPHANIE TUBBS JONES, Ohio
CHARLES A. GONZALEZ, Texas
DAVID D. PHELPS, Illinois
GRACE F. NAPOLITANO, California
BRIAN BAIRD, Washington
MARK UDALL, Colorado
SHELLEY BERKLEY, Nevada

HARRY KATRICHIS, *Chief Counsel*
MICHAEL DAY, *Minority Staff Director*

SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

SUE W. KELLY, New York, *Chairmwoman*

LARRY COMBEST, Texas
DAVID M. McINTOSH, Indiana
JOHN E. SWEENEY, New York
JOHN THUNE, South Dakota

BILL PASCRELL, New Jersey
ROBERT A. BRADY, Pennsylvania
DENNIS MOORE, Kansas

MEREDITH MATTY, *Professional Staff Member*

CONTENTS

	Page
Hearing held on June 15, 2000	1

WITNESSES

McDonald, Gail, Small Business and Agriculture Regulatory Ombudsman	3
Maust, Ann Parker, President, Research Dimensions	18
Coratolo, Giovanni, Director, The Small Business Council	21
Hexter, John, President, Hexter and Associates, Inc.	23
Lara, Scott, Director, Governmental Affairs Home Care Association of America	26

APPENDIX

Opening statements:	
Kelly, Hon. Sue	34
Pascrell, Hon. Bill	36
Prepared statements:	
McDonald, Gail	38
Maust, Ann Parker	46
Coratolo, Giovanni	54
Hexter, John	66
Lara, Scott	74
Additional Information:	
SBA Executive Summary, National Ombudsman's 2000 Report to Congress	94
SBA, National Ombudsman's 2000 Report to Congress	110
NFIB News Release	200
[1&2] Start of Care Assessment form	201

THE NATIONAL OMBUDSMAN'S 2000 REPORT TO CONGRESS AND THE REGULATORY FAIRNESS PROGRAM

THURSDAY, JUNE 15, 2000

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY REFORM AND
PAPERWORK REDUCTION,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to call, at 10:12 a.m., in room 2360, Rayburn House Office Building, Hon. Sue Kelly (chairman of the Subcommittee) presiding.

Chairwoman KELLY. Good morning, ladies and gentlemen. Welcome to today's Subcommittee hearing on the Regulatory Fairness Program, and the Small Business Ombudsman Report 2000 for Congress.

For too long, small business owners have been subjected to overzealous enforcement by regulators who at times seem more interested in levying fines than ensuring compliance with the law. As a former small business owner, I know personally the frustration that exists among small business owners that, despite every effort to be in compliance, they are still treated unfairly by their government.

The passage of the Small Business Regulatory Enforcement Act, SBREFA, four years ago restored some hope that this unfortunate reality might change. SBREFA established a Small Business and Agriculture Regulatory Enforcement Ombudsman at the Small Business Administration, and Regional Small Business Regulatory Fairness Boards in each of the SBA's 10 regions.

The ombudsman is charged with gathering and recording comments from small businesses in order to form an evaluation of each agency's enforcement performance. The fairness boards, each composed of five small business owners, provide an opportunity for small businesses to come together on a regional basis to assess the enforcement activities of various Federal regulatory agencies. The ombudsman, using information provided by the fairness boards, is required to compile the comments of small businesses and provide an annual evaluation, similar to a customer satisfaction rating, for different agencies and regions and offices. The goal of the rating is to see whether or not agencies and their personnel are treating small businesses more like customers than as potential criminals and adversaries.

Today we are going to hear from Gail McDonald, who is currently the Small Business Ombudsman. Since she is the new ombudsman this year, she issued a report evaluating a year that she was not the administrator of the program. Despite this fact, and because of the importance of the program for small businesses, I thought it was important to give Ms. McDonald an opportunity to represent and present this report formally to Congress, and to discuss her vision for the program.

We also must deal with the reality that this program was without an appointed ombudsman for about seven months, so we need to examine the impact this had on the program and the small business owners it attempts to serve. Moreover, while I know Ms. McDonald is new to the program, there are portions of her report that deserve closer scrutiny and it is crucial that we discuss the report today. I also think that the program needs continued monitoring and oversight to ensure that it is meeting the goals of Congress when we enacted SBREFA.

We will also hear testimony today from individuals from the small business community who are familiar with the Regulatory Fairness Program. They will discuss their views on how the program is working, as well as offer comments on how it might be improved in the future. Being treated fairly when regulatory enforcement takes place should be a fundamental right of every small business owner.

SBREFA gave us the framework to help achieve this goal. Progress has been made in reaching it, but perhaps we have reached a crossroads with the program and it is time to examine very specific aspects of the report, including the criteria for evaluating the agency performance, and to explore better ways of communicating poor agency response to small business to Congress.

More broadly, perhaps it is also the time to discuss the financial resources of the office, the program structure and its independence. It is the job of Congress, working with the small business community, to see that the program is meeting its worthwhile objectives.

We have a number of excellent witnesses with us this morning. I am looking forward to their testimony. I thank all of you for being here, and now I am going to turn to Mr. Pascrell for his opening statement. And following that, since we have just been called for a vote, we will have a 10-minute recess for us to go and vote, and we will return. Thank you.

Mr. PASCRELL. Isn't it great to have a recess right after you start? [Laughter.]

Thank you, Madam Chairlady. First I would like to begin by thanking you for your hard work in preparing these hearings in the Subcommittee. The issues that the chairlady has chosen are giving us beneficial opportunities for oversight of various Federal Government agencies and their interaction with small businesses. I know that the knowledge I have gained in these hearings has opened my eyes to some problems that remain in how these agencies deal with small businesses throughout the government.

The need for reduced burdens on small business is our top challenge. We continue by looking at an interesting office today which is designed to help small businesses deal with the bureaucracy. All of us believe that there is too much bureaucracy.

The office of the ombudsman is one that was an innovative idea back when it was proposed a few years ago, and is in a position that has much potential to serve small business interests nationwide. However, its work is showing the increased commitment toward having government and business work together to solve problems, as we steer away from a purely adversarial relationship.

I welcome the opportunity to learn more about what the ombudsman does, and more importantly, what it can do in the future. I did read. I did do my homework.

One area that is especially in need of greater effort on the part of the agencies is more equitable enforcement and compliance assistance. While the annual ombudsman report can play a critical role in identifying potential problems and proposing solutions, both the ombudsman and regulatory fairness boards are limited in their ability to effect real change because they lack any leverage with the agencies. If the ombudsman and the regulatory boards are to evolve into anything more than advocates for small business regulatory concerns with agencies, I think they should change.

I want to thank Ms. McDonald for joining us today to explain her vision for where the Office of Ombudsman is going, and possibly explain what we can do in Congress to assist you in that mission. I am interested to hear your thoughts on how more small businesses can make use of our office, and how we can make the agencies more receptive.

I look forward to today's testimony. One of the questions I am going to ask is, you presented us with this report after only being there for three months. What would you change? And we will come back to talk about that. Thank you.

Chairwoman KELLY. Thank you very much, Mr. Pascrell. We are going to adjourn now for 10 minutes. We will be back.

[Recess.]

Chairwoman KELLY. Thank you for waiting. Let's continue now with the testimony of Gail McDonald. As I said before, Ms. McDonald, we are very pleased to have you before the Committee and I really look forward to your testimony. Please proceed.

STATEMENT OF GAIL McDONALD, NATIONAL OMBUDSMAN FOR SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT, SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY HATEM H. EL-GABRI, SENIOR COUNSEL; AND JOHN T. GREINER, DIRECTOR, REGULATORY REVIEW

Ms. MCDONALD. Thank you. I am glad to be here, Chairwoman Kelly, and good morning, Congressman Pascrell. I appreciated your opening remarks. I know you both are very interested in this program, and indeed we have received assistance from you.

I am Gail McDonald, the Small Business and Agriculture Regulatory Enforcement Ombudsman, or Ombudswoman, if you prefer. I was appointed by SBA Administrator Aida Alvarez this past February. Although my official capacity began in the midst of finalizing this report, my 10 years' experience both in the Federal Government and working with small business in the transportation sector, allows me to address the findings of the report. Certainly my years in my own family's businesses have helped me appreciate firsthand the regulatory concerns of small business.

In my position I am ably assisted by 50 small business owners who make up the Regional Regulatory Fairness Boards, or we call them the RegFair Boards. I want to thank the members who were able to attend today, as well as those who could not. Each RegFair Board member has made a significant personal and professional sacrifice to serve, and has given us invaluable advice, program guidance, and outreach assistance. Together, we can offer this Subcommittee our plans and ideas for the future of the office.

I would like to recognize Elise McCullough from Louisiana and Vinh Cam from Connecticut, who are here today, and then you will be hearing from two other of our members on the next panel.

The year 2000 report to Congress, "Building Small Business-Agency Partnerships," is a thorough review of the efforts of this program. I would like to submit the executive summary for the record. Today I would like to talk about what we have done in the context of what we are doing.

The good news is, the tide is turning on a regulatory climate that has for too long plagued our country's small business owners. Step by step, our program and others are building bridges to change the way the Federal regulatory officials view small business compliance, and in some cases a change in the way small businesses view Federal regulations.

The 2000 report demonstrates that these partnerships have improved agency enforcement practices by strengthening small business feedback, but we still have much work to do. Based on the recommendations of small business, we have prioritized four goals for next year:

Encourage increased small business feedback; promote greater agency accountability; develop more small business-agency communication; and foster creative partnerships between small business and Federal regulatory agencies.

My appointment has brought about a change in the program. Administrator Alvarez recognized that one person should be dedicated to the position of National Ombudsman, and that person should be located at SBA headquarters so the program could be more visible within the administration.

In the four months I have served, I have reached out to small business owners, listening to their concerns and compliments, assisting them in resolving important regulatory issues. Perhaps most importantly, I think the Office of the National Ombudsman helps close the loop on Federal agency accountability by allowing me to report directly to you, the Members of Congress.

The tide is turning. Small businesses are beginning to see improvement in the regulatory enforcement and compliance environment. While few agencies achieve the highest ratings in our report, most are working to implement the annual recommendations to Congress and generally to improve their enforcement and compliance policies and practices. Those who aren't, certainly will hear from me.

Federal agencies no longer feel that they are the only ones concerned with environmental protection or worker safety. Together, small businesses and Federal agencies are learning to appreciate each other's contributions toward addressing these issues and building a strong, healthy economy.

Thank you again for inviting me today. I am looking forward to our joint efforts on behalf of this program.

[Ms. McDonald's statement may be found in appendix]

Chairwoman KELLY. Thank you very much, Ms. McDonald. We really appreciate having you here.

I have a couple of questions that I wonder about. You know, we can assist you, and we would like to work with you, because I think the voice of the small businesses of this Nation truly needs an ombudsman to do outreach, to listen to what they have, to the complaints and problems that small businesses have with the agencies, and they really need to have your support. But from reading your full testimony and your report, it seems to me that there is a couple of things.

In your opinion, do you think we ought to investigate further the agencies, for instance, that have received unsatisfactory ratings in the various categories. Do you think that you should be empowered to be able to do that kind of investigative research?

Ms. MCDONALD. I am very disturbed that the three agencies don't participate, and I think, although they appointed someone that we can call when things come up, I do think that there ought to be some way to force them to comply with the law. When I was an agency head, I certainly felt like I should comply, and I think it is a great cause for concern.

Chairwoman KELLY. Well, I know that many of the agencies that do comply, only partly comply. They marginally comply, and that I find disturbing also.

Ms. MCDONALD. You know, I think in just going back and reading through the reports as they build forward, that you are seeing progress. I think it is so much about bringing about a cultural change with a lot of people in the agencies, that it takes a while, and I believe we have been seeing improvements year by year, not everywhere, but we certainly work at that.

And I would say that the report to Congress is really a thing that the agencies spend a lot of time talking to us about. It sort of pulls together what they are doing and how they are doing it, and focuses our discussions very tightly. And they compete to get in the "best practices" sections, and I think that section helps them, because a lot of times they are looking for new ideas.

So I wish it were better, but it is just three and a half years old, and I think in that time there has been—you know, if you think of all the work Congress has done to change IRS and the sea change there, I mean the very organization of the whole agency has been changed, and when I work with the Taxpayer Advocate, I am just amazed at all the resources they have brought to bear on their small business issues, and that is an excellent thing. So I do see, you know, improvement around the government from say 1990, when I was in an agency where we just had one small effort going on.

Chairwoman KELLY. I am interested. You say they actually could compete, would compete, are competing to be in "best practices"?

Ms. MCDONALD. Right.

Chairwoman KELLY. Because if you look at what is at least my interpretation of your Table 3 on page 18 of your annual report, you know, I look at that "timeliness of initial agency response," for

instance, and you look at the enormous number—IRS, USDA, DOT, DOL, FCC, FDA, HUD, INS, none of those did very well. They actually received lower ratings. Now, I am interested that you would feel that they are competing to be in "best practices" when in fact it doesn't look that way to me from that table, if that table is accurate.

So I think maybe the question here then resolves to, is that report—and I am not holding you responsible, please understand, I know you have been there just a short period of time—but is that report accurate and detailed enough to do the requirement for the RegFair hearings and the appraisal forms to provide this comprehensive picture that we in Congress are really asking for.

Ms. MCDONALD. Sure. The Acting National Ombudsman last year was Hatem El-Gabri, who is still our senior counsel. He is here, and John Greiner, our program manager here, and they might speak to the criteria, because they fought that out on how you develop effective, objective criteria.

Chairwoman KELLY. Well, I think that is fine. If they are here, if they would like to come and sit at the table and respond to that question, by all means, please come up and identify yourself, and let's get into a discussion here, because I think this is important for our small businesses.

Mr. EL-GABRI. Good morning.

Chairwoman KELLY. Please pull the microphone close to you so we can all hear you, and identify yourself when you speak.

Mr. EL-GABRI. I am Hatem El-Gabri.

Chairwoman KELLY. I am sorry. Please pull that microphone closer to you.

Mr. EL-GABRI. I am Hatem El-Gabri, senior counsel, and I was Acting National Ombudsman when Peter Barca left July 2nd, until Ms. McDonald was appointed.

Chairwoman KELLY. I am still having real trouble hearing you. Is that microphone on?

Mr. EL-GABRI. Can you hear me now?

Chairwoman KELLY. I think that is a little better. Okay, people in the room can also hear. Yes, please speak directly into the microphone. You may have to share.

Mr. EL-GABRI. I am Hatem El-Gabri——

Chairwoman KELLY. Thank you.

Mr. EL-GABRI [continuing]. Senior counsel, and I was Acting National Ombudsman from July 2nd to the end of January, when Ms. McDonald was appointed.

Chairwoman KELLY. From July——

Mr. EL-GABRI. Second.

Chairwoman KELLY. Thank you. All right. You heard my question to Ms. McDonald about the agencies actually receiving, in the evaluation—if you have that report in front of you, turn to page 18.

Mr. EL-GABRI. Yes, I have it.

Chairwoman KELLY. Okay. On Table 3, the agencies, like—and I read out the list, beginning with IRS, USDA, DOT, et cetera—actually received lower ratings in the category of timeliness of the initial responses since the RegFair inception. And I want to know what you think, then, about whether or not, when Ms. McDonald testified that they are actually trying to compete to be better,

whether this is a fair indication, and does this indicate that the report is in fact accurate?

Mr. EL-GABRI. I think the "best practices" section is separate than the question of timeliness. Timeliness addresses their response to specific small business comments and how long does it take for them to send a response to us. The best practices are simply structural changes within the agency that different agencies have undertaken.

We thought it is important to have a "best practices" section for the sake of the agencies themselves, so one agency would know what other agencies are doing and have that dialogue going on, and to encourage them. The timeliness issue is something we have worked on, are consistently working on, and when agencies are late in submitting responses, we do have a dialogue with them, try to identify what the problem is and rectify it.

So the fact that they are not timely does not mean they are not competing for best practices. As I said, it is viewed as a different matter than making structural changes within the agencies, and we have seen that with a number of agencies.

Chairwoman KELLY. But are you saying that you have actually seen the agencies make structural changes as a result of your interest and the fact that they aren't timely and smiling?

Mr. EL-GABRI. Yes, ma'am. Yes, Congresswoman.

Chairwoman KELLY. What other changes have you seen them make as a result of what your actions have been?

Mr. EL-GABRI. The individuals they have appointed to respond to the timeliness issues, we have seen that over and over. We have seen it with HCFA where we have, because of the timeliness issue, it was an issue where they have brought it to high profile. In the case of that agency, a direct dialogue was undertaken with the chief of staff to make sure that we get responses to these comments in a timely fashion, and responsive responses, not simply boilerplate type of languages. These are the type of structure changes we have seen as to the issue of timeliness, the kind of individual who the comments will be sent to, and the kind of responses we will get back from the agencies.

Chairwoman KELLY. Mr. El-Gabri, do you think that this report is detailed enough to do the RegFair hearings and appraisal forms justice, in terms of providing us and Congress with a comprehensive picture of the agencies and what they are doing?

Mr. EL-GABRI. I believe it——

Chairwoman KELLY. I am deliberately asking you because you have been working with the agencies and you obviously know. You recognize also I didn't include HCFA on that list.

Mr. EL-GABRI. I understand. The same format that was used with this report is basically the same format that was used in the previous two reports. We simply felt at that time that that was responsive as to what is going on.

But as you are also aware, this is not the only thing that is available to Congress with what is going on. All the public hearings are on line and available to the Members of Congress. Members of Congress have been kind enough to attend these public hearings. So I don't think it is our position that any one document speaks as to what is going on with regard to the small business community.

Chairwoman KELLY. Well, on the other hand, you are charged with the responsibility of reporting back, in this document, accurate, detailed information to give us a pretty clear understanding of what these agencies are doing vis-a-vis the small businesses. And my reason for questioning, for this line of questioning, is that I am wondering how seriously the agencies are taking this charge of yours.

Mr. GREINER. Madam Chairlady, if I could——

Chairwoman KELLY. Please identify yourself.

Mr. GREINER. My name is John Greiner. I am, I guess, the Acting Program Manager and the Director of Regulatory Review. And I think if I could elaborate on a couple of points that Hatem El-Gabri made, on the timeliness alone, we get a lot of calls from agencies when they see our draft.

And as the National Ombudsman stated earlier, that draft report that Congress and the President thought should go out to the agencies so they could comment on it is a great vehicle to attract their attention. When they see their initial ratings, for instance, on the recommendations, based on the previous responses they provided us, we get a lot of agencies that are very concerned about their ratings, so I think they are clearly interested in getting the highest ratings possible.

On the timeliness issue in particular, a lot of agencies are working, even though I think you see the trend from '99 to 2000 was not a positive trend in terms of timeliness, a lot of agencies are working to improve their timeliness. The manner in which the response will come, and in a lot of cases they pull, if the small business chooses to disclose its identity to the agency because they want a high-level review of their particular circumstances, they actually pull the enforcement records. They talk to the officials and the supervisors involved, and so there is a fairly in-depth process.

We encourage agencies, when this in-depth process is being undertaken, to provide us at least an initial response within the 45-day time period, so that businesses know that they are working on it. And I think, I know for instance with EPA, with SEC, I recall specifically conversations with them, "What can we do when we have a very complex situation, to improve this rating?" And basically we tell them that it is important that you give us an update along the way; that we understand certainly in some cases these are on appeal, and so they won't actually be able to give us a final response for years.

So there is an interest. I can't say it is a level interest throughout every agency. We thought the timeliness of the initial response was perhaps the best indicator, again because some of these appeals take years, and so to say the final response is the one evaluated is a little unfair, or maybe it is a less accurate judgment than at least that initial response.

Another thing that we do in our office is, every 60 days we call these agencies if we don't have a response, and badger them basically. We tell them that we are going to continue to call them until they get us the response, and then we let the small businesses know that we are continuing to work on that.

So we are doing what we can to remind them. I think this report does focus a lot of attention within the agency, and I think they

are now learning that this timeliness rating is going to be a mainstay of one of the ratings we do, and that if they want to improve their ratings, they are going to have to improve, at least one of them is the timeliness.

The other point, I think just real briefly, is the issue of the evaluations. In 2000 we added new evaluations, and I think that is the continuing trend. As we get more sophisticated and we develop more feedback from small businesses and through the board members, the feedback they are providing us, we are able to provide the Members of Congress with more information and better evaluations.

Chairwoman KELLY. Thank you.

Mr. EL-GABRI. Madam Chairwoman.

Chairwoman KELLY. Yes?

Mr. EL-GABRI. If I may point to page 15 of the report, these are questions we send to the agencies in addition to the comments that we receive from small businesses. The agencies are required to answer some of these questions.

As you can tell, these are complex, elaborate questions, which might explain some of the timeliness issue. So the timeliness in the previous year I don't think is necessarily an accurate reflection of their effort in the year we evaluated, simply because of the type of questions we have been asking, simply for us to get a better sense of the small business climate within that agency.

Chairwoman KELLY. The point, though, I think of all of this really is, we need, we in Congress really need good and useful information. This Committee is going to take action with agencies. We can do that, but we have to be confident before we draft letters and begin to have a dialogue with agencies, that we are getting accurate information from the agencies.

And when Ms. McDonald testified, she said, well, they were competing in one area, but as I look at this chart on page 18, you see a number of agencies here who didn't bother to comment at all, and that raises the question in my mind that I presented. I wonder if all of these agencies actually have a liaison working with you, Ms. McDonald?

Ms. MCDONALD. Yes, they all do have a liaison working with us. Sometimes we ask for someone else. Sometimes we will go through an issue with them, as we once did at the Department of Agriculture, and found that we needed someone at a higher level who was indeed independent of the regulatory area we were looking into. And we have also been encouraging the Department of Agriculture, where their different agencies have issues with us, to appoint someone like an FSIS, and they have done that recently. But they have a full list, and I can submit it for the record if you would like.

Chairwoman KELLY. I would like that, please.

Ms. MCDONALD. All right.

Chairwoman KELLY. And I would like to know what agencies are not cooperating with you, because I think this Subcommittee has a duty to make sure that SBREFA is implemented fully, and to do that we have got to know who is cooperating with you and who isn't.

Ms. MCDONALD. All right.

Chairwoman KELLY. Because what you are doing needs to be supported, and you have asked, you have set as one of your goals that we would promote, that you would promote greater agency accountability. We in the small business community need that. We need to know, if you are going to be our ombudsman, that you are going to be there fighting for the small business people. And we need to know in Congress whether or not we need to tell the agencies that it is their duty, because of the mandates of SBREFA, it is their duty to cooperate and work with you so that you have the information you need in order to help small businesses when they have problems.

Ms. MCDONALD. Well, I would appreciate that. That of course is very, very helpful. But I will put this in the record.

Chairwoman KELLY. All right. Fine. And any further information you can give us about which agencies are and are not, especially the "are not" cooperating with you, we would like to have that as a part of the record.

Ms. MCDONALD. Yes. All right.

Chairwoman KELLY. I want to move on, because I just want to ask you if you think that we should appoint—every agency has a small and disadvantaged business utilization officer.

Ms. MCDONALD. Yes.

Chairwoman KELLY. Should we appoint an officer, a similar type of officer, created within the agency, for resolving the enforcement, the regulatory enforcement problems? Should we actually put someone in each agency to do that? Do you think that would be a good idea?

Ms. MCDONALD. Generally, I do think it would be a good idea, but I was speaking with the ombudsman at EPA, for example, and she was telling me that last year she received only 20 regulatory enforcement problems. She deals with a broader, you know, spectrum of issues. And so I am sure it varies agency by agency on how it could be most effective.

Chairwoman KELLY. Well, you said it was the EPA who said they only got 20?

Ms. MCDONALD. Yes, it was EPA. Twenty on regulatory enforcement, you know, just my piece of it. She had many other issues that she was working on. And they have had that office for quite a long time.

Chairwoman KELLY. I am not sure that is a very good measure, however. Put yourself in the position of being a small business person, wanting information, not sure if you have broken the law or not, dealing with the EPA, many of whose people decide that it is an "Ah, ha, gotcha" if you call them and say "Could you please give me some direction here?"

Quite honestly, I am not sure that is a good, a very good number, and I am not sure that is—that is why I am thinking that maybe we ought to think about asking the agencies to put someone in each agency to deal directly with the small businesses. where there is not going to be retaliation, where people—because most small businesses want to cooperate. You know that, or you wouldn't be sitting in the ombudsman's chair. And we need to have people understanding, because a lot of these rules and regulations are complicated.

Ms. MCDONALD. Right.

Chairwoman KELLY. And personally, as a small business owner, I know full well you haven't got time to sit down and read a whole bunch of Federal regulations, and all of the pages that they entail.

Ms. MCDONALD. Right.

Chairwoman KELLY. You do need to be able sometimes to pick up the phone, where you have got a finite area that you are not sure about, and ask somebody honestly. Can you give me some help here? I don't see that as happening right now for small businesses in government, in the way that we have this thing structured, and I would hope that you would consider that in the way we have been talking here.

I think we would have to have those people, though, report to the Inspector General, to avoid politics, because I think these offices tend to be very political sometimes, and we want to avoid that at all cost.

Ms. MCDONALD. Truly. You know, I have had good luck referring people to the Taxpayer Advocate at IRS. That office has been quite active and has——

Chairwoman KELLY. We have had a very big attitudinal change over there, which I am very glad to hear about. But yes, I mean, and that has been very much welcomed by the small business community, I believe.

But we need to get word about your program out. I think it lessens the fear, for small businesses to know that they have got someplace to go. I think we get, you know, we get complaints and requests for assistance. We get a lot of them, and when EPA said they get 20 a year, well, we get them over here on this side of the House at the rate of about 20 a month, so I know there is a little more interest out there.

In testimony that we are going to hear from someone else who is going to be appearing in the next panel, Mr. Hexter brings up a point that I think is very interesting. He talks about a lack of sufficient resources and insufficient authority to address specific issues and complaints. Are those two things that you feel you need support from our Committees on?

Ms. MCDONALD. Well, certainly every program director wants such things, but my role is to work with what we have. And when I visited with you before this meeting, you know, I knew because of your role with so many volunteer organizations, you could give us some nuts-and-bolts advice. Your suggestion that we go to the SCORE office is just an excellent one, and we certainly will do that.

But within my agency I certainly will be working on the 2002 budget, which is my first sort of shot at the apple to get us additional resources. I do think that our marketing efforts and so forth, while they are indeed volunteer-based, we want to do more because we want to get the word out so people can take advantage of their rights to regulatory fairness. I mean, it is a revolution, if you think about it, for small business people. So it is good news, and I am certainly impatient to get it out faster.

Chairwoman KELLY. We need it. I would also hope that you will put a big poster up in every post office in the Nation, if that is possible, because we need to get the word out as much as possible to

let people know. And I don't even know if that is possible or not, but——

Ms. MCDONALD. Well, we are working, still working on that suggestion you gave us. We are working on a box that would go, and we are doing—the post office wants to do a pilot project with us, and we will be doing that next year and then see how that works, and then we could expand that program.

Chairwoman KELLY. That is good, because small business needs all the help it can get. We are the engine driving this economy. We need to help.

You are okay with, you are working out what is happening with the post office?

Ms. MCDONALD. Yes, we are. We are doing a pilot project which will cost about $20,000.

It is not that much, you know, for the printing and so forth, and so we are working on that. And then once, if the program is indeed successful, we could do the whole country for about $100,000.

Chairwoman KELLY. Do you have a geographic area that you have decided on for the pilot project?

Ms. MCDONALD. I have forgotten which one they told us. They are doing a study to select it, Hatem tells me.

Chairwoman KELLY. How much money is the study costing?

Ms. MCDONALD. Oh, they are doing that. They are not asking for money on that.

Chairwoman KELLY. Just a question. If it is $20,000 of printing, I hope they are not spending $40,000 on a study.

Okay. Thank you. I have taken up well more than my time here. I am going to turn it over to Mr. Pascrell.

Mr. PASCRELL. Thank you, Madam Chairlady.

I think that the code of ethics that you put together for the board members is a good one and a solid one, to avoid conflicts of interest. I think that is something we need to pay very careful attention to, particularly in terms of loans and everything else in other agencies that we have to deal with.

I don't think it should be too hard, though, to find out who is cooperating and who is not. I mean, you have been in business for three years. Who is cooperating and who is not? And we need to know that, because if they are not cooperating, I think that we have a role here to play.

We are not just in existence, as I understand the ombudsman to be, we are not just in existence to have these agencies, these Federal agencies, produce more paperwork for you.

Ms. MCDONALD. Right.

Mr. PASCRELL. I mean, then we are defeating basically what—we want to reduce paperwork and regulations for the business person, but we don't want to increase paperwork for those Federal agencies that have the problem as well, same problem. So we are not here just to create more paperwork.

I noticed some on the first chart, those that weren't too quick to respond to comments, cleaned up their act. When they did respond, they did it well, like HCFA. We have a lot of complaints, a lot of problems with HCFA nowadays, and I am meeting with them to try to resolve them. But from what I see, it seems to me that they are trying to clean their act up in terms of when they do respond,

there is substance. That can't be said for DOD or Government Services. Why not?

Ms. MCDONALD. DOD has a letter, which we included, where they just don't feel that they are covered by the law. They take what I should not characterize, not being a lawyer, but they take a narrower view of the law than we do.

Hatem, would you like to speak to the DOD comment?

Mr. EL-GABRI. That is an issue that was raised in the previous hearing. There are a number of agencies who do not believe SBREFA covers them. GSA is one of them. Department of Defense is another.

Mr. PASCRELL. State Department?

Mr. EL-GABRI. State Department believes it is covered. They simply say their resources are very limited, so unless they know from Congress they should participate, the person that was assigned did not have the resources to be able to respond. But the main ones were the VA, GSA, and DOD.

The position the National Ombudsman has taken is, the definition of agencies covered is synonymous with the definition under FOIA, so as long as you are covered under FOIA, you are covered under SBREFA. That is the position we have taken, but to be honest, it is an intellectual disagreement that is up to Congress to decide. I mean, having letters go back and forth is not going to produce——

Mr. PASCRELL. The obligation to clear that problem up is on our shoulders. It shouldn't be on your shoulders. Because, very interesting, you are stating for the public record something that we think, but you are stating it for the public record, and that is that there are agencies who feel that they shouldn't even be affected by this. I find that to be unacceptable.

And that is why we have problems in procurement with small businesses, with the DOD and Government Services. It is intolerable. We have written letters. And that is why, I am not speaking for the Chairlady, but I think that is why she asked, "Do you need more teeth in what you do, to make sure that people understand that you are serious about it?"

I mean, these agencies aren't going to take you seriously because they think that the law was not written for them. Whatever gave them that idea, we might have to drag them in front of a panel here and ask them, and I think that is serious, very serious. We have had problems.

You know, one of the major things we tried to open up, in fact around the country, we have had meetings and hearings and forums on how small businesses can compete for business with the Federal Government. If parts of the Federal Government feel that they don't have to comply to what the Congress has passed, we have a very serious problem here on contracting and services, and I think we should bring that up, Madam Chairlady, and we should bring it to a head.

Ms. MCDONALD. I would like to add that we currently have an issue with the Department of Navy, and we just pursue it just like we would with any other agency, but we are—I am, I should say—largely jawboning. But we do have their attention, and I do think

we have clarified an issue for a small business owner. It is a patent dispute.

But this small business owner cannot fight Stanford University and the Navy in court and win, even though I have seen her data, I suspect she could, if she could afford to go into court, but of course she can't. So we have tried to help clarify the issue and get it to move on. And we are trying of course to encourage the Navy, as part of its program, and it has a large program trying to improve its contracting and procurement, and we are trying to say to them, at the same time, you know, "Don't run this woman out of business," which is what the court case would do.

Mr. PASCRELL. Let's take the example you just gave us. Do you work with the Office of Advocacy within the SBA?

Ms. MCDONALD. Yes. And Advocacy sent me this woman, the second day I was on the job.

Mr. PASCRELL. How is that working out?

Ms. MCDONALD. That works very well. In fact, we have just done a big issue where we went to EPA on a nitrates enforcement issue and got them to back off of some 600 business people they had given very short notice to, you know, of a kind of a requirement that no one had noticed. And Advocacy held a roundtable which we participated in, and Jere Glover and I followed up with a letter to EPA and worked with a large number of trade associations here in town who were involved. And some of the best compliers in terms of the toxic release inventory were involved in this, so we were gratified when they backed off.

Mr. PASCRELL. Are you getting many comments or complaints about those small businesses dealing with contracts with the Federal Government, particularly the Department of Defense, that they cannot get on a list to bid, they are not even accepted as bidders?

Ms. MCDONALD. I have not received those comments.

Mr. PASCRELL. Who would they go to? Would they go to the Office of Advocacy or you?

Ms. MCDONALD. No, they would go to us, wouldn't they, John? Have we gotten any in other years?

Mr. GREINER. Well, some of the comments we get on the Department of Defense and contracting issues generally do not directly apply to enforcement or compliance. And what we try to do, I mean, we want to be full service regardless of whether we have jurisdiction.

What we try to do is to work with the representatives in each agency and say, "We're not referring this to you in the role of regulatory fairness, but we're referring this to you in the role of a sister agency trying to make sure that the small business doesn't get lost in the cracks." And by and large, with every agency we have worked with, they are responsive. They do send us copies of their reviews that they send to the small business.

There are some DOD comments that dealt with enforcement activities. I am not aware of any DOD contract issues, apart—there was a bonding. There was one comment on a bonding issue for a trucker, and so you could say it dealt with contracting because if they weren't able to come up with this bond, they weren't going to get the contract. And we have had other DOD instances where

there are enforcement activities that are—I guess they touch on contracting issues.

Mr. PASCRELL. I looked at the '98 recommendations, you know, the period just before the '99 recommendations.

Ms. MCDONALD. Yes, right.

Mr. PASCRELL. It seems to me that those recommendations could be duplicated, some of them, for '99. "To adopt and follow policies and procedures that make it clear to small businesses that they will not face retaliation," you mentioned that before, raising concerns about compliance and enforcement.

Ms. MCDONALD. Right.

Mr. PASCRELL. How serious is that?

Ms. MCDONALD. Small business people always mention it to me. They are very serious about it, and so we have made it very clear that you can file without giving us your identity. We have an agreement with the IGs in every agency that they will be careful of people's identity.

I have been actually pleased at the number of people who have been willing to come forward and use their names and, you know, will stand up. I know my father, just in his experience with the FAA, would never have come forward and given his name.

Mr. PASCRELL. Well, I think that is one of the——

Ms. MCDONALD. So we work against that all the time.

Mr. PASCRELL. The chairlady discussed the promulgation of what your office is all about. If small businesses don't know about you, they can't take advantage of you, and they cannot come to you.

Ms. MCDONALD. Right.

Mr. PASCRELL. I think this is critical communication. Most small businesses don't even know you exist. How would they?

Ms. MCDONALD. Right.

Mr. PASCRELL. How would they?

Mr. GREINER. I guess one of the chief ways that the National Ombudsman's Office has worked to make sure small businesses know about us is that every agency, actually to some extent you can look at the previous reports, except the DOD has agreed to provide small businesses with notice of their rights to regulatory fairness when they take enforcement activity. So it is sort of, it is somewhat similar to a police officer reading you your Miranda rights when you are arrested.

It is a timely notice, and I think that that is—sometimes you get a lot of paperwork, you know, during an enforcement activity, so it is some notice. It may not be sufficient, and that is why we are now working with agencies to market it beyond just notifying them at the time of enforcement.

Mr. PASCRELL. You have a role to——

Chairwoman KELLY. Would the gentleman yield for one minute?

Mr. PASCRELL. Sure.

Chairwoman KELLY. I just want to ask what you think about including a posting of the rights of small businesses on the web sites of each of the agencies. What do you think about that?

Ms. MCDONALD. I think that would be excellent. I think some of them do that, you know, and reference our program that way as well.

Chairwoman KELLY. Why can't we ask them to do that?

Ms. MCDONALD. I can.

Chairwoman KELLY. You think you could ask them to do that?

Ms. MCDONALD. Oh, yes. Yes. Yes, we certainly could, and what you have done in the past, you know, mailing your constituents the card telling them about the program is a wonderful thing to do. And I think if you would help me reach out to new Members of Congress as they come in, tell them about the program and urge them to do this, I think that would be something that could help us get the word out. I think coming from a reliable source such as your Representative gives the program a lot more credibility, and so I would love to, as I say, use these cards a lot more.

Chairwoman KELLY. Thank you.

Mr. PASCRELL. Just one more question, that is all. You have been there for three months.

Ms. MCDONALD. Yes, sir.

Mr. PASCRELL. What would you change? Easy question.

Ms. MCDONALD. You know, I don't think there is anything to change. I wish I could learn faster and, you know, come up to speed faster, but I am pleased with many of the things we have done. We did get the report out and meet our deadline. You know, in a small program you are anxious about deadlines, and we are doing more within the agency to publicize the program through other SBA programs, and I can see that moving on.

Mr. PASCRELL. So you don't need more money and you don't need more teeth?

Ms. MCDONALD. Oh, we need everything. You know, every program needs more money and more teeth, but——

Mr. PASCRELL. Oh, I don't know about that.

Ms. MCDONALD [continuing]. But, you know, I am working certainly within the agency to ask for more resources. SBA has been generous in giving us printing and congressional representation and outreach opportunities that we wouldn't have if we were an independent program, and I am grateful, and I am following up on those things.

Mr. PASCRELL. Thank you.

Chairwoman KELLY. Ms. McDonald, I want to go to that independence question. You just raised it.

Ms. MCDONALD. Yes.

Chairwoman KELLY. Do you think that you might have more authority and be able to function better if you were an independent commission?

Ms. MCDONALD. Oh, my perspective on that isn't good. I think, you know, that we benefit from our place in SBA, and the administrative contacts help us with the agencies when things get, you know, tense. I mean, as we did with the HCFA situation, the administrator became involved in talking one-on-one with that administrator, so those things benefit us, too.

Chairwoman KELLY. One final question.

Ms. MCDONALD. Yes.

Chairwoman KELLY. Why do you think the President only asked for half a million dollars for your agency?

Ms. MCDONALD. You know, I wasn't here, and I don't know exactly. As I say, I will work on it, and SBA has made up more. They have given us 10 percent more this year, for example, to help us

out, and are looking for some people to detail. But when you take from one program, it is a problem for the program that loses. So, you know, I am not a good one to comment on that.

Chairwoman KELLY. Well, what about these other gentlemen at the table. They seem to have been there. Would they care to comment on that question? This seems to me to be one of the more important agencies for our Nation. It certainly is a very important agency for our small businesses. It seems to me also that because of the enormity of what small business means to this Nation, this Nation ought to be perhaps more financially committed to what you are doing to help our small businesses. Would either of you gentlemen care to comment on that?

Mr. EL-GABRI. Well, there has been discussion as to the annual report that you have and the resources SBA has devoted. We, during that hiatus between January and February, not only did we have the program continue as planned but I think we have done significant initiatives through the assistance of SBA, especially the chief of staff and the deputy general counsel and CLA.

Chairwoman KELLY. I am glad about that, but that is not going to the heart of my question, which is why do you think you have only been funded at such a low level?

Mr. GREINER. May I? I think one of the things that changed, Peter Barca was the regional administrator, and so some of the funding, the $500,000 that the program has been operating under, has in many regards been about a $1 million budget, with Peter Barca being paid out of the regional office, with our senior counsel and his paralegal. I mean, we have got a large portion of his time devoted to the program. We have had detailed employees from the district office for quite a while, and that has been very helpful.

So I think in many ways the program has benefited greatly from SBA monetarily. I mean, I think the benefit of having a full-time National Ombudsman outweighs the impact on our budget, but that does mean that for 2002 we definitely need to work with the administration to compensate for that impact.

Chairwoman KELLY. I would agree with you that we need to work with the administration to make sure that there is enough funding that you can do your job. I think a low budget figure like that indicates that there is no serious purpose behind it. I think that lack of serious purpose sends a very strong and not very positive message to our small businesses of this Nation.

So I would hope that we are able to get you some funding at an appropriate level so you can do your job, Ms. McDonald, because I think that you have, with your background and just having worked with you, I believe that you have the skill to negotiate well for our small businesses, but I want to make sure that we are able to empower you to do that job.

With that, I am going to thank you all for appearing and for speaking, and I now I am going to go to the second panel. Thank you.

Ms. MCDONALD. Thank you.

Mr. GREINER. Thank you.

Chairwoman KELLY. Good morning, and thank you very much for being patient. And, Ms. McDonald, I am glad you are staying here with us, because that indicates the strength of your commitment

to what we are trying to do here this morning, so I thank you very much for being here.

Our second panel has Dr. Ann Parker Maust. She is the president of Research Dimensions of Richmond, Virginia, and we welcome you, Dr. Maust.

Dr. MAUST. Thank you.

Chairwoman KELLY. Our next panelist is Mr. Giovanni Coratolo—I guess I got that right, I hope—director of the Small Business Council here in Washington. Our next witness is Mr. John Hexter. Mr. Hexter, I appreciate your comments, and picked up a few when I was reading your testimony. I am glad to have you here today. He is president of Hexter and Associates of Cleveland, Ohio. And our final panelist is Mr. Scott Lara. He is the Director of Governmental Affairs at the Home Care Association of America from Jacksonville, Florida.

Welcome, all of you. We welcome your testimony here today, and let's begin with you, Dr. Maust.

STATEMENT OF ANN PARKER MAUST, PRESIDENT, RESEARCH DIMENSIONS, RICHMOND, VIRGINIA

Dr. MAUST. Thank you, Chairwoman Kelly, Congressman Pascrell, and members of the Subcommittee. I am pleased to be here today to provide my perspectives on the Regulatory Fairness Program and the National Ombudsman's 2000 Report to Congress. I currently serve as vice chair of the Small Business Regulatory Enforcement Fairness Board for the South Atlantic States.

I am also a member of the Virginia State Leadership Council for the National Federation of Independent Business, and served as Chair of the '95 Virginia delegation to the White House Conference on Small Business. Our Virginia delegation was very active in pushing for regulatory reform for small businesses.

We have been active supporters of SBREFA. We feel this legislation holds much hope for our small business community, not only in terms of better communication with Federal agencies on enforcement and compliance issues but also as an avenue to voice concerns and have those concerns thoughtfully addressed before the various Federal agencies.

We do feel, however, that we have lost much momentum this year, as structural changes from the top of the SBREFA infrastructure have funneled down through the system, with small businesses in our State ultimately being the loser. In the face of these changes, however, we applaud the efforts of the new National Ombudsman and her staff in preparing a well-documented and thorough annual report, produced in a timely fashion under very difficult circumstances, reflecting the best input to date from the small business community.

From my perspective on the South Atlantic RegFair Board, ensuring the success of this program hinges on the careful nurturing and development of a strong national infrastructure to provide support, guidance and assistance to the network of RegFair Boards. As you know, small business owners are critical partners in this structure, and this partnership is what helps with the implementation of SBREFA and provides it so much of its unique strength.

We must remember, however, that small business owners are just that. They each own a business that requires considerable demands on their time, and the time that they devote to this program, while willingly given, must be backed up with strong staff support from the top in order to ensure viability of the entire structure. When such support begins to waiver, the entire system is jeopardized. This is indeed what I believe began to happen this year, first with the departure of the National Ombudsman, then followed by the significant time delay in the reappointment of a new ombudsman.

Let me illustrate for the Subcommittee. On March the 4th, '98, I testified before this Subcommittee that I believe State industry trade associations are a critical vehicle in the information dissemination process to the grassroots small business owner. I noted that we had a huge job yet to do in educating the leadership of these State associations about SBREFA, and until the leadership understands the value and power of this act for their respective memberships, the process of information dissemination will be stymied.

Further, my testimony indicated that outreach to the leadership is needed, not simply to request that they put a letter about SBREFA into their respective newsletters, but to inform and counsel about the value of this piece of legislation for their membership. Such outreach will allow association leaders to link the opportunities under SBREFA with the regulatory issues brought before them by their members, and to frame these opportunities in language and options more familiar to the small business member.

The importance of such outreach to State associations, I believe, rests with the fact that we can't assume that the results of meetings with national trade associations will automatically filter down to the State leadership. As such, while I think all information dissemination vehicles are important, and that programs like Association of the Month are a vital component in this initiative, particularly for national associations that don't have State affiliates, I still feel that we have much more intensive outreach that is needed at the State level.

I would like to share with you what progress I believe has been made in this type of outreach initiative since the March '98 hearing, and how important the national infrastructure is in terms of ensuring that small businesses at the grassroots are informed of their rights under SBREFA. Please reference the outreach section of the National Ombudsman's 2000 Report to Congress, as this section indicates the Office of the National Ombudsman and the RegFair Boards held Business Leader Roundtable Discussion Groups across the country to build stronger relationships with small business trade associations at the State and local levels.

As the report indicates, five roundtables were held between January and June of '99. Suddenly, in June '99, this series of roundtables comes to a halt, and to this date, to my knowledge, no others have been held, although it is my understanding that an additional series is planned for the future. What is significant about the June '99 date? It is at this time that the announcement was made that the National Ombudsman was leaving his office to take another position.

In Virginia, in the months leading up to the departure of Mr. Barca, we were making considerable progress. We were building important connections within the wider business community, and had begun to obtain the support of several very influential organizations within our State for this initiative.

In September '98 we had held a very successful public hearing with testimony from a diverse group of small businesses. We were on a momentum path. Our efforts were gathering steam, and more and more small business owners and their organizations were becoming aware of SBREFA, the RegFair Boards, and the mechanism for registering their concerns under the Act. In addition, our RegFair Board was becoming much more cohesive and knowledgeable.

As part of this momentum, we were scheduled to hold a Business Leader Roundtable in July of '99. Working with the SBA district office and the State office of the NFIB, we had already begun informally notifying some of our State associations about this meeting. Abruptly, it was cancelled, not because of lack of interest but because of the other demands engendered by changes at the top.

In short, we have yet to gain the momentum in Virginia that was lost at this time approximately a year ago. I believe that this momentum could have been regained if there had been a shorter period of time between Mr. Barca's departure and the announcement of a successor, or certainly if the work had been allowed to continue under the able hands of the staff still in place to execute the program.

In summary, I still believe that these roundtables are needed, and I assure the National Ombudsman that we will do all we can in Virginia to continue to support this initiative. We feel that these roundtables can play a vital role in strengthening the entire SBREFA process.

By building strong, viable linkages with business leaders in the various States, an automatic feeder network or system is put into place, not only for informing the small business owner, the ultimate target of the Act, but also strengthening the public hearing process. In short, with better informed State leadership, more productive input into the public hearing process can be assured, thus hopefully ensuring that realistic and critical views of the various industry sectors are fed into the public hearing process.

Chairwoman Kelly and members of the Subcommittee, let's strengthen the SBREFA network, not only by ensuring continuation of these roundtables, but also by ensuring that these roundtables are linked to a public hearing process in a thoughtful, analytical manner. Let's also do whatever we can to ensure the creation of a strong national infrastructure. This does cost resources.

I believe that the substantive information resulting from the small business community through this process will be better and more representative than is currently obtained through regional public hearings, which are costly for small businesses to attend and often reflect the testimony of professionals randomly pulled into the process rather than thoughtfully planned and provided for.

Thank you for your time and thoughtful consideration of the testimony.

[Dr. Maust's statement may be found in appendix.]

Chairwoman KELLY. Thank you so much, Dr. Maust. As usual, very concise and very precise. Thank you for speaking.

Next we will turn to Mr. Coratolo.

STATEMENT OF GIOVANNI CORATOLO, DIRECTOR OF SMALL BUSINESS POLICY, U.S. CHAMBER OF COMMERCE, WASHINGTON, D.C.

Mr. CORATOLO. Thank you, Chairwoman Kelly, and thank you, Congressman Pascrell. I am Giovanni Coratolo, Director of Small Business Policy for the U.S. Chamber of Commerce. We applaud this Subcommittee's dedication and interest in reducing the regulatory burdens faced by the Nation's 24 million small businesses.

I am here today representing the Chamber's small business membership. These are business owners who are faced with the daily challenges of complying with thousands of pages of regulations that are generated by almost 40 government agencies on a yearly basis, and that is just what is produced at the Federal level. If you measure the cumulative effect of all Federal, State and local regulations on the small business owner, the prodigious task of compliance becomes overwhelming.

Typically, the small business owner is the human resource director, the maintenance engineer, the industrial hygienist, as well as serving in many other positions that demand in-depth understanding and meticulous implementation of a plethora of rules and regulations. The small business owner is faced with the presumption of knowledge of an array of confusing and sometimes conflicting mandates from the regulators, with heavy penalties for noncompliance.

Small businesses bear a disproportionate regulatory burden, as we all know. According to the report by the Small Business Administration, the total cost of Federal regulations per employee was 50 percent greater for firms with less than 20 employees than for firms with more than 500 employees.

There is not compelling evidence that the disproportionate burden has at all subsided. Just this year alone, OSHA, in its proposed ergonomics final rule, will likely add hundreds of pages of regulatory burden with vague guidelines on implementation and compliance. Conservative estimated cost to small business, $45 billion.

Now four years old, the Regulatory Fairness Program, RegFair, offers an incentive for agencies to change their culture and treat small businesses as partners. The primary mission of the program is to encourage a regulatory enforcement environment that is fair to small business. It is the current intent of the National Ombudsman to engender greater compliance by more consultation, communication, partnerships, accountability and feedback on behalf of the small business and Federal agency enforcement communities.

The framework of this program remains unchanged since its inception. Coordinated and supervised by the statutory ombudsman for the Small Business Administration, the boards' activities include soliciting and gathering subjective views and comments from small businesses about their interactions with Federal agencies in their compliance efforts.

In order to encourage agencies to make changes, the RegFair program required the National Ombudsman to file an annual re-

port to Congress on agency evaluation of enforcement and compliance activities. The annual report provides information and a rating system that praises those agencies that have successfully implemented cultural change.

Agencies that have resisted cultural change that would have allowed greater sensitivity to regulatory enforcement concerns of small businesses are singled out in the report for criticism. Maybe this is an area we can look at to find a little more teeth, and to subjecting agencies to comply better.

We applaud the National Ombudsman's efforts to partner with organizations like the U.S. Chamber of Commerce to provide outreach and marketing of the program and the hearings. Based on materials provided to us by the ombudsman's office, we have recently developed and have widely disseminated to our members a user-friendly reference brochure, and you will see an attachment there, and it is titled, "When the government comes knocking on your door, know your rights to regulatory fairness." We also have just recently implemented an e-mail notice to a small but growing sample database of our membership that will announce each upcoming regulatory fairness hearing in the regions and encourage their participation.

Even though we feel the overall program has been beneficial for small businesses, it has been only incremental in changing the culture of the Federal agencies' compliance activities from the "gotcha" mentality to the consultant or compliance advisor. If you look at the back of the attachment, you will notice the Chamber listed the Federal organizations with their respective regulatory help phone numbers, agency ombudsman contacts, agency web site home pages, and small business help links.

Some agencies have attempted to provide a wealth of web resources directed to small business, in order to provide information on regulatory compliance. You will also note that agencies like the Department of Agriculture, the Department of Transportation, and Health Care Financing Administration provide little or no targeted help for the small business community via their web sites.

Another concern of the program is the lack of broad-based small business participation. We attribute this to the following: Even with the most creative efforts to market the program, it is not widely known or understood within the business community. Small business owners feel they are no match against the resources of the Federal agency. Small business owners fear retribution on behalf of the Federal agency, and faced with the knowledge that the panel can only report their findings to Congress and not change the outcome of a compliance disposition, small business owners feel voicing their grievance, regardless of its merits, is not a good use of their valuable time.

As far as our recommendations, we feel the program can best be served by stepping back and viewing the totality of SBREFA in the regulatory process. The two departments within SBA that are responsible for carrying out the responsibilities of the small business community under SBREFA are the Office of Advocacy and the Office of the National Ombudsman.

Each office must engage in duplicative and simultaneous efforts in their mission to encourage Federal agencies to invoke a friend-

lier environment for small business to comply with the plethora of Federal regulation. Each office must establish outreach into the small business community in order to achieve their prospective objectives.

The Office of Advocacy needs feedback from small business owners in the early stages of rulemaking to determine what impact these rules will have, and if there are alternative ways of achieving the same agency objectives while mitigating their impact on small business. The National Ombudsman needs the same small business outreach in order to fulfill the objectives of her program. Each office must deal with high level contacts within Federal agencies to act as liaisons for the small business community.

We strongly feel the interests of the small business community would best be served by combining the RegFair Program under the Office of Advocacy's General Council and having one coordinated force to administer the rights that SBREFA has created. In this time of budget constraints, splintering the effectiveness of the full potential of SBREFA by having two programs does not maximize the potency and effectiveness that could be accomplished by unifying them under the guidance and direction of one office.

Furthermore, we feel that the combined overall budget of both programs should be a line item designation in the SBA budget. This would provide more independence from external pressures that adversely affect sensitive decisions that must be made on behalf of small business regulatory reform. Even though the funding for the SBA has increased over the last several years, the portion allocated to Advocacy has decreased and the portion attributed to the RegFair Program has remained constant. There should be a reallocation of funding within the SBA budget to fully fund both programs as a line item.

The Chamber appreciates the opportunity to comment on this important program for small business. We especially applaud the interest shown by Congress and this Subcommittee through hearings such as this, that clearly signal that Congress will do all that it can do to make sure the law works as you intended it to, and so that small business will be the beneficiaries.

Thank you, Chairwoman. Thank you, Congressman Pascrell.

[Mr. Coratolo's statement may be found in appendix]

Chairwoman KELLY. Thank you very much, Mr. Coratolo. I let you run over because I was watching your testimony, but if it is possible, we really would like to adhere to that 5-minute rule.

Mr. Hexter, we would like to hear from you next.

STATEMENT OF JOHN HEXTER, PRESIDENT, HEXTER AND ASSOCIATES, INC., CLEVELAND, OHIO

Mr. HEXTER. I think he covered a couple of my points, so I can cut them out.

Madam Chairwoman, Congressman Pascrell, thank you for allowing me to testify today. My name is John Hexter, and I am the chairman of National Small Business United. I have the opportunity and pleasure, in addition, to serve as a member of the Region V Regulatory Fairness Board since its inception.

Today's hearing regarding the Regulatory Fairness Program is critically important to the future of the small business community.

It has been over four years now since Congress passed, without dissent, and the President signed into law, SBREFA. Now, NSBU worked for this passage, and it was a highly important item at the White House Conference on Small Business in 1995, and we consider it one of our greatest successes that in the last few years we have added teeth to the Regulatory Flex Act, 1980.

We have previously mentioned the impact of regulation on enterprises with fewer than 20 employees, and that represents the vast majority of NSBU's 65,000 members. No matter the perspective, the report from the SBA found that the total costs of Federal regulation are generally 90 percent higher for small companies than they are for large companies.

With 30 more hearings now behind us, I think it is a good time to assess the success of that program and to suggest ways that this effort can be improved. Understandably impatient with the bureaucracy and anxious to provide results and relief, we must view the program as a mixed success. We see great potential, to date largely unfulfilled, to make SBREFA the tool that Congress and the small business community envisioned.

The problems we see stem essentially from two glaring shortcomings in the current program: one, a lack of sufficient resources; and, two, insufficient authority to address specific issues and complaints.

Small businesses are mostly unaware—we have talked about this—that there is a mechanism to address their regulatory concerns. Information about board hearings, the kinds of issues that are being raised, and the relief that is possible, needs to be more widely circulated. I don't have to beat up on that.

There is a great deal of apprehension in the small business community about making our disaffection with the Federal Government known. A chilling effect does exist. Small businesses are concerned that any number of negative consequences may follow if we take on a large government agency in a public forum. Retribution is serious, real, and a legitimate concern. Small business owners are uncomfortable about sharing business information with Federal agencies. You have pointed this out already. We must work to find a solution to that issue.

Returning again to the issue of impatience, entrepreneurial impatience I believe is the largest inhibitor of small business participation in the Regulatory Fairness Board process, because it has to do with results. That is, from a small business perspective, can my participation make my problem go away in the relative short term? Because I will be out of business in the long term.

The answer, in most cases, I am afraid is no. How can a small business owner justify traveling hours to an out-of-town hearing, or even writing an extensive letter to an organization that is only statutorily sanctioned to gather comments and issue a general report sometime next year? It is time, I believe, that we give another look at the law in this regard. Small businesses need to be assured that someone in this process has the authority to act in the most egregious and pressing cases. I urge the Committee to consider initiating this discussion.

Further, the Office of the Ombudsman is crippled by dramatic underfunding. In order to achieve the objectives Congress unani-

mously voted, the budget must be increased markedly. A handful of staff people cannot possibly hope to both promote the program and meaningfully address the regulatory enforcement issues encountered by millions of small businesses nationally, especially if, as we recommend, the underlying statute is changed to enhance the authority of the ombudsman. The resources of the office will be doubly insufficient.

The dangers of continuing along the current path are substantial to small business. Because of the lack of resources for outreach and the lack of authority to actually address real problems, small businesses are not coming to the ombudsman or fairness boards in great numbers. We are already seeing Federal agencies and others pointing out those low response rates, suggesting, therefore, that small business regulatory concerns are overblown. Allowing SBREFA to limp along, as it currently is, undermines the cause of small business regulatory fairness rather than promotes it.

While there are many positive aspects to the current and previous annual National Ombudsman's Reports, the reports have not measured up to our expectations. The Ombudsman's Reports should applaud all efforts to reduce the burden of regulation on small business, but I believe that picture is not quite as bright as the reports may lead some to believe.

NSBU works with Federal agencies regularly. We know the individuals at EPA, OSHA, and the IRS who are doing their very best for small business. These individuals are lonely and too few in number. The reason they are lonely is because their actions are not embraced and fully supported by the rest of the agency. We are talking about changing the culture. No matter the quality of individual or the quality of a single pro-small business program, we have not overcome this regulatory culture. The Ombudsman's Report must not shy away from the tough criticism of agencies when necessary.

The Fairness Program is still a work in progress, but a very important one that must be accelerated and strengthened to become truly effective for small business. The program needs more resources; it needs more authority. We cannot let this experiment falter.

Let me conclude with praise and support for the efforts made by my fellow volunteers who make up the Regulatory Boards, and I also want to recognize the efforts of a number of excellent staff who have shown great dedication and perseverance to keep the program moving forward despite its lack of resources. On behalf of NSBU, I would like to thank you, Chairwoman Kelly, Congressman Pascrell, and the entire Committee for allowing me this opportunity to testify.

[Mr. Hexter's statement may be found in appendix]

Chairwoman KELLY. Thank you very much, Mr. Hexter. I, too, really want to go on record as lauding and very appreciative of the people who take their time out of their business to sit at the roundtables and try to help us in small business get our feelings and our information out their and known, and work with the agencies. That is a very tough job to do, and it is one that we need to have people do, and I am glad there are people willing to do it.

With that, let's go on to you, Mr. Lara.

STATEMENT OF SCOTT LARA, DIRECTOR, GOVERNMENTAL AFFAIRS, HOME CARE ASSOCIATION OF AMERICA, JACKSONVILLE, FLORIDA

Mr. LARA. Good morning, Chairwoman Kelly, Representative Pascrell, and esteemed members of the Subcommittee. My name is Scott Lara, and I am the Director of Governmental Affairs for the Home Care Association of America. HCAA represents over 250 locally owned and operated home health agencies across the United States.

I deeply appreciate the opportunity to testify before you today regarding the Small Business Administration Regulatory Fairness Program and its benefit to America's small business men and women. I would first like to commend you, Chairwoman Kelly, for holding this hearing. It is important for you and for members of the Subcommittee to know the importance of the Regulatory Fairness Program.

Under the leadership of former ombudsman Peter Barca, and now Gail McDonald, the Regulatory Fairness Program has provided the opportunity for small business men and women to voice their concerns over the excessive undue paperwork burdens and about overzealous and unfair enforcement actions by Federal agencies.

Many of HCAA's members, who are small business men and women who own home health agencies, have taken the opportunity to testify before the Regional Fairness Boards throughout the country. Without the Regional Fairness Boards, there would be no avenue for them to comment about the excessive regulations and paperwork requirements that have been placed on the home health industry by the Health Care Financing Administration, HCFA. I have personally taken the opportunity to testify before the Regional Fairness Boards, most recently in Houston in April; and in Nashville, that was in 1998.

I would first like to discuss two of the main comments made to the Regional Fairness Boards from home health agency owners: first, the Outcome and Assessment Information Set, OASIS; HCFA's failure to protect patient choice. And hopefully in the follow-up I can discuss the 50–50 payment method.

The first issue is the OASIS information, which consists of hundreds of questions, over 50 pages of paper comprising several data collection forms that home health nurses are required to complete on each home health patient. It takes approximately three hours for a home health nurse to complete the Start of Care form alone. Now, I have included the OASIS forms with my testimony, and as an example of the amount of paperwork that is required, allow me briefly to demonstrate the amount of the OASIS forms.

Chairwoman KELLY. It needs to be shown as a part of the record that this form is unrolling from the witness table all the way to the back of the room and beyond. It looks as though it might go all the way across the bridge to Arlington.

Mr. LARA. So, as I said, Madam Chairwoman——

Chairwoman KELLY. Excuse me, Mr. Lara, but I can't believe the length of this form. We have now wrapped this form around the room, and it is continuing on. That needs to be a matter of record, absolutely.

Mr. LARA. Thank you, Chairwoman.

Chairwoman KELLY. Thank you, Mr. Lara.

Mr. LARA. And I would request three minutes be restored to my time. [Laughter.]

Chairwoman KELLY. We will see about that.

Mr. LARA. Thank you. In consideration of time, please allow me to present only two examples of the many unnecessary and improper questions in that OASIS form that HCFA is mandating home health agency nurses to ask our Nation's Medicare beneficiaries.

First, a life expectancy question: A home health nurse is forced to ask or to observe if the patient's life expectancy is greater than or less than six months. Secondly, the behaviors demonstrated at least once a week, and I am paraphrasing these. You can refer to my written testimony: Either having memory deficit; impaired decisionmaking; verbal disruption, which would include yelling, threatening, excessive profanity, sexual references; physical aggression; disruptive or infantile behavior; delusional; or none of the above.

Now, clearly some paperwork is needed when treating Medicare beneficiaries, but the OASIS data collection effort is a result of HCFA's overzealous attempt to collect highly personal information which is not relevant to patient care, but instead is targeting to make home health nurses part of the Census Bureau. Now, how can a nurse or any health care professional determine how long a patient will live?

Besides being unethical and overly burdensome, HCFA is now reimbursing home health agencies only $10 for each OASIS data set that the home agency collects. This is a far greater cost than just $10 to collect this information. Now, equally important is that many good nurses who should be in the industry have opted not to serve because they became a nurse to take care of patients, not to become a spy or a paperwork pusher.

Now, the second issue is regarding the unethical referral processes by hospitals, which have resulted in denial of patient choice as mandated by the BBA of '97. By way of background, the BBA of '97 sought to prevent hospitals from denying patient choice by systematically downstreaming patients into their own hospital-owned home health agencies. The BBA of '97 mandated two things: first, that hospitals disclose their financial interest to patients; and, secondly, that hospitals provide a list of home health agencies in the community to patients being discharged from the hospital who will require doctor-certified home health services.

We have found that many hospitals are openly violating the intent of Congress, and in fact are further denying patient choice by placing their hospital-owned agency frequently at the top of the list; placing their hospital-owned agency in bold, and large font, while placing the locally-owned and operated home health agency in non-bold, lower type font; stating that their agency is fully licensed and certified by Medicare, while implying that the locally-owned agencies are not; stating that the hospital-owned agency is accredited, implying that the locally-owned agencies are not; and stating that they can only guarantee the quality of the services you will receive by the hospital-owned home health agency, and cannot

guarantee or certify the quality of other home health agencies on the list.

This coercion tactic at the patient's most vulnerable moment places doubt in the patient's mind about the quality of care provided by the locally-owned and operated home health agencies. Hospital discharge planners are not informing the patient of what agencies are in the community and which one that the doctor recommends regarding home health care.

In summary, hospitals are denying patient choice by using the patient notification as a blatant marketing tool. Hospitals are improperly misleading their patients by stating they cannot guarantee any care except theirs, and then conveniently refusing to tell the patient whom their doctor recommends and feels which agency is best qualified to provide the care they need.

Our recommendations: HCAA urges this Subcommittee to hold a hearing this year specifically about the overzealous regulations and burdensome paperwork requirements that HCFA is placing on home health agencies. HCFA Administrator Nancy-Ann Min Deparle should be asked about placing unrealistic burdens on home health agencies without reimbursing those agencies for completing that paperwork.

HCAA urges the Subcommittee to continue their support of the Regulatory Fairness Program. Without this important program, there would not be a vehicle to voice concerns about burdensome regulations and paperwork such as the OASIS data collection effort.

HCAA requests that this Subcommittee take the lead by crafting legislation to enforce the provision of the BBA of '97 regarding hospital self-referrals; providing specific language on the notification to patients which specifically outlaws hospital marketing, propaganda, and horn-blowing on the services of their hospital-owned agency, and it should be on one page; and mandating that the patient be informed of their doctor's recommendation for a home care provider, and this physician designation should also be on the same page. We would recommend that legislation state that those hospitals who are found in violation of denying patient choice would lose their Medicare provider number.

In closing, HCAA deeply appreciates the opportunity to testify before you today. We applaud Ombudsman McDonald, Mr. Jere Glover, John Greiner, and the entire staff of the SBA for their leadership and commitment to our Nation's small businesses. We also applaud this Subcommittee and you, Chairwoman Kelly, for conducting this hearing today. Your commitment to the small business men and women of America is a strong sign that Congress recognizes and is willing to deal with Federal agencies who are clearly abusing their power.

I have included with my testimony the October 15, 1999 Heritage Foundation Lecture No. 646 that talks about the OASIS data collection effort. Thank you. I appreciate this opportunity.

[Mr. Lara's statement may be found in appendix]

Chairwoman KELLY. Thank you very much, Mr. LARA. I am beginning to wonder if you talked to my husband before you conducted your testimony, because my husband, who is in a totally unrelated business, also has to fill out a lot of forms. And he keeps

scratching his head and saying to me, "Sue, why do I have to fill these forms out? Who is getting this information, and why? It takes me hours to fill these forms out about my employees, and I'm not even sure my employees know that I have to divulge this information to the Federal Government."

Good question, Mr. LARA. I don't know, either, but if we can, we are going to try to get at the root of that, because that is what this Committee is all about, so I thank you very much.

Mr. LARA. If I may comment on that, Chairwoman Kelly, it is amazing that you said that, because these patients that are in the home do not know that the home health nurse, who is a trusted clinician, is observing them about disruptive behavior, sexual references. And of course 99 percent of our patients don't have that, but to have someone who is trusted in your home being a spy for the United States Government, specifically HCFA, is an outrage.

Chairwoman KELLY. Well, it certainly isn't open democracy, is it?

Mr. LARA. No, ma'am.

Chairwoman KELLY. Well, at any rate, I am delighted to hear from you. I want you to answer me a question, another question, answer for me another question. I would like to know how, right now, the ombudsman's office is helping you, because you closed in thanking them. How are they helping you address these concerns right now, and what is the office doing to assist you?

Mr. LARA. Let me say that the office is doing great work on behalf of my industry. Peter Barca spoke to my association two years ago in Las Vegas at our convention, and Ms. McDonald has committed to speak to our trade association in Biloxi, Mississippi in July. So they are reaching out to us, to let us know what is available.

Secondly, John Greiner has been working very hard, along with Jere Glover and Ms. McDonald, about setting up a forum between the SBA, my trade association along with my colleague trade associations, and HCFA, to iron out some of these problems regarding the 15 percent, the additional cut that is coming October 1, 2000; regarding the 50–50 payment method, where government is only going to pay us 50 percent up front, and then at the end of the 60 days pay us the remaining 50 percent, which no one can afford to be paid 50 percent up front and then 50 percent at the end and stay in business, when you have overhead. And they are also helping us with the surety bond.

So they are working very hard. We talk on a frequent basis, and they have helped us immeasurably.

Chairwoman KELLY. Good. I am glad to hear that.

Ms. McDonald, I am glad you are here to hear that praise.

I find it interesting, again, that you are talking about getting 50 percent up front. I find it very curious that the U.S. Government, with as many tax dollars as we take in, tries to live on the "float" from other people, so I am glad to hear you are working on that, Ms. McDonald.

Mr. Coratolo, I want to go to your testimony right now. You spoke about the fact that the small businesses are faced with a lot of vague guidelines on the implementation and compliance, on the rules and regulations, and that you feel that the Office of Advocacy

and the Ombudsman need feedback early in the process. Now, is that happening with the roundtables?

Mr. CORATOLO. Well, it is to an extent, but there is a lot of duplicative efforts being done through having both offices separate. You know, we feel that outreach to a small business community shouldn't have to take place in two separate offices. They should be combined. They should have one streamlined way of outreaching small business. Certainly they, the National Ombudsman as well as Jere Glover has leveraged his position with the different associations, with the U.S. Chamber. We are always invited to the roundtables. We always try to disseminate that information, and they are widely attended.

Chairwoman KELLY. Well, then, that is good. I think obviously the ombudsman is struggling right now to get more information out into the community. I would hope the Chamber would work with the ombudsman to get information, and I know that you probably are.

One thing I want to throw in here, because it is my pet project, is that with the CORA legislation passage, if we can get that office in place, that will help because we can pick up the feedback from the small businesses of the Nation and talk with an office that would be in the General Accounting and would be able to intercede before the rules and regulations become absolute. After the comment period but before they become absolute, that office could inform Congress about what is going on.

With the plethora of rules and regulations that are being promulgated over there by the agencies, I think we have got to have some control. So I am hopeful that, working together with the Office of Advocacy, with the Ombudsman, and having this CORA office in place, those three things can be like the three legs of a stool that is holding up and supporting the small businesses of the Nation. And I also feel that a lot of the problems with the vague guidelines can be corrected through that office. I think that, again, we could address the vague guidelines and the problems of implementation.

I have got a couple of other questions that I wrote out here that I wanted to ask you, and that goes back to one of the comments I made. How do you think we can address the problem of marketing this program? Have you got any suggestions for that?

Mr. CORATOLO. Marketing the program is difficult. You are trying to get the attention of people that are always on the go. They don't necessarily have time. A business person that is not truly involved at the upper levels of advocacy and Federal regulation tends not to have the time to visit web sites, to look at rules, to look at regulations.

The other thing is, small businesses tend to be more focused on local regulation, because you have got to remember we are not only competing with Federal guidelines, but there are local and State guidelines that tend to be—also take them off, you know, take them on as far as their time. A lot of times they will be facing a compliance officer and they feel that, "Well, you know, there is so much that I don't know, that if I open my doors, while they got me on this one, while this may be a cost of doing business, there may be 10 other things that they haven't seen or they forgot."

So it is a tough thing to market. It is a tough program to market. I think we have to look at it on a statistical basis. Every time we get a comment, there is probably 100 m more people back there that had the same comments or the same concerns. We are doing all we can to market the program.

Mr. LARA. If I can respond to that also, Chairwoman Kelly, the fear of retribution for people coming forward is amazing. I know with the home health agencies I represent, they are scared to come out and say, a HCFA surveyor or an auditor came out and denied this, and they are scared to death that they are going to swing right back around and punish them further.

Chairwoman KELLY. I think that is a normal fear of anyone who is in business, because there has been this long history of the "Ah, ha, gotcha" mentality. That is why I feel so strongly that we have got to have some help here for our small businesses. We are drowning, I think.

And with that I want to talk about the historical perspective, and I am going to go to you, Dr. Maust. Dr. Maust, in 1998 you told us you only had one appraisal form filed and three inquiries which didn't result in appraisal forms being filled out. Do you know if the number of filings in Virginia has increased?

Dr. MAUST. I don't believe they have. Maybe one or two more. I don't think we have had a lot of appraisal forms filed.

Can you help me with that, John?

Mr. GREINER. Yes, if we can get back to that.

Chairwoman KELLY. Why don't we get back to that, and I will ask you another question.

Dr. MAUST. Okay.

Chairwoman KELLY. I want to know if you know how your national trade association informs its members about SBREFA.

Dr. MAUST. You are talking now the NFIB?

Chairwoman KELLY. Right.

Dr. MAUST. Obviously we have national newsletters, we have State meetings, we have national meetings and that type of thing. The issue here, and I think maybe I mentioned this before, NFIB represents a wide diversity of small businesses, and these regulatory issues are often obviously very industry-specific, and because of that they are complex to the industry. And the businesses in those industries' linkage with their State associations, the State associations can, I think, target those issues more specifically and can in a way run protection and interference from some of the owners themselves in terms of some of these issues. That is why I just think this mechanism is so important, and—well, I will just stop there.

Chairwoman KELLY. Thank you. In the interests of letting Mr. Pascrell speak up here, I am going to stop my line of questioning. We will talk in a minute.

Go ahead, Mr. Pascrell.

Mr. PASCRELL. I just want you folks to go away from here knowing that we want to address—we think that this could be such a great thing for small business, as well as the Advocacy Office, we want it utilized. We want to promulgate, you know, what is available, so that people feel armed, if I can use that term, to protect themselves.

On the other hand, many of these regulations are generated by us. Some are generated by second and third level management. You know, what protection do you have? I do notice this, and I can say, I mean, anybody on the panel can agree or disagree. I do notice in the past few years, not only on the Federal level but the State level, that these agencies have become less prosecutorial and more abatement oriented. We are always going to have regulations. We are always going to have rules. The question is, what are reasonable and what are not, and how do we judge?

Mr. LARA. If I may respond to that, sir——

Mr. PASCRELL. Sure.

Mr. *Lara* [continuing]. Regarding home health agencies, they have been overpaid because of the interim payment system, well, home health agencies have filed for bankruptcy and they have gone into Federal court and they have told HCFA, "Please don't shut our doors. We know we owe you $1.5 million. Will you take $1 million?" HCFA says, "No, shut them down." So for the Health Care Financing Administration not to take something and just to send that kind of a message is unbelievable.

Mr. PASCRELL. Well, we certainly don't want you to go out of business. You almost described what some HMOs have done. You know, they don't pay their bills, either, and we are getting back 15, 16 cents on the dollar in some places, and they have utilized already Federal dollars, our tax dollars. So, I mean, you know——

Mr. LARA. And let me follow up on that, sir. Don't be misled, as Members of Congress, that it is your fault. It is not your fault. Certainly you did the BBA of '97, but HCFA helped you to write that. And on the surety bond issue, they had plenty of latitude, along with the 50–50 payment method, they have plenty of latitude, and they will use that latitude when they want to. But when they don't want to, they will throw their arms up and say, "Well, that's the way Congress wrote it. That's how Bill Thomas wrote it."

That is not true. They have the authority and they refuse to use it. So please don't be misled that "Oh, no, we did it," and beat yourselves up, because certainly on some things Congress has to do things legislatively, but on the other hand, HCFA does have the authority to do it. And, Chairwoman, I would respectfully request that you call Nancy-Ann Min Deparle, or ask Mr. Talent to do that, and ask her some of these questions. I would be honored to testify at that hearing.

Mr. PASCRELL. I think you ought to run for Congress. [Laughter.]

Mr. LARA. I am planning on it, sir. Thank you.

Mr. PASCRELL. I mean, you go straight to the issue.

Mr. LARA. Thank you, sir.

Mr. PASCRELL. I have no other questions. Well, I have other questions but we have to go and vote. Thank you, all of you.

Chairwoman KELLY. I thank all of you, also.

I just wanted to ask Mr. Hexter, I did use some of your testimony before. I just want to talk with you a minute about the public relations awareness that you think we could—have you got any suggestions?

Mr. HEXTER. I do. One of the issues that you raised early on was how to get the attention of the agencies, and it occurs to me that Ms. McDonald waived the Miranda rights, loosely used. But it

seems to me that anytime the interaction between the government and the individual business owners is, from the business owners' perspective, as limited as possible, we would rather not know and not have to interact.

But at the point at which we do encounter those agencies, that is when the Miranda rights are important, and it seems to me that we could get the agencies' attention if, A, they had to deliver the Miranda rights with the visit and, B, that that in fact put a delay in the enforcement action, unless there is a health and safety issue that is clear and present, so that the attention of the business owner was drawn to the fact that there is an agency out there that could help and could in fact run interference. That would force the agencies themselves to take a closer look at their enforcement actions and make sure they have something that was valid and would last.

It bothers me that we get harassment enforcement by what I will refer to as rogue agents who haven't bought into the new culture, so you have got to find a way to delay that process, and I think you will get the attention of the people you need to get the attention of. We don't need to inform the entire business community, as Ann indicated, if it doesn't apply to them. We need to make sure that the people it applies to know that there is help out there, and that should be at the point of the encounter. Every agency should deliver that Miranda rights, and then have to step back so that the employer/business owner could cure the problem.

Chairwoman KELLY. Well, if I remember correctly, there is a 30-day time period for compliance once you are notified that there is a problem with an agency. However, I am going to look into that because I am not really sure of it. But if I understand what you just said, you feel that an agent going in from an agency to a small business should allow the small business first of all to understand where there is a problem that brought the agent into the business, and then there should be a wait period of time for that business to be allowed to correct and work with the agency so they can correct, prior to anything else happening. Is that what you are asking, what you are saying?

Mr. HEXTER. That is right. Yes, that is where I am coming from. Your question dealt with informing everybody about the availability of the tools, and I am saying that the only people who need to be informed are those that it applies to. We may not be missing the mark as badly as we think, but we need to make sure that everybody that it does apply to gets appropriately informed and then can use the tool. It is one thing to say it is out there. It is another thing to be able to use that tool.

Chairwoman KELLY. Good. I thank you very much. This has really been an interesting hearing. I appreciate all of you being here. I especially appreciate our roundtable participants.

You are wonderful to come and spend some more of your time here with us. And I hope that the hearing, I am certainly going to work to try to make sure that this hearing bears some fruit and does have some—we are able to get some response from the agencies on this. So thank you so much for your participation, and I have to bang this gavel here. We are adjourned.

[Whereupon, at 12:13 p.m., the Subcommittee was adjourned.

SUE KELLY, NEW YORK
CHAIRWOMAN

BILL PASCRELL, JR., NEW JERSEY
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
106th Congress
Committee on Small Business

Subcommittee on Regulatory Reform and Paperwork Reduction
B-363 Rayburn House Office Building
Washington, DC 20515-6317

Opening Statement of the Honorable Sue Kelly
Chairwoman, Regulatory Reform and Paperwork Reduction Subcommittee
Hearing on the Regulatory Fairness Program and the Small Business Ombudsman's Report to Congress
June 15, 2000

Good morning, ladies and gentlemen, and welcome to today's Subcommittee hearing on the Regulatory Fairness Program, and the Small Business Ombudsman's 2000 Report to Congress.

For too long, small business owners have been subjected to overzealous enforcement by regulators who at times seem more interested in levying fines than ensuring compliance with the law. As a former small business owner, I know personally the frustration that exists among countless small business owners who, despite making every effort to be in compliance, are still treated unfairly by their government. The passage of the Small Business Regulatory Enforcement Act (SBREFA) four years ago restored some hope that this unfortunate reality might change.

SBREFA established a Small Business and Agriculture Regulatory Enforcement Ombudsman at the Small Business Administration and Regional Small Business Regulatory Fairness Boards in each of SBA's ten regions. The Ombudsman is charged with gathering and recording comments from small businesses in order to form an evaluation of each agency's enforcement performance. The Fairness Boards, each composed of five small business owners, provide an opportunity for small businesses to come together on a regional basis to assess the enforcement activities of various federal regulatory agencies. The Ombudsman, using information provided by the Fairness Boards, is required to compile the comments of small businesses and provide an annual evaluation similar to a "customer satisfaction" rating for different agencies, regions, or offices. The goal of this rating system is to see whether agencies and their personnel are treating small businesses more like customers than potential criminals.

Today, we are going to hear from Gail McDonald who is the currently the Small Business Ombudsman. Since she is the new Ombudsman this year, she issued a report evaluating a year she was not the administrator of the program. Despite this fact, and because of the

importance of this program for small businesses, I thought it was important to give Ms. McDonald an opportunity to present this report formally to Congress and to discuss her vision for the program. We also must deal with the reality that this program was without an appointed Ombudsman for about 7 months so we must examine the impact this had on the program and the small business owners it attempts to serve. Moreover, while I know Ms. McDonald is new to the program, there are portions of her report that deserve closer scrutiny and it is crucial that we discuss the report today. I also think that the program needs continued monitoring and oversight to ensure that it is meeting the goals of Congress when we enacted SBREFA.

We will also hear testimony today from individuals from the small business community who are familiar with the Regulatory Fairness Program. They will discuss their views on how the program is working, as well as offer comments on how it might be improved in the future.

Being treated fairly when regulatory enforcement takes place should be a fundamental right for every small business owner. SBREFA gave us the framework to help achieve this goal, and progress has been made in reaching it. Perhaps we have reached a crossroads with this program and it is time to examine very specific aspects of the report, including the criteria for evaluating agency performance, and to explore better ways of communicating poor agency response to small business to Congress. More broadly, perhaps it is also time to discuss the financial resources of the office, the program's structure, and its independence. It is the job of Congress, working with the small business community, to see that the program is meeting its worthwhile objectives.

We have a number of excellent witnesses with us this morning. I am looking forward to their testimony. Thank you for being here and now I'll turn to Mr. Pascrell for his opening statement.

BILL PASCRELL, JR.
8TH DISTRICT, NEW JERSEY

WASHINGTON, OFFICE:
1722 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-5751
(202) 225-5782 FAX

PATERSON OFFICE:
ROBERT A. ROE FEDERAL BUILDING
200 FEDERAL PLAZA, SUITE 500
PATERSON, NJ 07505
(973) 523-5152
(973) 523-0637 FAX

Congress of the United States
House of Representatives

COMMITTEES:
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON GROUND TRANSPORTATION
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON SMALL BUSINESS
RANKING MEMBER:
SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

Congressman Bill Pascrell, Jr.
Opening Statement
Subcommittee on Regulatory Reform and Paperwork Reduction
Committee on Small Business

"The National Ombudsman's 2000 Report to Congress and the Regulatory Fairness Program"

I would like to begin by thanking the Chairwoman for her work in preparing these hearings in the subcommittee. The issues you have chosen are giving us beneficial opportunities for oversight of various federal government agencies and their interaction with small business. I know that the knowledge I have gained in these hearings have opened my eyes to some problems that remain in how agencies deal with small businesses throughout the government.

The need for reduced burdens on small business is our top challenge. Today, we continue by looking at an interesting office which is designed to help small businesses deal with the bureaucracy. The office of the ombudsman is one that was an innovative idea back when it as proposed, has added to the dialogue during its three year existence, and is a position that has much potential to serve small business interests nationwide. However, its work is showing the increased commitment toward having government and business work together to solve problems, as we steer away from a purely adversarial relationship. I welcome the opportunity to learn more

about what the ombudsman does and more importantly, what it can do in the future.

One area that is especially in need of greater effort on the part of agencies, is more equitable enforcement and compliance assistance. While the annual Ombudsman report can play a critical role in identifying potential problems and proposing solutions, both the Ombudsman and Regulatory Fairness Board are limited in their ability to affect real change because they seem to lack any leverage with the agencies. If the Ombudsman and Regulatory Board are to evolve into anything more than an advocate for small business regulatory concerns with agencies, this must change.

I would like to thank Ms. McDonald for joining us today to explain her vision for where the office of ombudsman is going and possibly explain what we can do in Congress to assist her in her mission. I am interested to hear her thoughts on how more small businesses can make use of her office, and how we can make the agencies more receptive.

I look forward today's testimony and thank the Chairwoman for her leadership on trying to reduce burdens on small businesses through these hearings.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

STATEMENT OF
GAIL MCDONALD

SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN

OFFICE OF THE NATIONAL OMBUDSMAN

U.S. SMALL BUSINESS ADMINISTRATION

THE NATIONAL OMBUDSMAN'S 2000 REPORT TO CONGRESS
BUILDING SMALL BUSINESS–AGENCY PARTNERSHIPS

BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

COMMITTEE ON SMALL BUSINESS

UNITED STATES

HOUSE OF REPRESENTATIVES

JUNE 15, 2000

Good morning, Chairwoman Kelly, Congressman Pascrell and Members of the Subcommittee. Thank you for inviting me here today to share with you some observations from the National Ombudsman's 2000 Report to Congress.

I am Gail McDonald, the Small Business and Agriculture Regulatory Enforcement 'National' Ombudsman appointed by SBA Administrator Aida Alvarez this past February. Although my official capacity as the National Ombudsman began in the midst of finalizing the 2000 Report to Congress, my ten years of experience in both the Federal government and working with small business allows me to address the findings in the 2000 report. Certainly, my years in my family's own small businesses have helped me appreciate first-hand some of the regulatory concerns of small businesses.

In my position as National Ombudsman, I am ably assisted by 50 small business owners who make up the regional Small Business Regulatory Fairness (RegFair) Boards. I want to thank the RegFair Board Members who were able to attend today's hearing as well as those who could not. Each RegFair Board Member has made significant personal and professional sacrifices to serve and has provided invaluable advice, program guidance, and small business outreach assistance. Together we can offer the Subcommittee our plans and ideas for the future of the Office of the National Ombudsman.

I understand, Congresswoman Kelly, that you and Members of the Subcommittee have been very helpful to the Office of the National Ombudsman in the past by encouraging agencies to implement the requirements of the Small Business Regulatory Enforcement and Fairness Act (SBREFA). I appreciate your past support and look forward to working with you.

The Year 2000 Report to Congress, ***Building Small Business–Agency Partnerships,*** provides Congress and the Administration a thorough review of the efforts of the National Ombudsman and the RegFair Boards. In the interest of keeping my remarks brief, I would like to ask that the Executive Summary of the Year 2000 Report be submitted for the record. I could certainly spend all day sharing with you the content of the report, but today I would like to talk about what we've *done* in the context of what we're *doing*.

The good news is the tide is turning on the regulatory climate that has far too long plagued our country's small business owners. Step by step – or maybe I should say, one RegFair hearing at a time – our program and others are building bridges to change the way Federal regulatory enforcement officials view small business compliance and, in some cases, change the way small businesses view Federal regulations.

Federal agency enforcement officials are becoming more sensitive to the impact of what they see as simple regulations, but small businesses see as one more costly requirement that diverts attention from day-to-day operations. The results have been productive partnerships between small businesses and Federal regulatory agencies that produce model projects, which we encourage others to utilize all over the country. For example the Environmental Protection Agency (EPA) joined the Office of National Ombudsman and the Denver Area FabricCare Association in developing a user-friendly compliance guidebook for dry cleaners. The Occupational Safety and Health Administration (OSHA) has worked cooperatively with the housing construction industry to develop an easy to use compliance flipbook. Some Saturday, you may go into a Home Deport as I did recently and observe an OSHA safety workshop for contractors and do-it-yourselfers.

Through SBA's Office of the National Ombudsman and the Regulatory Fairness Boards, small business owners are:

- voicing their regulatory enforcement concerns;
- exercising their First Amendment right, which allows them to communicate with Federal agencies without fear of retaliation and obtain responses that address their concerns and constructive suggestions;
- holding Federal agencies accountable with timely, independent, and high-level agency responses to their regulatory enforcement and compliance concerns; and
- changing agency and government-wide enforcement and compliance polices.

The 2000 Report demonstrates how these partnerships have improved agency enforcement practices, heightened the impact of small business feedback, enabled the development of innovative enforcement and compliance solutions, and enhanced the impact of RegFair Board efforts.

But we still have work to do. Based on the recommendations of small businesses and agencies, the National Ombudsman has prioritized four goals:

1. Encourage increased small business feedback
2. Promote greater agency accountability
3. Develop more small business—agency communication; and
4. Foster creative partnerships between small business and Federal regulatory agencies.

These four goals are the foundation on which all partners will build a regulatory enforcement environment that is fairer and friendlier to small businesses and will ultimately result in greater regulatory compliance and small business prosperity.

The Year 2000 Report to Congress demonstrates that together we are making progress on our shared goals. And we will continue to build upon the successes we have achieved.

One of the ways we intend to do this is through our partners. The Administration, Congress, small businesses, trade associations, and Federal agencies agree that Federal resources are better spent helping small businesses comply with the law, rather than taking punitive action against them. So we work together "to get the word out."

Members of Congress can help by including RegFair information cards and SBREFA brochures in their mailings to small business constituents or as handouts in district offices and at small business speaking engagements.

Trade associations are helping by using their publications and e-mail networks to market the regulatory fairness program to state and local affiliates as well as to their members. We have an Association of the Month (AOM) program, where we work with national small business associations to develop joint regulatory fairness marketing and outreach agreements helping us to reach a broader spectrum of small business, sector by sector. This year, in response to RegFair Board Member suggestions, we will inaugurate regional associations of the month to learn more about regional small business concerns and reach those companies that we do not reach through the national AOM program.

Federal agency representatives help tremendously by participating in the RegFair hearings. The small business feedback details the positive and negative aspects of Federal regulatory enforcement activities and provides agencies with innovative suggestions on how agencies may better serve their small business customers while meeting their regulatory missions.

Also, you will see in the 2000 Report that more high-level, independent agency officials are responding to the comments and testimony small business owners provide the National Ombudsman and the RegFair Boards.

Several Federal agencies, such as the Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA), Customs, and Internal Revenue Service (IRS) have initiated new small business outreach programs to learn about small business enforcement concerns and to make their enforcement and compliance environments fairer and friendlier. And some agencies are participating in small business-agency task forces, established cooperatively with trade associations to address long-standing industry enforcement or compliance issues.

My appointment to the Office of the National Ombudsman brought about very significant changes for the program. Administrator Alvarez recognized that one person should be dedicated to the position of the National Ombudsman and that person should be located at SBA headquarters, where 'she' could make 'her' presence felt within the Administration on a daily basis.

Since I joined SBA, I have managed to reach out to agency officials at the Securities Exchange Commission (SEC), Federal Aviation Administration (FAA), Immigration, Customs, OSHA, IRS, EPA and the Departments of Interior, Education, Agriculture, Veterans Affairs, Commerce, and Transportation... and of course, SBA. The responses have been very positive. The commitments I have received to build effective partnerships through SBREFA and to implement the National Ombudsman's Annual Recommendations prove that the time was right to move the office to Washington. We've learned that to get the greatest impact from small business feedback we need to work directly with the highest-level agency enforcement officials. Now that we have a physical presence in the Nation's Capitol we will make our partnerships more effective for small businesses.

The Office of the National Ombudsman continues to reach out to small business owners, listen to their concerns and compliments, assist them in resolving important regulatory issues and offer them unique opportunities to influence and even reshape Federal regulatory activities. Small business feedback provides the Office of the National Ombudsman the information needed to gauge and analyze national and regional small business regulatory enforcement and compliance issues and make Federal regulatory agency officials aware of small business concerns. Perhaps most importantly, I think the Office of the National Ombudsman helps close the loop on Federal agency accountability by allowing me to report to you, Members of Congress.

The tide is turning – small businesses are beginning to see improvement in the regulatory enforcement and compliance environment. While few agencies achieve the highest ratings in our report, most are working aggressively to implement the National Ombudsman's Annual Recommendations to Congress and generally

improve their enforcement and compliance policies and practices. Those who aren't, we will work with more closely.

Federal agencies no longer feel they are the only ones with concerns about such issues as waste, fraud, and abuse, or on environmental protection or workers' safety. Together, small businesses and Federal agencies are learning to appreciate each other's contributions towards addressing these issues and building a strong healthy economy. An economy based on a constructive compliance and enforcement environment built on partnerships.

Thank you, again, for inviting me here today. This concludes my testimony, and I will be happy to answer any questions you may have.

Statement of

Dr. Ann Parker Maust

President
Research Dimensions, Inc.

Vice Chair
Small Business Regulatory Enforcement Fairness Board
Mid-Atlantic States

Subject: The Small Business Regulatory Enforcement Fairness Act (SBREFA) and the National Ombudsman's 2000 Report to Congress

Before: House Small Business Committee:
Regulatory Reform and Paperwork Reduction Subcommittee

Date: **June 15, 2000**

Chairwoman Kelly, Congressman Pascrell and Members of the SubCommittee, I am pleased to be here today to provide my perspectives on the Regulatory Fairness Program and the National Ombudsman's 2000 Report to Congress.

I currently serve as Vice Chair of the Small Business Regulatory Enforcement Fairness Board for the South Atlantic states. I also am a member of the Virginia State Leadership Council for the National Federation of Independent Business and served as Chair of the 1995 Virginia Delegation to the White House Conference on Small Business.

Our Virginia Delegation was very active in pushing for regulatory reform for small businesses. We were active supporters of SBREFA. We feel this legislation holds much hope for our small business community not only in terms of better communication with Federal agencies on enforcement and compliance issues, but also as an avenue to voice concerns and to have those concerns thoughtfully addressed before the various Federal agencies.

We do feel, however, that we have lost much momentum this year as structural changes from the top of the SBREFA infrastructure have funneled down through the system with small businesses in our state ultimately being the loser. In the face of these changes, however, we applaud the efforts of the new National Ombudsman and her staff in preparing such a well-documented and thorough

annual report—a report produced in a timely fashion reflecting the best input to date from the small business community.

From my perspective on the South Atlantic Reg Fair Board, ensuring the success of this program hinges on the careful nurturing and development of a strong national infrastructure to provide support, guidance, and assistance to the network of Reg Fair Boards. As you know, small business owners are critical partners in the SBREFA structure and this partnership is what helps provide the implementation of SBREFA with much of its unique strength.

We must remember, however, that small business owners are just that: they each own a business that requires considerable demands on their time, and the time that they devote to this program—while willingly given—must be backed up with strong staff support from the top in order to ensure viability of the entire structure. When such support begins to waver, then the entire system is jeopardized. This is, indeed, what I believe began to happen this year: first with the departure of the National Ombudsman, then followed by the significant time delay in the reappointment of a new Ombudsman.

Let me illustrate for the Subcommittee.

On March 4, 1998, I testified before this Committee that I believe state industry trade associations are a critical vehicle in the information dissemination process

to the grassroots small business owner. I noted that we had a huge job yet to do in educating the leadership of the various state associations about SBREFA, and that until the leadership of these associations understand the value and power of SBREFA for their respective memberships, the information dissemination process will be stymied. Further, my testimony indicated that outreach to the leadership of these associations is needed, not simply to request that they put an article about SBREFA into their respective newsletters, but to inform and counsel about the value of this piece of legislation for their membership. Such outreach will allow these association leaders to link the opportunities under SBREFA with the regulatory issues brought before them by their members and to frame these opportunities in language and options more familiar to small business members.

The importance of such outreach to state associations, I believe, rests with the fact that we cannot assume that the results of meetings with national trade associations will automatically filter down to the state leadership. As such, while I think all vehicles of information dissemination are important, and that programs, like the Association of the Month, are a vital component in this information dissemination initiative particularly for national associations that may not have state affiliates. However, I still feel that further more intensive outreach is necessary.

I would like to share with you what progress I believe has been made in this type of Outreach Initiative since March 1998 Hearing, and how important the national

infrastructure is in terms of ensuring that small businesses at the "grassroots level" are informed of their rights under SBREFA.

Please reference the Outreach Section of the National Ombudsman's 2000 Report to Congress. As this section indicates, the Office of the National Ombudsman and the Reg Fair Boards held Business Leader Roundtable Discussion Groups across the country to build stronger relationships with small business trade associations at the state and local levels. As the report indicates, five roundtables were held between January and June 1999.

Suddenly, in June, 1999, this series of Roundtables comes to a halt, and to this date, to my knowledge, no others have been held although it is my understanding that an additional series of such Roundtables is still planned for the future. What is significant about the June 1999 date? It is at this time that the announcement was made that the National Ombudsman, Peter Barca, was leaving his office to take another position.

In Virginia in the months leading up to the departure of Mr. Barca, we were making considerable progress. We were building important connections within the wider business community and had begun to obtain the support of several very influential organizations within our state for this initiative. In September 1998 we had held a very successful public hearing with testimony from a very diverse group of small businesses.

We were on a momentum path; our efforts were gathering steam; and more and more small business owners and their organizations were becoming aware of SBREFA, the Reg Fair Boards, and the mechanism for registering their concerns under the Act. In addition, our Reg Fair Board was becoming more cohesive and more knowledgeable.

As part of this momentum, we were scheduled to hold a Business Leader Roundtable in July 1999. Working with the SBA district office and the state office of the NFIB, we had already begun informally notifying some of our state associations about this meeting. Abruptly this meeting was cancelled. Not because of a lack of interest, but because of the other demands engendered by changes at the top.

In short, we have yet to regain the momentum in Virginia that was lost at this time—approximately one year ago. I do believe that this momentum could have been regained had a shorter period of time elapsed between Mr. Barca's departure and the announcement of a successor, or certainly if the work had been allowed to continue under the able hands of the staff still in place to execute the program.

In summary, I still believe that the Business Leader Roundtables are needed and I assure the National Ombudsman that we will do all that we can do in Virginia to

continue to support this initiative. We feel that these Roundtables can play a vital role in strengthening the entire SBREFA process. By building strong, viable linkages with business leaders in the various states, an automatic "feeder" network or system is put into place, not only for informing the small business owner—the ultimate target of this Act, but also strengthening the public hearing process. In short, with better informed state leadership, more productive input into the public hearing process can be ensured, thus hopefully ensuring that realistic and critical views of the various industry sectors are fed into the public hearing process, thus resulting in better, more effective public information about this program.

Chairwoman Kelly and members of the Subcommittee, let's strengthen the SBREFA network not only by ensuring continuation of the Business Leader Roundtables, but also by ensuring that these Roundtables are linked to the Public Hearing Process in a thoughful, analytical manner. Let's also do whatever we can to ensure the creation of a strong national infrastructure. I believe that the substantive information resulting from the small business community through this process will be better and more representative than is currently obtained through regional public hearings which are costly for small businesses to attend and often reflect the testimony of professionals randomly pulled into the process rather than thoughtfully planned and provided for.

Thank you for your time and thoughtful consideration of this testimony.

Statement of the U.S. Chamber of Commerce

ON: SMALL BUSINESS ADMINISTRATION REGULATORY FAIRNESS PROGRAM

TO: HOUSE SMALL BUSINESS COMMITTEE SUBCOMMITTEE ON REGULATORY REFORM AND PAPERWORK REDUCTION

DATE: THURSDAY, JUNE 15TH, 2000

BY: GIOVANNI CORATOLO, DIRECTOR, SMALL BUSINESS POLICY U.S. CHAMBER OF COMMERCE

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 71 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 10,000 members. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 85 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. Currently, some 1,800 business people participate in this process.

Statement
on the
SMALL BUSINESS ADMINISTRATION
REGULATORY FAIRNESS PROGRAM
before the
HOUSE SMALL BUSINESS
SUBCOMMITTEE ON REGULATORY REFORM AND
PAPERWORK REDUCTION
for the
U.S. CHAMBER OF COMMERCE
by
GIOVANNI CORATOLO
June 15, 2000

Chairwoman Kelly and members of the Subcommittee, I am Giovanni Coratolo, Director of Small Business Policy for the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. Over ninety-six percent of the Chamber members are small businesses with fewer than 100 employees. Chairwoman Kelly, we applaud this Subcommittee's dedication and interest in reducing the regulatory burdens faced by the nation's 24 million small businesses.

I am here today representing the Chamber's small business membership. These are business owners who are faced with the daily challenges of complying with the thousands of pages of regulations that are generated by almost forty government agencies on an yearly basis – and that's just what is produced at the federal level. If you measure the cumulative effect of all federal, state and local regulations on the small business owner, the prodigious task of compliance becomes overwhelming.

Typically the small business owner is the human resources director, the maintenance engineer, the industrial hygienist, as well as serving in many other positions that demand in-depth understanding and meticulous implementation of a plethora of rules and regulations. The small business owner is faced with the presumption of knowledge of an array of confusing and sometimes conflicting mandates from regulators with heavy penalties for non-compliance.

Small businesses bear a disproportionate regulatory burden. According to a report by the Small Business Administration[1], the total cost of federal regulations per employee was 50 percent greater for firms with less than 20 employees than for firms with more than 500 employees. In relation to total sales, the total cost of federal regulation was 90 percent higher for small firms than for large firms.

There is not compelling evidence that the disproportionate burden has at all subsided. Just this year alone, OSHA, in its proposed ergonomics final rule, will likely add hundreds of pages of regulatory burden with vague guidelines on implementation and compliance. Conservative estimated cost to small business, $45 billion.

With the passage of the original Regulatory Flexibility Act of 1980 (Reg Flex Act) and its broadening under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), small businesses were given expanded rights in dealing with federal agencies, both in the rule-making process and the regulatory enforcement environment.

[1] "The Changing Burden of Regulation, Paperwork and Tax Compliance on Small Business," October 1995 report to Congress by the Small Business Administration.

The U.S. Chamber of Commerce endorsed the passage of these small business provisions but we feel that this has had only remedial effects on improving the regulatory impact on small business.

Much must continue to be done to ameliorate the burdens of regulation on small business. The House has not yet addressed legislation (H.R. 1882) passed by the Senate which includes the Internal Revenue Service as an agency required to provide small business panel review of proposed regulations that are particularly important due to their impact. Existing programs can be strengthened by legislation to provide a better vehicle for a more responsive regulatory environment.

The "Regulatory Fair Warning Act" (H.R. 881), legislation introduced by Rep. George Gekas, would require federal agencies to give "fair warning" of new rules or obligations. Federal agencies would be prevented from unfairly penalizing small businesses for alleged violations if: 1) the rule was not published in a public document, such as the Federal Register; 2) the agency did not give fair warning that a type of conduct is prohibited or required; or 3) the agency had already given specific guidance that contradicts an inspector's claim that the regulation had been violated.

This legislation would help small business owners understand what they need to do in order to comply with regulations. Ultimately, this will help keep the environment clean, create safer workplaces, and improve public health. Further, it will protect small

business owners and others from penalties when they could not have known about a change in policy or were not given "fair warning" of a new or changed regulation.

Program Review

Now four years old, the regulatory fairness program, RegFair, offers an incentive for agencies to change their culture and treat small businesses as partners. The primary mission of the program is to encourage a regulatory enforcement environment that is fair to small business. It is the current intent of the National Ombudsman to engender greater compliance by more consultation, communication, partnerships, accountability and feedback on behalf of small business and Federal agency enforcement communities.

The framework of this program remains unchanged since its inception. The program established ten citizen Regulatory Fairness Boards around the country, each consisting of five small business owners. Each of these boards would commence a hearing once a year to review complaints or compliments from small business owners on the methods and decisions of federal compliance officers that took place in their businesses. Coordinated and supervised by a statutory Ombudsman from the Small Business Administration, the Boards' activities include soliciting and gathering subjective views and comments from small businesses about their interactions with Federal agencies in their compliance efforts.

In order to encourage agencies to make changes, the RegFair program required the National Ombudsman to file an annual report to Congress on an agency evaluation of

enforcement and compliance activities. The annual report provides information and a rating system that praises those agencies that have successfully implemented cultural change. Agencies that resisted structural change that would have allowed greater sensitivity to regulatory enforcement concerns of small business are singled out in the report for criticism.

We applaud the National Ombudsman's efforts to partner with organizations like the U.S. Chamber of Commerce to provide outreach and marketing of the program and the hearings. Based on materials provided to us by the Ombudsman's office, we have recently developed and have widely disseminated to our members user-friendly reference brochures (Attachment 1) to make them aware of the valuable tools provided under SBREFA. We also have just recently implemented an e-mail notice to a small but growing sample database of our membership that will announce each upcoming regulatory fairness hearings in their region and encourage their participation.

Even though we feel the overall program has been beneficial for small business, it has been only incremental in changing the culture of federal agencies' compliance activities from the "gotcha" mentality to that of consultant or compliance advisor. If you look on the back of Attachment 1, you will notice the Chamber listed all the federal organizations with their respective regulatory help phone numbers, agency Ombudsman contacts, agency web site home pages, and small business help links. Some agencies have attempted to provide a wealth of web resources directed to small business, in order to provide information on regulatory compliance. You will also notice that agencies like

the Department of Agriculture, the Department of Transportation and the Health Care Financing Administration provide little or no targeted help for the small business community via their web sites.

Another concern of the program is the lack of broad-based small business participation. We attribute this to the following: 1) even with the most creative efforts to market the program, it is not widely known or understood within the business community; 2) small business owners feel they are no match against the resources of a federal agency; 3) small business owners fear retribution on behalf of the federal agency; and 4) faced with the knowledge that the panel can only report their findings to Congress and not change the outcome of a compliance disposition, small business owners feel voicing their grievance, regardless of its merits, is a not a good use of their valuable time.

Program Recommendations

We feel the program can best be served by stepping back and viewing the totality of SBREFA and the regulatory process. The two departments within SBA that are responsible for carrying out the responsibilities to the small business community under SBREFA are the Office of Advocacy and the Office of the National Ombudsman. Each office must engage in duplicative and simultaneous efforts in their mission to encourage federal agencies to invoke a friendlier environment for small business to comply with the plethora of federal regulation.

Each office must establish outreach into the small business community in order to achieve their respective objectives. The Office of Advocacy needs feedback from small business owners in the early stages of rulemaking to determine what impact these rules will have and if there are alternative ways of achieving the same agency objectives while mitigating their impact on small business. The National Ombudsman needs the same small business outreach in order to fulfill the objectives of her program. Each office must deal with high level contacts within federal agencies to act as liaisons for the small business community.

We strongly feel the interests of the small business community would be best served by combining the RegFair program under the Office of Advocacy's General Council and having one coordinated force to administer the rights that SBREFA has created. In this time of budget restraints, splintering the effectiveness of the full potential of SBREFA by having two programs does not maximize the potency and effectiveness that could be accomplished by unifying them under the guidance and direction of one office.

Furthermore, we feel that the combined overall budget of both programs should be a line item designation in the SBA budget. This would provide more independence from external pressure's that adversely affect sensitive decisions that must be made on behalf of small business regulatory reform. Even though the funding for the SBA has increased over the last several years, that portion allocated to Advocacy has decreased

and the portion attributed to the RegFair program has remained constant. There should be a reallocation of funding within the SBA budget to fully fund both programs.

The Chamber appreciates the opportunity to comment on this important program for small business. We especially applaud the interest shown by Congress and this Subcommittee through hearings, such as this, that clearly signal that Congress will do all that it can to make sure the law works as you intended it to and so that small businesses will be the beneficiaries.

When the government comes knocking on your door, know your rights to regulatory fairness.

1-888-REG-FAIR

Q. What new rights do small businesses have?

A. The U.S. Chamber of Commerce was instrumental in passing legislation that granted small businesses a greater voice in the federal regulatory enforcement and compliance process. Under this program:

➢ Federal agencies are required to identify and reduce the impact of regulations on small businesses: and

➢ For the first time small businesses are given a forum to speak out on the enforcement activities of the federal agencies that regulate them.

Q. What should you do if you feel you were dealt with unfairly by a federal inspector?

A. Pursue all your legal rights and options of appeal within the agency or courts. RegFair is not a substitute for this process. Also, tell your story to the Small Business Regulatory Enforcement Ombudsman.

Q. How do I comment on a federal agency's actions?

A. You can testify at a regional Fairness Board (RegFair) hearing and/or comment in writing. To initiate the process call 1-888-REG-FAIR or visit the RegFair web site at www.sba.gov/regfair for details.

Q. What happens at a Fairness Board hearing?

A. You or your representative is invited to tell your story to a panel of five Fairness Board members. The regional board members are small business owners themselves, so they understand what your business faces when dealing with federal regulations.

The boards advise the National Ombudsman, who communicates weekly with federal agencies, and reports on small business comments directly to Congress every year.

Q. What happens to the comment I make?

A. Your comment will be sent to the federal agency involved for a review and response by a high-level agency representative. The National Ombudsman and the Fairness Board ask the agency to explain the enforcement action. The Ombudsman will advise you of the agency's response and of further action by the Board on your comment.

Q. Can voicing my comment with RegFair result in the repeal of a fine or change the enforcement action?

A. RegFair cannot overturn or cancel fines, penalties or other enforcement actions for individual small businesses. However, upon review, agencies at times do cancel a fine or penalty for a small business. Even more important, agencies sometimes change regulations or enforcement policies as a result of small business comments.

Q. Who can I call at a federal agency if I have questions concerning regulatory requirements and compliance?

A. Federal agencies are now required to respond to small business inquiries about the actions that must be taken to comply with federal regulations. The following help lines and web sites on the reverse side have been established to answer your questions.

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector and region. If you are not yet a member or would like to renew your U.S. Chamber membership, call 1-800-833-9106 today.

U.S. Chamber of Commerce • 1615 H Street, NW • Washington, DC 20062 • 1-800-638-6582 • www.uschamber.com 25/fb0

Help lines and Web sites to answer your questions.

Federal Organizations

Commodity Futures Trading Commission
http://www.cftc.gov/

Department of Agriculture http://www.usda.gov/

Department of Defense http://www.defenselink.mil/

Department of Energy http://home.doe.gov/

Department of Housing and Urban Development
http://www.hud.gov/
Quick References: http://www.hud.gov/busquick.html

Department of Interior http://www.doi.gov/

Department of Labor http://www.dol.gov/elaws
Small Business Handbook:
http://www.doi.gov/dol/asp/public/programs/
handbook
SBREFA: http://www.dol.gov/dol/osbp/public/sbrefa
1-888-9-SBREFA • 202-219-9148

Department of Transportation http://www.dot.gov

Department of Veterans Affairs http://www.va.gov/va.htm

Environmental Protection Agency http://www.epa.gov/
Small Business Gateway:
http://www.epa.gov/smallbusiness
1-800-368-5888

Equal Employment Opportunity Commission
http://www.eeoc.gov/
Small Business Information:
http://www.eeoc.gov/small/index.html
202-523-3236

Federal Communications Commission
http://www.fcc.gov/

Federal Energy Regulatory Commission (Energy)
http://www.ferc.fed.us/
SBA Ombudsman & Regional Fairness Boards:
http://www.ferc.fed.us/public/SBA_Fairness.htm

Federal Trade Commission http://www.ftc.gov/

Federal Deposit Insurance Corporation
http://www.fdic.gov/
Office of the Ombudsman:
http://www.fdic.gov/about/oo/index.html
1-800-934-3342 • 1-800-250-9286

Food & Drug Administration (HHS) http://www.fda.gov/
Small Business Guide:
http://www.fda.gov/opacom/morechoices/
smallbusiness/ toc.html
Information for Companies Regulated by FDA:
http://www.fda.gov/opacom/morechoices/
moreindu.html 301-827-3390

General Services Administration http://www.gsa.gov/

Health Care Financing Administration (HHS)
http://www.hcfa.gov

Immigration and Naturalization Service http://www.ins.usdoj.gov/

Internal Revenue Service (Treasury)
http://www.irs.ustreas.gov/prod/cover.html
Small Business Corner:
http://www.irs.ustreas.gov/prod/bus_info/sm_bus
1-800-829-1040 • 202-622-4989

National Aeronautics & Space Administration
http://www.hq.nasa.gov/

National Labor Relations Board http://www.nlrb.gov/

Occupational Safety & Health Administration
http://www.osha.gov/
Small Business Information:
http://www.osha-slc.gov/smallbusiness
202-693-2200

Securities and Exchange Commission http://www.sec.gov/
Small Business Information: http://www.sec.gov/smbus1.htm
202-942-2950

Small Business Administration http://www.sbaonline.sba.gov
National Ombudsman SBREFA:
http://www.sbaonline.sba.gov./regfair
312-252-0880

Social Security Administration
http://www.ssa.gov/SSA_Home.html

Tennessee Valley Authority http://www.tva.gov/

U.S. Consumer Product Safety Commission http://www.cpsc.gov/
Small Business Ombudsman
http://www.cpsc.gov/businfo/ombud.html
Small Business Guide:
http://www.cpsc.gov/businfo/smbusgde.html
1-800-638-2772 ext. 234 • 301-504-0550

U.S. Customs Service http://www.customs.ustreas.gov/

U.S. Department of Commerce http://www.doc.gov/bureaus/
Business Regulation:
http://www.ogc.doc.gov/ogc/legreg/regulati.htm
202-482-3151

U.S. Department of Education http://www.ed.gov/index.html

U.S. Department of Health and Human Services
http://www.hhs.gov/

U.S. Department of Justice http://www.usdoj.gov/

U.S. Department of Treasury http://www.ustreas.gov/
Small Business Assistance: http://www.treas.gov/sba/

U.S. State Department http://www.state.gov/index.html

List provided by the U.S. Chamber of Commerce as a service to its members

TESTIMONY OF JOHN HEXTER
CHAIRMAN OF

NATIONAL SMALL BUSINESS UNITED

Regarding the
Small Business Regulatory Fairness Program

Before the House Regulatory Reform and Paperwork Reduction Subcommittee of the Committee on Small Business

June 15, 2000

Madam Chairwoman, members of the House Subcommittee on Regulatory Reform and Paperwork Reduction, thank you for allowing me to testify before you today. My name is John Hexter, and I am Chairman of National Small Business United (NSBU), the oldest small business advocacy organization in the country, representing 65,000 small businesses in all 50 states. I have also had the opportunity and pleasure to serve as a member of the Region V Regulatory Fairness Board since its inception. Today's hearing regarding the Regulatory Fairness Program is of critical importance to the small business community and I thank you for having this hearing.

It has been over four years now since Congress passed without dissent -- and the President signed into law -- the Small Business Regulatory Enforcement Fairness Act (SBREFA). NSBU worked tirelessly for passage of SBREFA, which stemmed from years of lobbying by small business and having been a top issue at the 1995 White House Conference on Small Business. We consider it one of our great successes of the last few years to finally put some teeth into the Regulatory Flexibility Act of 1980.

SBREFA was designed to get small businesses more involved in the regulatory process, provide small businesses plain-English explanations of new regulations, require federal agencies to do the research on the most cost-effective implementation methods available for small businesses to achieve compliance, and establish Regulatory Fairness Boards (and a Regulatory Enforcement Ombudsman at the SBA) to rate the regulators. SBREFA took the further step of requiring the Environmental Protection Agency, the Occupational Health & Safety

Administration and the Internal Revenue Service prior to introducing a regulation, to convene a panel of small business owners to gather their input on how to minimize the negative impact of the proposed regulation.

Last, but by no means least, SBREFA has given small entities, or organizations that represent them, the ability to sue agencies in Federal Court for failure to comply with the Regulatory Flexibility Act during the rulemaking process. It also makes a number of sections of the Regulatory Flexibility Act, including Section 610 -- a section that requires agencies to review their regulations periodically -- judicially reviewable for small business.

Regulatory Fairness Program

As highlighted above, one of the key elements of SBREFA was the creation of a mechanism in which small business owners could become a part of the solution to the regulatory problems they face. You are all very familiar with the SBA Office of Advocacy report that states that the total cost of federal regulations on a per-employee basis is 50% greater for firms with fewer than 20 employees -- the vast majority of NSBU's members -- than for firms with 500 or more employees. No matter the perspective, the report found that the total costs of federal regulations are generally 90% higher for small companies than large.

The ten Regulatory Fairness Boards that were established have given small business owners a forum to address their concerns, ideas, and complaints about the way they are treated by the federal regulatory agencies. These panels, which are based upon -- and located within -- the existing 10 SBA regions, have open meetings which these issues can be addressed. Overseeing this entire process is the SBA Small Business

and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman or Ombudsman) who is required by law to issue a yearly report to Congress on the state of small business in relationship to regulation.

Established in March of 1996, 1997 was the first year that this new regional Regulatory Fairness structure was put to the test. I am very proud to say that a number of NSBU activists, including myself, have been named as Fairness Board members and a great deal more have taken their time to testify at these hearings. It certainly is just one example of NSBU's commitment to making the entire SBREFA process -- and specifically the Regulatory Fairness Program -- a success. Another example is the fact that our members have placed SBREFA Oversight as part of NSBU's Legislative Priority Issues in every year since 1997.

With 30 or more hearings now behind us, I think it is a good time to assess the success of that program, and to suggest ways that this effort can be improved. Understandably impatient with the bureaucracy and anxious to provide results and relief, we must view the program as a mixed success. We see great potential, to date largely unfulfilled, to make SBREFA the tool that Congress and the small business community envisioned.

While the Regulatory Fairness Boards and the Ombudsman staff have done a tremendous job at their hearings, we have heard suggestions from Fairness Board members, from people who have testified at the hearings, and from others in the general small business community about the process overall. The problems we see stem essentially from two glaring short-comings in the current program: 1) a lack of sufficient

resources; and 2) insufficient authority to address specific issues and complaints.

Public relations and awareness. The small business is mostly unaware that there is a mechanism established to address their regulatory concerns. Information about the Board hearings, about the kinds of issues being raised and the relief that is possible for small business needs to be circulated more widely. Certainly, the single largest obstacle to promoting the program is the lack of sufficient appropriations for the program, but whatever money is available should first be focused on getting out the message. NSBU and other small business groups must and have taken some responsibility for this, though we must do more. Speaking for only my organization, we routinely announce the Fairness Board hearing dates and locations as soon as we get them in our weekly fax and e-mail newsletter, *NSBU Net.* We have also placed the hearing schedule on our Internet site, *www.nsbu.org* as well as a link to the Reg Fairness homepage on the SBA's site.

Promoting small business participation. There is a great deal of apprehension in the small business community about making our disaffection with the federal government known -- a chilling effect does exist. Small businesses are concerned that any number of negative consequences may follow if we take on a large government agency in a public forum. Retribution is a serious, real and legitimate concern. The Ombudsman has done a great deal to expose small business regulatory concerns and problems, but we have seen the current process is potentially a problem. Small business owners are uncomfortable about sharing business information with the federal agencies. We must work to find a solution to this issue.

Returning again to the issue of entrepreneurial impatience, I believe the largest inhibitor of small business participation in the Fairness Board process has to do with results. That is, from a small business perspective, can my participation make my problem go away in the relative short-term (because I'll be out of business in the long-term)? The answer in most cases, I'm afraid, is no. How can a small business owner justify traveling hours to an out-of-town hearing—or even writing an extensive letter—to an organization that is only statutorily sanctioned to gather comments and issue a general report sometime next year? It is time, I believe that we give another look to the law in this regard. The Ombudsman clearly cannot become a caseworker for every small business complaint brought to our attention. However, small businesses need to be assured that someone in this process has the authority to act in the most egregious and pressing cases. I urge the Committee to consider initiating this discussion.

Appropriations. The Office of the Ombudsman is crippled by dramatic under-funding. In order to achieve the objectives Congress unanimously voted, the budget must increase markedly. A handful of staff people cannot possibly hope to both promote the program and meaningfully address the regulatory enforcement issues encountered by millions of small businesses nationally. Especially if—as we recommend—the underlying statute is changed to enhance the authority of the Ombudsman, the resources of the office will be doubly insufficient.

The dangers of continuing along the current path are substantial for small businesses. Because of the lack of resources for outreach and the lack of authority to actually address real problems, small businesses

are not coming to the Ombudsman and the Fairness Boards in great numbers. We are already seeing federal agencies and others pointing out those low response rates, suggesting, therefore, that small business regulatory concerns are overblown. Allowing SBREFA to limp along as it currently is undermines the cause of small business regulatory fairness rather than promotes it.

Annual report. While there are many positive aspects to the current and previous annual National Ombudsman's reports, the reports have not measured up to our expectations. Let me say that there is no doubt that there are individuals in each federal agency who are concerned about small business. Certainly, agencies have developed a number of programs that are designed to minimize the regulatory burden small businesses face. The Ombudsman's Report should applaud all efforts to reduce the burden of regulations on small business, but I also believe that the picture is not quite as bright as the reports may lead some to believe.

NSBU works with federal agencies regularly. We know the individuals at the EPA, OSHA and the IRS who are doing their very best for small business. These individuals are lonely and too few in number. The reason they are lonely is because their actions are not embraced and fully supported by the rest of their agency. No matter the quality of individual or the quality of a single pro-small business program, we have not overcome this regulatory culture. The Ombudsman's Report must not shy away from tough criticism of the agencies when necessary.

Conclusion

This Regulatory Fairness Program is still a work in progress, but a very important one that must be accelerated and strengthened to become truly effective for small business. Small business needs and deserves the utmost dedication and care from those who are given the authority to assist them in mitigating negative regulatory impacts. The program needs more resources, and it needs more authority. The Regulatory Fairness Boards and the SBA Small Business and Agriculture Regulatory Enforcement Ombudsman are keys to the future success of small business, and we cannot let this experiment falter.

Let me conclude with praise and support for the efforts being made by my fellow volunteers who make up the Regulatory Fairness Boards. We who take time away from our customers and employees to help other small business owners navigate the treacherous shoals of our regulatory system and give them a forum to have their differences aired, and hopefully resolved and provide real small business oversight to the process, are the true heroes of the Small Business Regulatory Enforcement Fairness law. I also want to recognize the efforts of a number of excellent staff people who have shown great dedication and perseverance in keeping the program moving forward, despite its lack of resources.

On behalf of NSBU, I would like to thank Chairwoman Kelly and the entire Committee for giving me the opportunity to testify before you today.

House Committee on Small Business

Subcommittee on Regulatory Reform and Paperwork Reduction

June 15, 2000

Prepared remarks of Scott Lara

Director of Governmental Affairs

Home Care Association of America

Good Morning Chairwoman Kelly, Representative Pascrell and esteemed members of the subcommittee. My name is Scott Lara and I am the Director of Governmental Affairs for the Home Care Association of America (HCAA). HCAA represents over 250 locally owned and operated home health agencies across the United States. I deeply appreciate the opportunity to testify before you today regarding the Small Business Administration Regulatory Fairness Program and its benefit to America's small businessmen and women.

I would first like to commend you Chairwoman Kelly for holding this hearing. It is important for you and for members of the subcommittee to know the importance of the Regulatory Fairness Program.

Under the leadership of former ombudsman Peter Barca and now Gail McDonald, the Regulatory Fairness Program has provided the opportunity for small businessmen and women to voice their concerns over the excessive undue paperwork burdens and about overzealous and unfair enforcement actions by federal agencies.

Many of HCAA's members, who are all small business men and women who own home health agencies, have taken the opportunity to testify before the regional fairness boards throughout the country. Without the Regional Fairness Boards, there would be no avenue for them to comment about the excessive regulations and paperwork requirements that have placed on the home health industry by the Health Care Financing Administration (HCFA). I have personally taken the opportunity to testify before the Regional Fairness Boards, most recently in Houston in April, and in Nashville last year.

I would like to discuss two of the main comments made to the regional fairness boards from home health agency owners:

FIRST - Outcome and Assessment Information Set (OASIS).

SECOND – HCFA's Failure to Protect Patient Choice.

THE FIRST ISSUE IS ON THE TOPIC OF OASIS.

The OASIS information set consists literally of HUNDREDS of questions and over 50 pages of paper comprising several data collection forms that home health nurses are required to complete **on each home health patient. It takes approximately 3 hours for a home health nurse to complete the Start of Care form alone. The OASIS forms consists of:**

1. A 17-page form to be completed upon Start of Care
2. A 15-page form to be completed at each recertification period (each 60 days).
3. A 15-page form to be completed when the patient is discharged from the home health agency.

4. A 4-page form to be completed when the patient returns to an inpatient facility (hospital), and a 2-page form to be completed if the patient dies in the home during the home care certification period.

I have included the OASIS forms with this testimony. In consideration of time please allow me to present ONLY two examples of the MANY unnecessary and improper questions in the OASIS that HCFA is mandating home health nurses to ask our nations Medicare beneficiaries:

(MO 280) Life Expectancy (Physician documentation is not required)

[ ] 0. Life expectancy is greater than 6 months

[ ] 1. Life expectancy is 6 months or less

(MO 610) Behaviors demonstrated at least once a week

[ ] 1. Memory deficit; failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.

[ ] 2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.

[ ] 3. Verbal disruption, yelling, threatening, excessive profanity, sexual references, etc.

[ ] 4. Physical aggression, aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects).

[ ] 5. Disruptive, infantile, or socially inappropriate behavior, (excludes verbal actions)

[ ] 6. Delusional, hallucinations, or paranoid behavior.

[ ] 7. None of the above behaviors demonstrated.

Clearly, some paperwork is needed when treating Medicare beneficiaries, but the OASIS 51 page data collection effort is the result of HCFA's overzealous attempt to collect highly personal information and information NOT relevant to patient care BUT instead targeted to making home health nurses part of the CENSUS BUREAU. Can you imagine if your father or mother needed home care and that a home health nurse is forced to collect the above data? Do you want a government agency, by using a home health professional who is a trusted clinician, collecting such data? How can a nurse (or any other health care professional) determine how long a patient will live?

How can a nurse (or any other health care professional) determine the behavior of a patient unless that nurse spends a significant amount of time with that patient?

Besides being unethical and overly burdensome, HCFA is now reimbursing home health agencies only $10.00 for each OASIS data set (per patient) to the home health agency for collecting this data. The cost for collecting this data is far greater than the $10 HCFA has chosen to reimburse home health agencies for collecting this data. In essence HCFA is forcing home care agencies to forgo providing patient care in exchange for a tedious and unmandated census bureau.

In addition, if the nurse doesn't correctly (in HCFA's eyes) score the patient's information, HCFA reserves the right to retroactively deny reimbursement, and worse, may terminate the home health agency from participating in the Medicare program.

Equally important is that many good nurses who should be in the industry have opted NOT to serve BECAUSE they became a nurse to take care of patients. Nurses do NOT want to be spies and paper workers (over 51 pages – NOT counting their nurses notes!) for an out of control HCFA bureaucracy.

THE SECOND ISSUE IS HCFA'S FAILURE TO PROTECT PATIENT CHOICE.

This second issue is regarding the unethical referral processes by hospitals which results in denial of patient choice as mandated by BBA-97. By way of background, BBA-97 sought to prevent hospitals from denying patient choice by systematically downstreaming patients, into their hospital-owned home health agencies. The BBA of 97 mandated two things: First, that hospitals disclose their financial interest to patients; and Secondly, that hospitals provide a list of home health agencies in the community to patients being discharged from the hospital who will require doctor-certified home health services.

We have found that many hospitals are openly violating the intent of Congress and in fact are further denying patient choice in the following manners (all under the auspice of giving the patient a list to protect patient choice):

1. Placing their hospital-owned agency frequently at the top of the list.

2. Placing their hospital-owned agency AND in bold (and large font), while placing the locally-owned and operated home health agencies in non-bold lower type font.

3. Stating that their agency is FULLY licensed and certified by Medicare (Implying other agencies are not).

4. Stating that their agency is accredited (Implying other agencies are not).

5. Stating that, "we can only guarantee (certify) the quality of the services you will receive by our hospital-owned home health agency and cannot guarantee (certify) the quality of any other home health agencies on the list." This "coercion tactic" (at their most vulnerable moment) places doubt in the patient's mind about the quality of care provided by locally owned and operated agencies, which in turn coerces the patient to choose the hospital-owned home health agency. It is troublesome that hospitals don't offer a guarantee on hospital inpatient care NOR do they specify the guarantee they offer for home care services.

6. Finally, hospital discharge planners ARE NOT INFORMING THE PATIENT of what agency the doctor recommends regarding home health care.

7. In summary, hospitals are denying patient choice by using the patient notification as a blatant marketing tool. Hospitals are improperly misleading their patients by stating they cannot guarantee any care except theirs, and then conveniently refusing to tell the patient whom their doctor recommends and feels which agency is best qualified to provide the care they need.

Recommendations:

I. HCAA urges the subcommittee to hold a hearing this year specifically about the overzealous regulations and burdensome paperwork requirements that HCFA is placing on home health agencies. HCFA Administrator Nancy-Ann Min Deparle should be asked about placing unrealistic burdens on home health agencies without reimbursing those agencies for completing that paperwork.

II. HCAA urges the subcommittee to continue their support of the Regulatory Fairness Program. Without this important program, there would not be a vehicle to voice concerns about burdensome regulations and paperwork such as the OASIS data collection effort.

III. HCAA requests that this subcommittee take the lead by crafting legislation to enforce the provision in the BBA of 97 regarding hospitals self referrals, provide specific language on the notification to patients which specifically outlaws hospital marketing propaganda and horn-blowing on the services of their owned agency (the notification should be on one page), and mandate that patients be informed of their doctors recommendation for a home care provider (this physician designation should also be on the one page). We would recommend that legislation state that those hospitals who are found in violation of denying patient choice would lose their Medicare provider number.

HCAA deeply appreciates this opportunity to testify before you today. We applaud Ombudsman McDonald, Mr. Jere Glover and the entire staff of the Small Business Administration for their leadership and commitment to our nations small businesses. We also applaud this subcommittee and you Chairwoman Kelly for conducting this hearing today. Your commitment to the small businessmen and women of America is a strong sign that Congress recognizes and is willing to deal with federal agencies who are clearly abusing their power.

I have included with my testimony the October 15, 1999 Heritage Foundation Lecture #646 entitled, "How the Medicare Bureaucracy Threatens Patient Privacy by Dr. Robert Moffit, Dr. Paul Appelbaum, Kent Masterson Brown, Jim Pyles and Ronald Welch which supports my above testimony.

| Library | E-mail Lists | Support Heritage | Events | SEND TO A FRIEND Search

The Heritage Foundation
Heritage Lectures

No. 646 October 15, 1999

HOW THE MEDICARE BUREAUCRACY THREATENS PATIENT PRIVACY

ROBERT E. MOFFIT, PH.D., PAUL APPELBAUM, M.D., KENT MASTERSON BROWN, JIM PYLES, RONALD WELCH

Link to:
| PDF (123k) |
Optimized for Adobe Acrobat 4.0.

INTRODUCTION
Robert E. Moffit, Ph.D.

While Congress has been engaged in a heated debate over managed care reform and the media have reported another increase in the number of Americans without health insurance, a crucial health-policy issue is being neglected: the privacy of personal medical records. Earlier this year, the Health Care Financing Administration (HCFA), the regulatory agency that runs the Medicare program, proposed a rule to force almost 10,000 home health-care agencies around the country to report sensitive personal information on patients and to transmit this information to a federal database and, eventually, to state databases. Under the proposed rule, this would take place without the patient's knowledge and fully informed consent.

Under the rule, officials of home health agencies contracting with Medicare would be compelled to report

HERITAGE FOUNDATION LECTURE
held on May 27, 1999

Produced by
Lectures and
Educational Programs

Published by
The Heritage Foundation
214 Massachusetts Ave., N.E.
Washington, D.C.
20002-4999
(202) 546-4400
http://www.heritage.org

ISSN 0272-1155

contracting with Medicare would be compelled to report sensitive, personal information ranging from the patient's history, personal characteristics, race, ethnicity, living conditions, and financial and behavioral profiles. But HCFA's intrusion would not stop there. The detailed record includes inquiries into whether patients expressed "depressive" feelings, a "sense of failure," "thoughts of suicide," or had used excessive profanity or made "sexual references." Remarkably, this Medicare data-collection program (called the Outcome Assessment and Information Set, or OASIS) would not be confined to Medicare patients, but would include patients not even being treated on the Medicare program seeking home health services, even though no Medicare payment was being sought or made.

Backing Off. Collection of personal data already had commenced, but in April, media attention and adverse publicity led officials at HCFA to back off on enforcing their initial rule. On June 18, HCFA published another version of the data-collection rule for home health agencies. With one exception, said officials, HCFA would continue to use all of the questions it originally proposed. It would continue to require the collection of information on non-Medicare patients, but it would not transmit information on those patients until an encryption system was developed to mask "patient-identifiable" data. HCFA officials said that they expect such a system to be developed by the spring of 2000. HCFA also restated its intention to collect personal information on Medicare patients for transmission to the federal database. In response to privacy concerns, HCFA said that it would provide Medicare patients "notice" that this information was being collected and transmitted, but this is far short of seeking a patient's voluntary and informed consent. Under the revised rule, the collection resumed on July 19. Then, one day later, the General Accounting Office (GAO) issued a general report on Medicare's confidentiality procedures that was sharply critical. The GAO uncovered significant weaknesses in the current Medicare system that could enable unauthorized individuals to have access to confidential information. Meanwhile, the Congress has not yet intervened to enact any law to safeguard the privacy of Medicare patients or to prevent future intrusions into their privacy.

A Larger Debate. The HCFA Medicare database issue is part of a larger debate. Under the Health Insurance Portability and Accountability Act of 1996, Congress authorized the establishment of a "unique patient identifier," a provision originally included in the Clinton Administration's massive and unsuccessful Health Security Act of 1993. Under the terms of the 1996 law, Congress was supposed to have enacted legislation to protect the privacy of medical records by August 1999. Congress failed to meet that deadline. The 1996 law therefore authorizes the Secretary of Health and Human Services to protect medical confidentiality through regulation. This, however, is not necessarily a comforting prospect. HCFA, after all, is part of the Department of Health and Human Services. It is not clear how much the Secretary would be willing to rein in HCFA's excesses. And experience shows that "intrusive" is almost a synonym for federal regulation.

So that is where the medical privacy issue stands today. Last May, at a Heritage Foundation symposium, a panel of distinguished experts explained how the issue of HCFA's intrusions into patient privacy in the Medicare program is of necessity part of a much larger question about the privacy of Americans' most sensitive information. This is an issue that Congress and the Administration need urgently to address.

--Robert E. Moffit, Ph.D., is Director of Domestic Policy Studies at The Heritage Foundation.

HOW PATIENTS ARE BEING STRIPPED OF THEIR PRIVACY
Paul Appelbaum, M.D.

By the time we are done here today, I think you will all conclude that threats to our health care privacy are both real and imminent. Unfortunately, both the public at large and Congress are oblivious to their nature and extent.

HCFA's Outcome and Assessment Information Set (OASIS) is one example that we'll be examining closely. I think it is important for all of us to recognize that OASIS is just part of a broader pattern of assaults on health-care privacy, including congressional authorization of a national unique patient identifier for every American. One number for every person, from sperm to worm, as they say, that would track all of our medical-care contacts for ever and ever. While that patient identifier is temporarily on hold, it still lurks out there, having already been authorized by Congress.

Much of the current legislation before Congress would deprive patients of control of the dissemination of information from their health-care records. It constitutes an abrogation of patients' traditional rights.

Before looking more closely at the Medicare OASIS program, we should ask why these systematic threats to medical privacy are occurring now. There are several reasons. First, we have the computer technology that makes it possible to aggregate nearly infinite amounts of data about all of us. Second, we have a concern with costs and a misleading belief that, if only we could track every patient's care, we could control our health care costs. That concern drives those who pay for care, including the federal government, which pays for a staggering percentage of health care in this country. Those who pay for health care are collecting ever-increasing amounts of data and they are utilizing that advanced computer-based technology to do so.

Once collected, that information becomes an irresistible target for all those who seek some advantage from access to medical record information, whether they are marketers for pharmaceutical companies, regulators in federal agencies, law enforcement personnel, or researchers. That is part of the dynamic driving HCFA's OASIS program

What Oasis Is. If "oasis" evokes an image for you of palm trees gently swaying in the breeze and pools of cool water in an otherwise parched desert, that image is a mirage.

The OASIS we are talking about--the Outcome and Assessment Information Set--is a 79-item questionnaire designed to be completed by home health-care agencies on all their patients. It was commissioned by HCFA and developed by a research center in Denver.

HCFA has now issued regulations--temporarily in abeyance--that would require every home health agency to fill out an OASIS questionnaire every time a person enters or leaves the care of an agency, even if just going into a hospital and coming out again, 60 days after entry to care.

Much of the information collected by OASIS is highly personal. For example, whether a person has urinary or bowel incontinence and, if so, how often. A person's financial status, whether they are alcohol or drug dependent, the frequency with which they experience anxiety, the sense of failure or self reproach that they may feel, whether they're indecisive or suffer a lack concentration, or whether they sprinkle their conversation with sexual references. Some of this information may be useful to home health agencies in planning a person's care--although I must wonder about other aspects of it.

Our concern is less that agencies would be required to collect that information than what they would be asked to do with it. HCFA regulations would require the agencies to transmit the information to HCFA in identifiable form, that is, with a name or other identifier attached.

Now the federal government will know whether you display "socially inappropriate behavior" in your home, have rodents in your house, or have attempted suicide--all questions that are included in the OASIS database.

What possible justification could HCFA have for wanting this information? HCFA now offers two, although they change, they mutate over time. OASIS, officials claimed, will help HCFA monitor the quality of care that patients receive. Also, OASIS will provide a basis for HCFA to develop a prospective payment system, that is, a fixed-payment-per-case method for home health care.

HCFA's Excuses. These justifications just don't stand up to close scrutiny. The random OASIS data will not help HCFA monitor quality of care because the database doesn't provide the right information for the task. OASIS details patients' current condition, but not what is being done to treat them. Nor does OASIS measure the efficacy of that care, and those are the crucial data if you are focusing on quality.

Moreover, it defies belief that HCFA intends to assess the quality of care--even assuming OASIS could do it for them--for every patient receiving federally funded home health care. This is a task best done at the agency level, the agency that is providing the care. HCFA does not need OASIS to monitor quality.

Nor are these data needed in the way they are proposed to be collected--that is, indefinitely--on every patient in home health-care treatment, to develop a prospective payment system. Only a sample of patients need to be examined in order to develop a payment methodology, as long as the patient's specific information and billing information, that is, a detail of the services rendered, can be linked.

HCFA officials don't need to know who these people are. They don't need the identifiers. They could, in fact, hire a contractor to provide an identified sample of appropriate data for their use in developing payment methodology, just like they hired a contractor to develop OASIS in the first place. There is no reason why this huge amount of identifiable data needs to reside in federal government computers.

OASIS is an example of the current government approach to medical privacy. It is based on two assumptions: First, more information is always better than less, and second, the

patient's interest in privacy is so insubstantial that it can be overridden on the flimsiest of pretexts.

A similar attitude is evident in the leading medical records information proposals now in the Senate, and more recently in the House.

Consider the bill introduced by Senator James Jeffords (R-VT). Under this proposed legislation, patients would be stripped, as a condition of receiving insurance and treatment, of their traditional control of information in their records for treatment. States would be stripped of their traditional power to regulate medical-records privacy, which would be preempted by the federal government. No special protection would be afforded especially sensitive medical information, such as psychiatric records, sexually transmitted diseases, pregnancy, abortion, and the like.

The message, I think, is clear. America needs to watch out. Americans need to be on the alert. Because the Medicare OASIS program is just the beginning.

--Paul Appelbaum, M.D., is distinguished professor of psychiatry and the director of the Law and Psychiatry program at the University of Massachusetts Medical School. Dr. Appelbaum is vice president of the American Psychiatric Association. He is the past president of the American Academy of Psychiatry and the Law, and past president of the Massachusetts Psychiatric Society.

LESSONS FROM THE KENTUCKY HEALTH PLAN
Kent Masterson Brown

We have a principle that has constitutional underpinnings. It is that informational privacy in one's medical care is a right. Yet, when you look at the picture of medical records in this country, there are so many individual institutions--both government and private--that seek medical records, the exceptions literally obliterate the rule.

Let me call your attention to a recent book review in *The University of California Law Review*. The subject was a new treatise on medical-records privacy. The review began with the basic postulate that there is a constitutional right to privacy. Yet, the remaining 600 pages of the book discuss all the exceptions. Finally, the book reviewer just said, "Privacy is dead; hurray for privacy!" And that's pretty much the way it is: "Hurray for privacy," but it seems dead.

With respect to OASIS in the Medicare program, I see three basic problems.

First, it invades an individual's private domain, the most private of all. It seeks more information than the government could possibly find necessary. Why do they need to know whether or not there are visible fire alarms on the wall? There is no need. If they are looking for a means by which they can develop a prospective payment system, why does it need to be person-specific?

Second, at least under the initial or proposed Medicare rule, HCFA invades the privacy of people for whom the federal government pays nothing. The home health agency is

required to collect this data on everybody as a condition of participation in Medicare. Why?

Third, once the information is collected by the government, it is controlled by the government. What happens to it? Where does it go?

That is the crucial question. If you went before a federal district judge, and there was a record-production statute that had a confidentiality requirement making it a criminal violation to divulge that information, the judge would say, well, that's probably constitutional. You'd walk away and say, okay, fine.

But even if it is a criminal violation for someone to divulge information that is patient-specific, that does not give me a high degree of confidence. Let me tell you why.

Back during the big health care reform debate in 1993 and 1994, a lot of states were developing their own health care reform bills very much like the Clinton Health Security Act. I was in that mix, because I was suing the Clinton Administration over the disclosure of the records of the Administration's Health Care Task Force. In order to get those meetings open to the public, we had to prove that the people who formed the task force were not all full-time government employees. We found that to be true, and we did it by identifying several people on that task force who were listed as health policy fellows. It was brought to our attention that a major private foundation in this country has a health policy fellowship program. This opened up the records, because now we had a task force, an interdepartmental working group, that was not composed entirely of full-time officers or employees of the federal government.

At the same time, we found that this private foundation was giving money to the states to enact health care reform bills, much like the Clinton plan. My home state of Kentucky was one of them. So, I asked, under an open records request, for information on that foundation. Indeed, they had actually given money to the state of Kentucky to see this Clinton-style proposal implemented.

The Kentucky Health Plan. I say all this because Kentucky, with that bill, enacted the most sweeping health-care data requirement it has ever had. It was a mirror of the Clinton plan. It was also a mirror what was taking place in other states.

The Kentucky Health Plan set up a health-data commission, a health-policy board. It collected data on everybody, even though the state government did not pay a dime for that health care. It required every physician to file the equivalent of a HCFA 1500 Claim Form on every patient: name, address, Social Security number, what they did, what the diagnosis was, what the treatment was--all of that. It also made it a criminal offense for anyone in government to divulge that information. Sounded fine.

Well, in Kentucky, I filed an action challenging the constitutionality of that statute for the reason, among others, that this statute was enacted because private money was given to the government to create the Kentucky Plan, and then private money came in to implement that plan.

Please understand. I am not saying this private foundation that supplied funding ever got

one piece of information here. But I am saying that this sort of arrangement created a door for information of a sensitive nature to flow in and flow out.

In the case, we rescued, from among the volumes of relevant information, a document that the governor of Kentucky had signed. Consider this. The bill creating the Kentucky Health Plan was passed on April 14, 1994. On April 28, the governor of Kentucky entered into an agreement with this private foundation. The purpose of this grant is to assist with the implementation of House Bill 250, the Kentucky Health Reform Bill, including the data component. As one of the conditions of receiving the money, the foundation received a specific grant of authority from the state of Kentucky. I'll read it to you: "(8) The grantee," meaning Kentucky, "hereby grants to the foundation a nonexclusive, irrevocable, perpetual royalty free license to use, and licenses others to use any and all data collected in connection with the grant, in any and all forms in which the data is affixed." Now, again, I have no idea if any data were transmitted, but does that agreement bother you? It bothered me.

With respect to Medicare's OASIS Program, I went through the regulations that the government proposed on January 25, 1999. I found that they have an HCFA-OASIS contractor. The contractor is getting this information--the information that's creating the data set. That contractor is the University of Colorado Health Sciences Center, Center for Health Services and Policy Research. Then, I tried to find out, just out of the blue, if this same private foundation is funding that center. So I went to the foundation's annual report of 1997, which lists all of its grants. In 1997, the year ending December 31, here's what's listed: "University of Colorado Health Sciences Center, Denver, Colorado, a grant in the amount of $1,425,423, for assisting home care providers in using patient outcome data to improve care for four years." They entered into the identical agreement that the governor of Kentucky did with paragraph 8 of the Kentucky agreement. It's the standard form agreement.

Now I ask you, is that data confidential? Who is to get the data? Is it the private agency that is financing the assembly of it at the University of Colorado? So who gets it? I have no idea.

All I know, is that the barn door seems wide open. That's the problem. What is government to do with it? Where is it going to go? That question alone illustrates the gravity of the problem.

--Kent Masterson Brown is counselor to the United Seniors Association. Practicing in Danville, Kentucky, and Washington, D.C., Mr. Brown specializes in health-care law, with an emphasis on constitutional law. Mr. Brown represented the Association of American Physicians and Surgeons in its suit against the Clinton Administration to force public disclosure of the content and composition of the 1993 Health Care Task Force run by Hillary Clinton.

MORE PAPERWORK, LESS CHOICE
Jim Pyles

Our firm had been working on the OASIS issue for months. We brought the privacy

concerns to the attention of HCFA officials in August 1998, and again in September and December of that year.

I contacted the folks at HCFA and told them that this was not only bad policy, but it looked like it had the makings of a real political backlash. I suggested that they really ought to sit down and chat with us about it.

I met with them in January and again in February of this year. The latest meeting was on February 25, the day after the initial collection requirement went into effect.

Bureaucratic Insensitivity. The concerns of the individuals and the patients were of no relevance to HCFA at all. I told them that study after study had shown that, when mental health information is forced to be disclosed, the patients simply don't disclose the information any more.

As Dr. Appelbaum said, this OASIS data collection included patient information with respect to whether they were depressed, had feelings of hopelessness, feelings of suicide, and all of it compelled to be disclosed to the federal government and the states in a fully identifiable form. And it was to remain on file for a period of three years.

I pointed out to HCFA that the private home-health agencies would have to tell both Medicare and non-Medicare patients: "If you tell me you're depressed, I'm going have to report that to the federal government. If you tell me you live alone, I'm going to have to report that to the federal government and to the state government."

Those of us who have worked around the psychiatric community know that patients will never make those statements any more, and those are the very statements that are necessary for diagnosis and treatment.

The thing that the folks at HCFA failed to understand, it seems to me, are the same things that Members of Congress now are failing to understand: that privacy is an essential element of quality care. It is indispensable.

This issue of what to do about privacy standards did not fall on us this year out of the sky. Profound thinking has gone into this issue. A lot of it has been summarized in a 1996 United States Supreme Court decision in the case of *Jaffee* v. *Redmond*. In that case, the Supreme Court analyzed the question of whether psychotherapy communication should be kept private. The Justices did what Congress should be doing, but is not. They went back and analyzed the history of the issue. And their decision was a ringing defense of the principle of privacy. Let's be clear on an essential point. Every professional examination of the privacy issue has found that maintaining the privacy of mental-health communications is essential to effective mental-health therapy.

What is at stake here is clear: If we don't protect the privacy of individual patient information, particularly psychotherapy communications, we are going to lose effective psychotherapy in this country.

The United States Supreme Court clearly understood the stakes in the case. As the Supreme Court noted, privacy in these matters is not just an individual interest; it's also a

public interest. There is no conflict here between individual and public interest. They are concurrent.

I recently testified before the Senate Special Committee on Aging. I had with me the OASIS data form with each page stapled end to end. I unrolled it, and you could hear gasps throughout the hearing room. It went from the hearing desk and banged into the back wall. The thing is over 30 feet long. It contains more than 450 data elements. And as Mr. Brown was noting, under the original rule it was to be filled out and completed on non-Medicare patients who get something as simple as a bed bath.

The research folks, one of the HCFA subcontractors, did research to find out how long it takes home health agencies to get this thing completed. It's anywhere from an additional hour to two hours, per patient, each time. The patients, not surprisingly, rebelled.

This data collection effort was actually in effect on February 25, until the Vice President compelled HCFA to pull it and do a privacy evaluation. In the meantime, however, we learned a lot. HCFA's view was that home health agencies would have to terminate services to any patient who didn't consent to the collection and reporting of this information. We found that the care givers, in order to preserve access to the necessary medical services, made up the entries. They just made them up.

It was another hassle factor. More paperwork was becoming a barrier to quality care because you couldn't have Medicare services unless you consented.

In addition, the very data that they were trying to collect was hopelessly corrupted, so it was eroding the quality of health care in two ways. First, it was preventing patients from getting access to the care. Second it was generating data that HCFA was planning on using for future development of a perspective payment system for home care, and that, in turn, would be helplessly flawed.

OASIS is a real warning shot. Americans need to wake up and understand that privacy is not just a personal preference. It is really a medical necessity. That was the conclusion of The Los Angeles Times in a May 10 editorial on the subject. A recent California Health Care Foundation study found that, increasingly, patients will lie, and the physicians will not put down accurate information, in order to protect the patient's privacy.

Unless we protect privacy, unless Congress protects the privacy of medical information, we are going to fundamentally alter the way in which health care is delivered in this country. And it is going to be altered for the worse. Patients will simply forgo getting the care. They won't provide accurate information. The medical practitioners will not put it down, or they'll put it down in a skewed manner so it protects the patient's privacy.

Patient privacy is very much like personal self-defense. It's a fundamental drive. People will do whatever it takes to protect themselves and their family. If you try to violate someone's privacy, if you take their privacy away from them, they will do whatever it takes to preserve it.

The United States of America was founded on the need to protect your individual privacy and to keep the government out of your personal life, unless you violate the law. We have

an expectation of that in this country.

Under Medicare's OASIS program, we have seen nurses being compelled to go into people's homes and obtain information that was not necessary for their diagnosis and treatment, but deemed necessary for a governmental program. These nurses are, in effect, federal agents going into homes, where you think that people would have a right to privacy, and according them less protection than an accused criminal would have. Their only crime was being sick.

As I pointed out to the Senate Special Committee on Aging, being sick in this country should not be treated as a crime. We should make sure patients have the basic personal protections they need and expect.

One last point. I hear this a lot: that insurance companies have access to a lot of your personal information anyway, hospitals do, doctors do, and even HCFA has access to a lot of home health information on an individual basis. So, why should we be worried now that Congress may allow this information to be collected for health-care operations? Well, it is one thing to have this kind of information passed to an insurance company or the government, on an *ad hoc* basis, but it is quite another to have your government establish a new standard that *compels* the reporting of this information routinely. That, in my view, will undermine the confidence of the public in the health care delivery system.

That is what is at stake in the congressional legislation that is currently under consideration. It was clearly a mistake in Medicare's OASIS program.

--Jim Pyles is attorney for the American Psychoanalytic Association and a founding member of the law firm of Powers, Pyles, Sutter & Verville in Washington, D.C. He has specialized in health-care law, both in the federal government and in private practice, for nearly thirty years.

GETTING THE LEGISLATIVE PROCESS BACK ON TRACK
Ronald Weich

I want to commend the Heritage Foundation for holding this very timely and important forum. This issue is really at the center of the congressional agenda, and I appreciate the opportunity to come and talk about the ACLU's perspective on this.

There are some who might find it amusing or ironic that a representative of the ACLU would be at a Heritage Foundation forum. The Heritage Foundation is on the right of the political spectrum, and the ACLU is often characterized as being on the left. People who follow issues of privacy and constitutional law and civil liberties know that it's not really a spectrum, but a circle. On the left and on the right, very sensible people get together to defend the constitutional right to privacy and the inherent right to privacy that all human beings have.

That right to privacy is absolutely crucial in the health-care context. Trust is essential to quality health care. You go to a doctor, and you undress. You disrobe, and you expect that the conversation between you and your doctor and the information that the doctor learns about you from your comments and from the fluids that he draws from your body

are to be kept private. That's information that's going to be strictly between you and that doctor.

There is a real question about whether there is a legal right to privacy or confidentiality in that encounter. Certainly, there is a common-law rule that speaks of a doctor-patient privilege, so that a doctor could not take the witness stand in a criminal or civil case and testify about that encounter or reveal the records without the patient's permission. There is also a Fourth Amendment right in our personal effects, our papers.

For different reasons, those traditional protections of privacy are increasingly ineffective. The common law privilege is between a doctor and a patient. But who has our records these days? It's not just "Marcus Welby, M.D.," the wise and kindly family physician portrayed in the old television series. It's the insurance company that reimburses "Dr. Welby" for his services. It's the pharmaceutical company that fills the prescription. It's the managed-care company that looks over his shoulder to see whether he is providing care in an efficient manner.

The records of our medical encounters with doctors are spreading far beyond the doctor's office. Of course, that is the result of technology, which is very beneficial to the health care system. It allows for the transmission of health research and health information and that, too, dramatically improves the quality of care.

No one on this panel is suggesting that we go back to paper and pencil records. Electronic communications and electronic record-keeping can enhance quality health care. But technology also presents significant challenges to privacy. There are so many entities now involved in the health care system that these records can be transmitted to those entities virtually at will, at the click of a computer mouse. That presents a challenge that overwhelms the common-law privilege between a doctor and a patient.

Constitutional Protections. What about the Fourth Amendment? Does that help? If I have a set of X-rays in my desk drawer at home, the police cannot break down the door of my house and take those X-rays, right? We all would claim the Fourth Amendment protection against unreasonable searches and seizures.

What if my X-rays are kept in my doctor's office, or in the insurance company's office, or the managed care company's office? Does the Fourth Amendment protect my right to those records? No, because the law does not consistently recognize a patient's ownership interest in those records. In effect, the law views me as having abandoned the ownership interest when I left the doctor's office and left the X-ray there, or left the blood sample there, or left the records there that describe my encounter with the doctor.

In Fourth Amendment challenges to the seizure of medical records from a doctor's office or an insurance company's office, the Fourth Amendment has been held not to protect a patient's privacy interest in those records.

As a result, the ACLU strongly believes that we need a new federal law that establishes by statute a patient's ownership interest in his records, and a set of legal protections that guard against the invasion of privacy in those records.

Much has been said about Medicare's OASIS program. It has been well said, and I don't want to repeat it. Dr. Appelbaum said that OASIS is a symptom of a larger problem and a larger process. I would like to speak to this very briefly. In 1996, when Congress passed the Health Insurance Portability and Accountability Act, it included "administrative simplification" provisions that essentially permitted the freer flow of health information among various entities, including insurance companies, doctors, and managed-care companies.

Congress recognized at that time that administrative simplification and the computerization of medical records posed a threat to medical privacy. There were then efforts by some Members of Congress to include in that law detailed privacy protections. These efforts did not succeed. The reason: An agreement could not be reached among the Members of the Senate and the House who were working on that bill. So, Congress punted and said, "We will enact comprehensive medical privacy protections in law within three years, by 1999. But if we don't act by August of 1999, the Secretary of Health and Human Services will be empowered to establish such protections by regulation." So, if Congress doesn't act, Secretary Shalala is authorized to promulgate regulations.

Congressional Legislation. Three bills have emerged in the Senate. Senators Patrick Leahy (D-VT) and Edward Kennedy (D-MA) have introduced S. 573. Senators James Jeffords (R-VT) and Christopher Dodd (D-CT) have introduced S. 578. Senators Bennett and Mack have also introduced a bill. Those three bills offer different visions for privacy protections.

The Senate Health, Education, Labor and Pensions Committee scheduled a markup on a bill that was an amalgamation of the three. The Senators on that committee, under the direction of Chairman Jeffords, had worked to put together a consensus draft. It wasn't a consensus in the sense that everybody agreed to it. But Chairman Jeffords put it forward as the "Chairman's mark." That markup was canceled at the very last minute. But the Committee will again begin the process of considering this bill.

The ACLU has very deep concerns about the direction of this legislative process. Under the guise of protecting medical privacy, we fear that Senator Jeffords and others, who undoubtedly are well intentioned and are trying their best to address this need to legislate, are going to pass a federal bill that would actually, in key respects, be a step backwards for privacy protections.

There are a couple of key problems with the bill the Senate Committee is considering. First of all, the law enforcement section of the bill is disastrous. As you would imagine, the bill establishes a general rule that says patients have ownership interest in their medical records. They have to consent to the disclosure of those records to other people, and they have the right to access their own records to check and make corrections. That rule is then modified by many exceptions, as Kent Brown noted earlier. You can start by saying there is a principle of privacy, but then you list all the exceptions. You finally ask whether there is anything left, or is it just a tattered piece of paper?

Government Databases. One of the key exceptions in this Jeffords bill is an exception for law enforcement. As we read the current draft, law enforcement agencies have

virtually unfettered access to your medical records. There is not a warrant requirement. Essentially, the police are permitted to issue what are called "administrative subpoenas" to obtain your medical records. When they obtain those records, they can virtually do anything with them.

They can maintain databases. This is a long-standing fear of the ACLU, that health care records have become the new law enforcement database, in which the police can search for clues to a crime based on your blood type, your DNA sample, or other information about your health status.

A second concern of ours is in the area of preemption. A number of states have begun to address this issue. I know policy analysts at The Heritage Foundation understand and respect the important role of the states in our constitutional system. They are "laboratories" for policy, and indeed, the states have begun to address this challenge.

The Jeffords bill would, in a very significant measure, preempt state laws governing privacy that have already been enacted, and more dramatically, it would preempt the states from acting in this area in the future. We think that's wrong and dangerous.

Finally, a third area that concerns us--and is most relevant to this panel today--is in the area of health oversight. Section 206 of the current Chairman's mark provides that a health care provider, health plan, health researcher, employer, life insurer, etc., shall disclose health information to a health oversight agency with an oversight function authorized by law.

More Power to HCFA. Well, if that sounds familiar to you, it should. Because it's that "mirage" that Dr. Appelbaum described in his opening remarks. It's like OASIS. HCFA would specifically be authorized to carry out the OASIS kind of activity under Section 206 of the Jeffords bill. If Senator Jeffords and his staff were here, they would be quick to point out that other sections of the bill provide protections about how that information could be used by HCFA. But the sweeping intrusion into health care operations by government agencies in the name of oversight is perpetuated by this bill. Therefore, this bill, which purports to protect privacy and limit access to medical records, is shaping up to be something very different.

We hope that this legislative process gets back on track. Congress should enact privacy protections. There is a pressing need, and Congress should address it. But right now, we fear that the bill is off-track. While we're not calling on Congress to pull the plug on this legislative process, we urge very significant improvement over this Jeffords bill. Everyone in this room who came here concerned about Medicare's OASIS program, should be very concerned about the direction of health-privacy legislation.

--Ronald Weich is a partner in the law firm of Zuckerman, Spaeder, Goldstein, Taylor & Kolker, and a legislative consultant to the American Civil Liberties Union. He has served in a series of senior staff positions in the Senate, notably as general counsel to the Labor and Human Resources Committee and chief counsel to Senator Edward Kennedy on the Senate Judiciary Committee.

SEND TO A FRIEND

Link to:
| PDF (123k) |
Optimized for Adobe Acrobat 4.0.

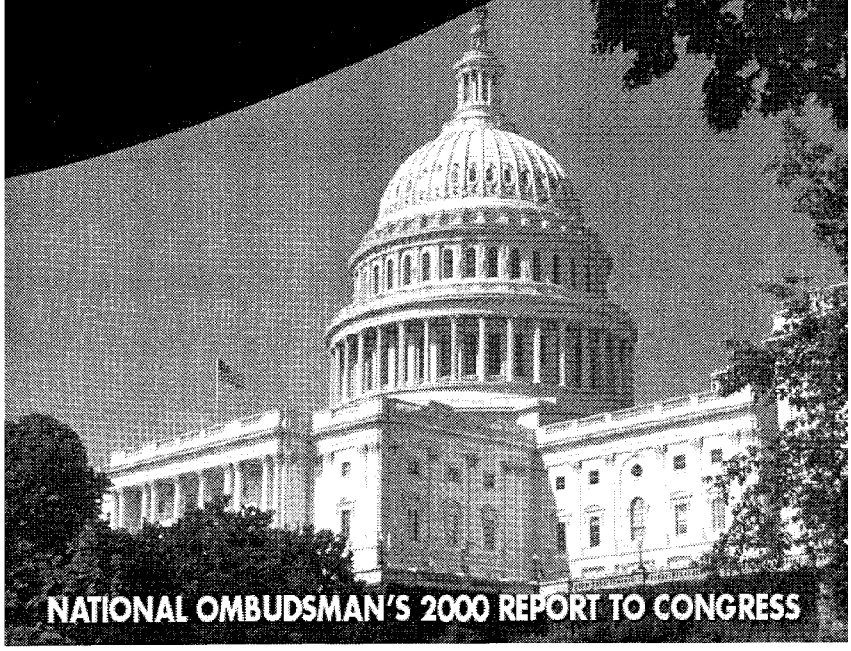
U.S. Small Business Administration

SBA

EXECUTIVE SUMMARY

Building Small Business—Agency Partnerships

Regulatory Fairness Program



NATIONAL OMBUDSMAN'S 2000 REPORT TO CONGRESS

U.S. Small Business Administration

Aida Alvarez, Administrator

Gail A. McDonald, National Ombudsman

Hatem H. El-Gabri, Senior Counsel
Elizabet Gonzalez, Staff Asst., Cust. Affairs
John T. Greiner, Director, Regulatory Review
Elestine Harvey, Staff Asst., Program Delivery
Cora McGee, Staff Asst., Regulatory Review
Margaret Pascual, Paralegal
Gary Peele, Director, Program Delivery
Lisa Roemer, Staff Asst., Program Development

2000 Fairness Board Members

I	New England States Region 1	Vinh Cam Larry Morse Roxanna Adams Judith Obermayer Ronald Williams	VI	Southern States Region 6	Larry Mocha Wallace Caradine Elise McCullough Massey Villarreal
II	Mid Atlantic States Region 2	E. Peter Ruddy Phyllis Hill Slater Sandra Lee Joan Haberle Manuel Cidre	VII	Heartland States Region 7	Dan Morgan J. Scott George Alonzo Harrison Stella Olson Joanne Stockdale
III	South Atlantic States Region 3	Victor Tucci Ann Parker Maust Shawn Marcell Wilkins McNair, Jr. Kenneth Rodriguez	VIII	Rocky Mountain States Region 8	Linda Nielsen Albert Gonzales Vernon Thompson Mary Thoman Donna Davis
IV	Southeastern States Region 4	Rita Mitchell Robert Clark LeRoy Walker, Jr. Livia Whisenhunt Jeffery Adduci	IX	Western States Region 9	Kathy Chavez Napoli Tim Moore Thomas Gutherie C.K. Tseng Joseph Cerbone
V	Midwestern States Region 5	Thelma Ablan John Hexter Reid Ribble Hardie Blake Donald Magett	X	Northwestern States Region 10	Clyde Stryker Gretchen Mathers Keith Sattler Serena McAlvain Morris Thompson[1]

[1] We are saddened by the death of Mr. Thompson. Mr. Thompson was one of Alaska's most prominent Native American advocates. We were privileged to work with him on behalf of Alaska and the nation's small businesses.

Message from Administrator Aida Alvarez

Three and a half years ago the President signed into law the Small Business Regulatory Enforcement Fairness Act (SBREFA) which instituted several important reforms to help small business. Several of the Act's provisions codified initiatives President Clinton and Vice President Gore had instituted through the National Performance Review, such as requiring agencies to adopt and publish compliance policies. Both the Administration and the Congress recognized the need to reduce the regulatory burdens that fall disproportionately on small businesses.

One important vehicle to accomplish this objective was the establishment within SBA of a National Ombudsman and 10 regional Small Business Regulatory Fairness Boards, whose work and accomplishments I am proudly submitting today. I am especially pleased to be able to report that the Government and the private sector are working in partnership to implement good public policy that is also responsive to the concerns of small business. What Congress anticipated and what SBA expected is in fact happening:

- more and more small businesses are working with the Office of the National Ombudsman and agencies to develop concrete solutions to their enforcement concerns; and
- joint efforts are triggering systemic improvements in agency enforcement practices.

I want to thank the small business leaders who have volunteered significant time and energies to serve as Regulatory Fairness Board Members. Their work and commitment is proof that small business has indeed a vital stake in worker safety, a clean environment and good government. We are truly proud and grateful to have them as partners in this effort. I also want to thank all the small businesses that shared their compliance and enforcement experiences with the Boards—information that helped guide and formulate the recommendations contained in this year's report.

Finally, I am pleased to announce the appointment of Gail A. McDonald as the new National Ombudsman. Ms. McDonald has extensive experience both as a regulator and a reformer. I am confident that the experience she brings to her new assignment will make her an effective National Ombudsman, safeguarding the interests of America's small businesses.

Message from National Ombudsman Gail McDonald

As the newly appointed Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman), I am very pleased to join Administrator Aida Alvarez and the Members of the regional Small Business Regulatory Fairness Boards in presenting the Year 2000 Report to Congress: *Building Small Business–Agency Partnerships.*

The 2000 Report provides Congress and the Administration a thorough review of the efforts of the National Ombudsman and the Small Business Regulatory Fairness Boards to respond to small business owners on their views concerning the regulatory enforcement and compliance environment. This year's Report shows progress in improving communication on regulatory enforcement issues and making agencies sensitive to the conditions that are essential to the prosperity of small business. We continue to make strides in reaching a broader small business audience. We have made significant advances in both gauging the pulse of small business and making sure their issues are fully expressed to agency officials who have the authority to make needed changes. In keeping with Administrator Alvarez's call to transform SBA into a leading edge institution, we are well on the way to making full program participation available on the World Wide Web.

The 2000 Report provides a review of key enforcement and compliance issues, small business perceptions, and 10 small business-driven recommendations that are geared to improving the regulatory enforcement environment. Last year the Office expanded existing partnerships and created many new ones. The Report demonstrates how these partnerships have improved agency enforcement practices; heightened the impact of small business feedback; enabled the development of innovative enforcement and compliance solutions; and enhanced Regulatory Fairness Board Member participation.

Based on the recommendations of small businesses and agencies, the National Ombudsman has prioritized four goals: enhanced small business feedback; greater agency accountability; better small business—agency communication; and more creative partnerships between the small business and Federal agency communities. These four goals are the foundation on which all partners will build a regulatory enforcement environment that is fairer and friendlier to small businesses and that ultimately results in greater compliance and small business prosperity. The Administration, Congress, small businesses, their trade associations, and Federal agencies agree that Federal resources are better spent helping small businesses comply with the law, rather than taking punitive action against them. The Year 2000 Report to Congress demonstrates that together we are making progress on our shared goals. This year, I am especially grateful to Hatem H. El-Gabri for the strong leadership he demonstrated as Acting National Ombudsman with the departure of Peter W. Barca. I look forward to working with Mr. El-Gabri on many important projects.

On behalf of the Office of the National Ombudsman and the 50 RegFair Board Members, I wish to thank the Congress and the heads of the affected Federal agencies for their support and continuing leadership in making the Federal regulatory enforcement and compliance environment fairer and friendlier to our Nation's 25 million small businesses.

Executive Summary

President Clinton, the Congress, and the 1995 White House Conference on Small Business all agreed on the need to make the regulatory enforcement and compliance environment fairer and friendlier for small businesses. Together they made the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) a reality. SBREFA, born through a bipartisan government and private sector partnership, sought concrete solutions to long-standing regulatory fairness concerns.

Small Business-Driven Reform
From program inception, the Office of the National Ombudsman and the RegFair Boards understood that small business owners want to communicate without fear to high-level, independent agency officials who will respond promptly to their comments. Enabling this dialog is one of RegFair's most important roles. At the same time, responsible officials throughout the government have demonstrated that they want to receive feedback and ensure that positive policies are carried out within their agencies. Small businesses and the government agree that resources are better spent helping companies comply with regulations.

Last year, the Office of the National Ombudsman worked to maintain existing partnerships while building new ones. Reaching small businesses across the country is a top priority and a significant challenge. The Regulatory Fairness Program (RegFair) hearings, Associations of the Month, Board Member Outreach, and agency RegFair notification to small businesses, at the time of enforcement or compliance--all aim to inform small businesses about regulatory fairness. The National Ombudsman and RegFair Boards believe future inroads to the small business community require new partners and expanding the role of existing partners.

Leveraging Federal Agency and Technological Resources
In step with Administrator Aida Alvarez's efforts to make the Small Business Administration (SBA) a twenty-first century leading-edge institution, the Office of the National Ombudsman is redesigning its small business comment process to allow full small business participation via the World Wide Web. The changes will also provide RegFair Board Members direct access to comments and increase the depth of review. With assistance of the SBA Chief Information Officer, the redesign will be completed early in 2000. The National Ombudsman and the RegFair Boards expect a greater percentage of web site visitors will provide feedback on their regulatory enforcement and compliance experiences.

Progress in reaching small businesses and improving the regulatory enforcement and compliance environment is occurring on many fronts. Many agencies have moved beyond simple cooperation with the National Ombudsman, and several have become active partners in informing small businesses about regulatory fairness and improving their enforcement and compliance practices.
SBA Administrator Aida Alvarez committed the agency to use existing program and field office marketing efforts to inform its small business customers about their rights to regulatory fairness and their right to comment on any Federal agency's enforcement and compliance activities. By utilizing SBA's substantial small business portfolio, small businesses that receive assistance from any of SBA programs will also learn about their right to comment on the enforcement or compliance activities of government agencies.

Using Small Business—Agency Partnerships to Increase Impact
The partnerships that RegFair has established and continues to build provide greater and more diverse small business feedback to the National Ombudsman and RegFair Boards. The improved feedback enhanced the current recommendations and agency evaluations. The 2000 Recommendations to Congress and the Administration focus on the most pressing issues raised by small businesses in 1999. The Recommendations are designed to be both practical for agencies to implement and effective in addressing the substantiated concerns of small business. The 2000 evaluations address additional regulatory fairness concerns and

provide agencies with feedback they can use to improve their enforcement and compliance environment for small businesses.

Last year was an important building year for the Office of the National Ombudsman and the RegFair Boards. The Office developed many additional mechanisms to sustain existing partnerships and establish new ones. Agencies are increasingly being held to higher standards and are evaluated and rated on their enforcement and compliance performance. Small businesses are participating in increasing numbers. As the founding partners expected, solutions to regulatory enforcement and compliance concerns are being identified in the experiences of small businesses and the cooperative relationships they are building with agencies. We are proud to be facilitators of this collaborative process.

2000 Recommendations

The recommendations for the Year 2000 Report to Congress urge agencies to raise the bar so that their internal culture increasingly reflects one of support and encouragement toward small business compliance with the laws and regulations of this country. What is needed is an approach by agencies of encouraging and showing small businesses why and how to comply with regulations. Agencies should reject both the "gotcha" mentality with its traditional emphasis on fines and penalties, and an environment divorced from education and partnerships with small business.

Recommendation 1
To the extent practicable and before nationwide implementation, agencies should empirically test new or significantly modified enforcement and compliance policies that may affect small businesses through cooperative pilot projects. The pilots should be developed in partnership with affected industries and stakeholders and should consider the varying impact of policies across major demographic factors. Finally, agencies should fully address the feedback from pilot participants.

Recommendation 2
Agencies should provide feasible compliance guidance to small businesses, but should not dictate the means by which small businesses achieve compliance.

Recommendation 3
Provided a violation does not involve serious injury or harm, agencies should institute programs that give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized. Agencies should also increase voluntary compliance reviews to give businesses the guidance they need without the fear of penalty.

Recommendation 4
When Federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum Federal standards, including SBREFA, are met. This includes a flow-down of all Federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable Federal standards.

Recommendation 5
Agencies should make full use of Federal law that prohibits giving false information to the government or using the government as a tool to unjustly retaliate against employers. Agencies should notify individuals of their legal obligations to give truthful information and the penalties for giving false information. Agency staff should be well trained in evaluating the credibility of the information obtained and the information threshold necessary before undertaking an enforcement or compliance activity against a small business.

Recommendation 6
Agencies should carefully evaluate, in partnership with affected industries, the development and use of voluntary industry standards before considering or implementing new mandatory regulations.

Recommendation 7
In an ongoing effort, Federal agencies should utilize internal offices that work with small businesses to inform small businesses about their rights to regulatory fairness, including the dissemination of RegFair material in mailings, at offices, and through existing outreach efforts. Such offices may include the Offices of Small & Disadvantaged Business Utilization and individual agency Ombudsmen.

Recommendation 8
Agencies should conduct objective reviews of their implementation of SBREFA.

Recommendation 9
Agencies should review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. Agencies should also periodically conduct field studies of the actual time small businesses spend complying with their reporting requirements.

Recommendation 10
Agencies must provide well-trained staff for inspections or compliance audits. Staff should be well versed in the particular industry, in applicable law and regulations, and compliance assistance. Agency personnel should work with small businesses, and not only focus on sanctions.

2000 Enforcement and Compliance Issues

For 2000, there are three major enforcement and compliance issues that arise from the small business comments received by the Office of the National Ombudsman. These issues directly relate to the National Ombudsman's 2000 Recommendations.

1. Too frequently, agencies do not accurately estimate the impact of new regulations and regulatory actions on small businesses, which results in unnecessary and unintended business costs and restrictions.
2. Agencies can do more to involve small businesses in agency actions that have enforcement and compliance impacts.
3. There is a significant need to improve the training and supervision of enforcement and compliance staff on the proper use of discretion during enforcement and compliance activities.

The State of Federal Agency Regulatory Enforcement Fairness for Small Businesses

The Year 2000 Report to Congress continues the evaluations and ratings of previous years and develops some additional areas of evaluation. These areas are:

- The quality, thoroughness and timeliness of agencies' responses to small business comments;
- Agency responsiveness to specific regulatory fairness questions based on individual small business comments;
- Agency implementation of the recommendations contained in the National Ombudsman's 1999 Report to Congress; and
- Agency response and participation in the ten RegFair hearings held in 1999.

The following tables are summary ratings for each evaluation conducted by the National Ombudsman on agency performance for 1999.

Evaluative Table 1[2]

Adequacy and Thoroughness of Agency Responses to Small Business Comments in 1999

Agency	*Response to Small Business Comment*
Department of Labor	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Federal Deposit Insurance Corporation	●
Federal Energy Regulatory Commission	●
Immigration and Naturalization Service	●
Pension Benefit Guarantee Corporation	●
Small Business Administration	●
Social Security Administration	●
Customs (Treasury)	◗
Department of Transportation	◗
Food and Drug Administration (HHS)	◗
Housing and Urban Development	◗
Internal Revenue Service (Treasury)	◗
Department of Agriculture	⊙
Health Care Financing Administration	⊙

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory

Evaluative Table 2

Adequacy and Thoroughness of Agency Response to the National Ombudsman's Regulatory Fairness Questions for 1999

Agency	*Response to National Ombudsman's Questions*
Department of Transportation	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Federal Energy Regulatory Commission	●
Housing and Urban Development	●
Pension Benefit Guarantee Corporation	●
Small Business Administration	●
Customs (Treasury)	◗
Department of Agriculture	◗
Department of Labor	◗
Federal Deposit Insurance Corporation	◗
Food and Drug Administration (HHS)	◗
Health Care Financing Administration (HHS)	◗
Internal Revenue Service (Treasury)	◗
Social Security Administration	◗
Immigration & Naturalization Service	⊙

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory

[2] The number of agencies listed above reflects agencies that have provided a final response to small business comments reviewed in 1999. There are additional comments on other agencies for which RegFair has not received adequate final agency responses. Those comments were not evaluated at the time this report was printed. Evaluative Table 3 lists additional agencies because RegFair has received initial responses on current comments from a greater number of agencies.

Evaluative Table 3

Timeliness of Initial Agency Responses Since RegFair Inception

Agency	*Overall Weighted Rating*[3]	*2000 Rating*	*1999 Rating*
Commodities Future Trading Commission	●	NC	●
Customs (Treasury)	●	●	●
Federal Deposit Insurance Corporation	●	NC	●
Federal Energy Regulatory Commission	●	●	⊙
National Labor Relations Board	●	●	NC
Occupational Safety & Health Administration	●	NC	◗
Pension Benefit Guaranty Corporation	●	●	NC
Securities and Exchange Commission	●	NC	●
Small Business Administration	●	●	●
Equal Employment Opportunity Commission	◗	●	◗
Internal Revenue Service (Treasury)	◗	⊙	◗
Department of Agriculture	⊙	○	●
Department of Transportation	⊙	○	⊙
Environmental Protection Agency	⊙	●	⊙
Department of Defense	○	NC	◗
Department of Justice	○	NC	○
Department of Labor	○	○	◗
Federal Communication Commission	○	○	⊙
Food and Drug Administration	○	○	⊙
Health Care Financing Administration (HHS)	○	○	NC
Housing and Urban Development	○	○	●
Immigration and Naturalization Service (Justice)	○	○	●
Social Security Administration	○	NC	○

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory; NC = No Comments

Evaluations on the 1999 Recommendations

In evaluating agency adoption and implementation of the National Ombudsman's 1999 Recommendations, all agency responses, including responses to the draft Year 2000 Report to Congress, were considered. Evaluative table 4 shows that nine agencies achieved a rating of *Good* or *Excellent* in all five categories. Those agencies are the Customs Service, the Equal Employment Opportunity Commission, the Federal Communications Commission, the Federal Trade Commission, the Occupational Safety and Health Administration, the Pension Benefit Guarantee Corporation, the Securities and Exchange Commission, the Small Business Administration, and the Department of Transportation.

The Department of Defense, the General Services Administration, and the Department of State received an *Unsatisfactory* rating for all five recommendations because they either did not supply RegFair with the status of their implementation or they did not implement the recommendations.

Agencies were evaluated on the first five 1999 Recommendations. The five recommendations follow.

Recommendation 1:
Develop a regulatory fairness protocol for Federal agency staff who undertake enforcement or compliance activities involving a small business. This protocol may include a form containing information such as a check list for the following:

[3] Reflects the average agency initial response time since 1997.

- Consideration of the size of the business when determining the enforcement or compliance action;
- Consideration of the economic impact of the enforcement or compliance action on this small business and on small businesses generally;
- Consideration of any mitigating circumstances the small business was dealing with;
- Consideration of a lesser action; and
- Whether the small business had sufficient notice and appropriate opportunity to correct the cause of the violation.

Recommendation 2:
Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement or compliance action threatens the economic viability of the business. The reviewing entity should have the authority to provide for alternative payment arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

Recommendation 3:
Federal agencies should publicize data on agency enforcement and compliance activities, annually. Information gathered should improve agency self-assessment of its fairness to small businesses at all stages of enforcement and compliance activities as well as small business understanding of those activities. Agency heads could select data they believe most relevant to their agency's statutory authority, requirements or mission. Examples of appropriate data include the following:

- Number and type of enforcement and compliance activities, with regional and program office breakdowns;
- Inspections, on-site visits, audits, or similar field activities;
- Activities involving licensed versus unlicensed facilities;
- Small business feedback, compliments and complaints with agency responses;
- Number of fines, penalties, restrictions, license suspensions, or other debarments and similar actions;
- Administrative, final agency, and judicial appeals and the cost of such activities; and
- Use and success of informal and formal appeal channels for small versus large businesses.

Recommendation 4:
Agencies heads should certify to the National Ombudsman that their designated RegFair Program representatives are independent of enforcement or compliance activities.

Recommendation 5:
Federal agencies should provide formal training on a periodic basis for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program. The training should sensitize employees to the unique needs of small business.

Evaluative Table 4

Rating of Agency Responses to RegFair Recommendations

Agency	***Rec. 1*** *Protocol*	***Rec. 2*** *Expedited Avenue*	***Rec. 3*** *Collect Data*	***Rec. 4*** *Independent Official*	***Rec. 5*** *Training*
Department of Agriculture	⊙	●	⊙	○[4]	◗
Department of Commerce	⊙	●	⊙	●	●
Commodity Futures Trading Commission	⊙	⊙	⊙	●	◗
Consumer Product Safety Commission	◗	⊙	⊙	●	◗
Customs Service (Treasury)	●	●	◗	●	●
Department of Defense	○	○	○	○	○
Department of Education	⊙	◗	⊙	●	○
Environmental Protection Agency	⊙	⊙	⊙	●	●
Equal Employment Opportunity Commission	●	●	●	●	●
Farm Credit Administration	⊙	⊙	⊙	●	●
Federal Communications Commission	◗	◗	◗	●	●
Federal Deposit Insurance Corp.	◗	◗	⊙	●	●
Federal Energy Regulatory Commission (Energy)	◗	⊙	⊙	●	◗
Federal Trade Commission	●	●	●	●	●
Food & Drug Administration (HHS)	⊙	◗	◗	●	◗
General Services Administration	○	○	○	○	○
Health Care Financing Administration (HHS)	◗	⊙	◗	●	◗
Department of Housing and Urban Development	◗	●	⊙	●	●
Immigration and Naturalization Service (Justice)	⊙	○	○	●	○
Internal Revenue Service (Treasury)	◗	◗	○	●	◗
Department of Interior	◗	⊙	⊙	●	◗
Department of Justice	◗	◗	⊙	●	◗
Department of Labor	⊙	⊙	⊙	●	●
National Aeronautics and Space Administration	◗	●	⊙	●	●
National Labor Relations Board	◗	⊙	⊙	●	◗
Occupational Safety & Health Administration (Labor)	◗	●	◗	●	◗
Pension Benefit Guarantee Corporation	●	◗	●	●	◗
Securities and Exchange Commission	◗	●	◗	●	●
Small Business Administration	◗	●	◗	●	◗
Social Security Administration	○	○	○	●	○
Department of State	○	○	○	○	○
Tennessee Valley Authority	⊙	⊙	⊙	●	◗
Department of Transportation	◗	◗	●	●	●
Department of Veterans Affairs	⊙	⊙	⊙	●	●

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory; **NR** = Not Rated

Evaluation of Referral Process with Agency Inspectors General

SBREFA requires the National Ombudsman to establish the means to refer, in appropriate circumstances, comments from small businesses to agency Inspectors General.

As Evaluative Table 5 illustrates, RegFair reached agreement with 29 of the 30 agency Inspectors General that they will maintain the identity of the individuals and small business concerns making comments on a

[4] The USDA committed that it would provide independent reviews of each small business comment sent to it by the Office of the National Ombudsman. Unfortunately, USDA has not fully implemented its commitment as the Office of the National Ombudsman received a USDA response from an agency official who is directly involved in the underlying enforcement and compliance activity.

confidential basis, to the same extent as employee identities are protected under the Inspector General Act.

Evaluation Table 5

Cooperation of Inspectors General in Establishing Confidential Small Business Referrals

Agency	*Response*
Agriculture	●
Commerce	●
Commodity Futures Trading Commission	●
Consumer Product Safety Commission	●
Defense	●
Education	●
Energy	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Farm Credit Administration	●
Federal Communications Commission	●
Federal Deposit Insurance Corp.	●
Federal Trade Commission	●
General Services Administration	●
Health & Human Services	●
Housing and Urban Development	●
Interior	●
Justice	●
Labor	●
National Aeronautics and Space Administration	●
National Labor Relations Board	●
Pension Benefit Guaranty Corporation	●
Securities and Exchange Commission	●
Small Business Administration	●
Social Security Administration	●
State	●
Tennessee Valley Authority	●
Transportation	●
Treasury	●
Veterans Affairs	●

Key: ● = Satisfactory; O = Unsatisfactory

Helping Small Businesses Achieve Accountability

The Office of the National Ombudsman and the Regulatory Fairness Boards have worked diligently to help small businesses hold agencies accountable for their regulatory enforcement and compliance activities in the following ways:

- Requested that agencies notify small businesses, in plain written language, of their right to comment through the RegFair program at the commencement of a regulatory enforcement or compliance activity;
- Requested high-level, independent agency reviews of small business comments sent to them by RegFair. This guards against retaliation and ensures that small business concerns will be heard and responded to by agency representatives that can make systemic changes to address those concerns;
- Obtained meaningful agency reviews and written responses to small business comments and regulatory fairness questions;

- Held ten RegFair hearings throughout the country, where small businesses and agencies have an opportunity to attend, testify and answer questions on enforcement and compliance activities. With the transcripts made available on the World Wide Web the dialogue is extended nationally to Members of Congress, small businesses, and trade associations;
- Stressed matters of concern to small businesses in addition to small business comments; and
- Helped small businesses and agencies develop goals-driven compliance programs.

Agency Best Practices

A major goal of the National Ombudsman and the Regulatory Fairness Boards in putting forward these best practices is to provide a means through which agencies may obtain new ideas to incorporate a small business-friendly approach into their internal processes and procedures.

Best practices detail how agencies incorporated small business-friendly policies and procedures into their regulatory enforcement and compliance efforts. This year's best practices are not restricted to last year's recommendations, but rather are illustrative of novel approaches developed by agencies to accomplish voluntary compliance by the small business community through implementation of recommendations from prior reports. The National Ombudsman and RegFair Boards hope that publicizing these examples of best practices will assist small business advocates and agencies in their own efforts to develop innovative solutions to enforcement and assist compliance concerns.

Marketing Initiatives with Small Businesses

Moving RegFair On-Line

In early 1999, the Office of the National Ombudsman recognized that there was a large number of small-business visitors to the RegFair web site who were not filing comments on their Federal regulatory enforcement and compliance experiences. As a result, the Office of the National Ombudsman, with the advice of the RegFair Boards, re-engineered its workflow processes and designed a database and web site that would bring the RegFair program to any small business person with access to the Internet.

With assistance from SBA's Chief Information Officer, RegFair initiated development and implementation plans for a new web-based comment process. Comments submitted by small businesses, through the RegFair web site, will be sent to high-level, independent agency officials electronically. Web-filed small business comments will also be available to the RegFair Board Members. Direct access to the small business comments will: a) enhance Board Member knowledge of regional regulatory enforcement or compliance concerns; b) enable contemporaneous Board Member comment advisory involvement; and c) allow review of regulatory fairness concerns at times convenient to Board Members.

SBA's Marketing Efforts

With the leadership of SBA Administrator Aida Alvarez, RegFair has established agreements with many of SBA's programs to begin marketing RegFair, on an on-going basis, in conjunction with their own marketing programs and small business communications.

Outreach

Over the past 3 years, RegFair has expended much effort to inform the national small business community of the rights granted to them under SBREFA. As mentioned earlier, RegFair works to ensure that Federal agencies, when they engage in regulatory enforcement or compliance activities, advise small businesses of their right to comment on those activities to the National Ombudsman.

RegFair is meeting this challenge in additional three ways: first, by reaching out to all sectors of the small business community through speeches, presentations and media interviews throughout the country. Second, the Office of the National Ombudsman and RegFair Board Members work very closely with major trade associations, Members of Congress and other prominent actors in the small business community to notify small businesses of their new regulatory rights. Third, to reach all sectors of the small business community, RegFair developed and initiated a number of outreach avenues such as the Business Leader Roundtable, the Association of the Month program, the RegFair Report, and the RegFair Information Card.

Moving Forward

As we move into the next millennium, the Office of the National Ombudsman, through its evaluations and ratings and its Annual Recommendations, offers small businesses increasing Federal agency accountability for enforcement and compliance activities. The Office is expanding the opportunities for small business owners to offer feedback on agency activities and the mechanisms that implement change based on their feedback. In partnership with Federal agency heads and small business leaders across the country, we are building partnerships that bridge communication gaps and bring about practical compliance solutions.

The National Ombudsman and the RegFair Boards are dedicated to their SBREFA mission to bring about small business-centered regulatory enforcement reform. They are proud of their joint accomplishments in the past year. They are excited and inspired by the increasing positive impact the regulatory fairness partnerships are having on the small business enforcement and compliance environment and look forward to another outstanding year of progress.

For More Information

- SBA offices are located in all 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam. For the office nearest you, look under "U.S. Government" in your telephone directory, or contact:
- Phone: 1-800 U ASK SBA
- Fax: 202-205-7064
- E-mail: answerdesk@sba.gov
- TDD: 704-344-6640
- OnLine Electronic Bulletin Board
  (modem and computer required)
  1-800-697-4636 *(limited access)*
  1-900-463-4636 (full access)
  202-401-9600 (Washington, D.C., metro area)
- Internet
  SBA home page: www.sba.gov
  Gopher: gopher.sba.gov
  Telnet: telnet.sba.gov
  U.S. Business Advisor: www.business.gov
- Your rights to regulatory fairness: 1-888-REG-FAIR

Inquire at your local SBA office for the location nearest you.

- BICs — Business Information Centers
- TBICs — Tribal Business Information Centers
- OSCSs — One Stop Capital Shops
- SCORE — Service Corps of Retired Executives
- SBDCs — Small Business Development Centers
- USEACs — U.S. Export Assistance Centers
- WBCs — Women's Business Centers

Publications

- The Facts About ... SBA Publications — a listing of free SBA publications

Did you know that in fiscal 1999 the SBA —

- maintained a guaranteed loan portfolio of more than $40.5 billion in loans to 486,000 small businesses that otherwise would not have had such access to capital?
- backed nearly 49,000 loans totaling a record $12.5 billion to America's small businesses?
- made 3,100 investments worth $4.2 billion through its venture capital program?
- provided more than 36,000 loans totaling over $936 million to disaster victims for residential, personal-property and business losses?
- extended management and technical assistance to more than 900,000 small business persons through its 11,500 Service Corps of Retired Executives volunteers and 1,000 small business development center locations?
- created HUBZones providing federal contracting assistance to small businesses located in "historically under-utilized business zones"?

Did you know that America's 24 million small businesses —

- employ more than 52 percent of the private work force?
- generate more than 51 percent of the nation's gross domestic product?
- are the principal source of new jobs?

All of the SBA's programs and services are provided to the public on a nondiscriminatory basis.

All of the SBA's programs and services are provided to the public on a nondiscriminatory basis.

Federal Recycling Program Printed on Recycled Paper

SBA No. CO-0087 A (03/00)

U.S. Small Business Administration

SBA

Building Small Business--Agency Partnerships

Regulatory Fairness Program

NATIONAL OMBUDSMAN'S 2000 REPORT TO CONGRESS

THE NATIONAL OMBUDSMAN'S

2000 REPORT TO CONGRESS:

BUILDING SMALL BUSINESS—AGENCY PARTNERSHIPS

FINAL

U.S. Small Business Administration

Aida Alvarez, Administrator

Gail A. McDonald, National Ombudsman

Hatem H. El-Gabri, Senior Counsel
Elizabet Gonzalez, Staff Asst., Cust. Affairs
John T. Greiner, Director, Regulatory Review
Elestine Harvey, Staff Asst., Program Delivery
Susan Kramer, Director, Program Development.
Cora McGee, Staff Asst., Regulatory Review
Margaret Pascual, Paralegal
Gary Peele, Director, Program Delivery
Lisa Roemer, Staff Asst., Program Development

2000 Fairness Board Members

I	New England States Region 1	Vinh Cam Larry Morse Roxanna Adams Judith Obermayer Ronald Williams
II	Mid Atlantic States Region 2	E. Peter Ruddy Phyllis Hill Slater Sandra Lee Joan Haberle Manuel Cidre
III	South Atlantic States Region 3	Victor Tucci Ann Parker Maust Shawn Marcell Wilkins McNair, Jr. Kenneth Rodriguez
IV	Southeastern States Region 4	Rita Mitchell Robert Clark LeRoy Walker, Jr. Livia Wisenhunt Jeffery Adduci
V	Midwestern States Region 5	Thelma Ablan John Hexter Reid Ribble Hardie Blake Donald Magett
VI	Southern States Region 6	Larry Mocha Wallace Caradine Elise McCullough Massey Villarreal
VII	Heartland States Region 7	Dan Morgan J. Scott George Alonzo Harrison Stella Olson Joanne Stockdale
VIII	Rocky Mountain States Region 8	Linda Nielsen Albert Gonzales Vernon Thompson Mary Thoman Donna Davis
IX	Western States Region 9	Kathy Chavez Napoli Tim Moore Thomas Gutherie C.K. Tseng Joseph Cerbone
X	Northwestern States Region 10	Clyde Stryker Gretchen Mathers Keith Sattler Serena McAlvain Morris Thompson[1]

[1] We are saddened by the death of Mr. Thompson. Mr. Thompson was one of Alaska's most prominent Native American advocates. We were privileged to work with him on behalf of Alaska and the nation's small businesses.

The National Ombudsman's 2000 Report to Congress:
Building Small Business – Agency Partnerships

Table of Contents

Introduction 1

Recommendations 4

2000 Enforcement & Compliance Issues 9
Case Studies

The State of Federal Agency Regulatory Enforcement Fairness for Small Businesses 13
Evaluating Agency Enforcement and Compliance Activities
Agency Responses to the 1999 Recommendations
Referral to Federal Agency Inspectors General
Agency Participation in RegFair Board Hearings

Sharing the Perspectives of the RegFair Boards and Small Businesses 31
Perspectives of the RegFair Boards
Perspectives of Small Businesses

Helping Small Business 35
Notification of Small Business' Right to Comment
High Level, Independent Agency Review
Small Business Comments
RegFair Board Hearings
Guarding Against Retaliation
Matters of Concern to Small Businesses
Helping Agencies Develop Results-Driven Compliance Programs

Agency Best Practices 40

Marketing Initiatives with Small Businesses 44
Moving RegFair On-Line
Marketing RegFair Through SBA's Program and Field Offices
Working with the U.S. Postal Service

Outreach **48**
RegFair Program Activities
RegFair Awards
Office of the National Ombudsman Activities
RegFair Outreach Innovations
Working to Pass Regulatory Fairness Legislation at the State Level

Appendices: **56**

A. Small Business Feedback in 1999
B. Summary of 1999 Associations of the Month
C. SBA Programs Marketing RegFair
D. Follow-up of 1997-98 Case Studies
E. RegFair Public Hearings
   1. Hearing Promotion
   2. Hearing Planning
   3. Attendance and Participation at Hearings
   4. Individuals Testifying at 1999 Regulatory Fairness Board Hearings
   5. Synopses of 1999 Regional Regulatory Fairness Board Hearings
F. RegFair Materials
   1. Brochure
   2. Appraisal Form
   3. RegFair Card
   4. Board list, map, Roles & Responsibilities and Code of Ethics
G. Agency comments on 2000 Report
H. National Ombudsman's Previous Annual Recommendations

Message from Administrator Aida Alvarez

Three and a half years ago the President signed into law the Small Business Regulatory Enforcement Fairness Act (SBREFA) which instituted several important reforms to help small business. Several of the Act's provisions codified initiatives President Clinton and Vice President Gore had instituted through the National Performance Review, such as requiring agencies to adopt and publish compliance policies. Both the Administration and the Congress recognized the need to reduce the regulatory burdens that fall disproportionately on small businesses.

One important vehicle to accomplish this objective was the establishment within SBA of a National Ombudsman and 10 regional Small Business Regulatory Fairness Boards, whose work and accomplishments I am proudly submitting today. I am especially pleased to be able to report that the Government and the private sector are working in partnership to implement good public policy that is also responsive to the concerns of small business. What Congress anticipated and what SBA expected is in fact happening:

- more and more small businesses are working with the Office of the National Ombudsman and agencies to develop concrete solutions to their enforcement concerns; and
- joint efforts are triggering systemic improvements in agency enforcement practices.

I want to thank the small business leaders who have volunteered significant time and energies to serve as Regulatory Fairness Board Members. Their work and commitment is proof that small business has indeed a vital stake in worker safety, a clean environment and good government. We are truly proud and grateful to have them as partners in this effort. I also want to thank all the small businesses that shared their compliance and enforcement experiences with the Boards—information that helped guide and formulate the recommendations contained in this year's report.

Finally, I am pleased to announce the appointment of Gail A. McDonald as the new National Ombudsman. Ms. McDonald has extensive experience both as a regulator and a reformer. I am confident that the experience she brings to her new assignment will make her an effective National Ombudsman, safeguarding the interests of America's small businesses.

Message from the National Ombudsman

As the newly appointed Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman), I am very pleased to join Administrator Aida Alvarez and the Members of the regional Small Business Regulatory Fairness Boards in presenting the 2000 Report to Congress: *Building Small Business–Agency Partnerships.*

The 2000 Report provides Congress and the Administration a thorough review of the efforts of the National Ombudsman and the Small Business Regulatory Fairness Boards to respond to small business owners on their views concerning the regulatory enforcement and compliance environment. This year's Report shows progress in improving communication on regulatory enforcement issues and making agencies sensitive to the conditions that are essential to the prosperity of small business. We continue to make strides in reaching a broader small business audience. We have made significant advances in both gauging the pulse of small business and making sure their issues are fully expressed to agency officials who have the authority to make needed changes. In keeping with Administrator Alvarez's call to transform SBA into a leading edge institution, we are well on the way to making full program participation available on the World Wide Web.

The 2000 Report provides a review of key enforcement and compliance issues, small business perceptions, and 10 small business-driven recommendations that are geared to improving the regulatory enforcement environment. Last year the Office expanded existing partnerships and created many new ones. The Report demonstrates how these partnerships have improved agency enforcement practices; heightened the impact of small business feedback; enabled the development of innovative enforcement and compliance solutions; and enhanced Regulatory Fairness Board Member participation.

Based on the recommendations of small businesses and agencies, the National Ombudsman has prioritized four goals: enhanced small business feedback; greater agency accountability; better small business—agency communication; and more creative partnerships between the small business and Federal agency communities. These four goals are the foundation on which all partners will build a regulatory enforcement environment that is fairer and friendlier to small businesses and that ultimately results in greater compliance and small business prosperity. The Administration, Congress, small businesses, their trade associations, and Federal agencies agree that Federal resources are better spent helping small businesses comply with the law, rather than taking punitive action against them. The 2000 Report to Congress demonstrates that together we are making progress on our shared goals. This year, I am especially grateful to Hatem H. El-Gabri for the strong leadership he demonstrated as Acting National Ombudsman with the departure of Peter W. Barca. I look forward to working with Mr. El-Gabri on many important projects.

On behalf of the Office of the National Ombudsman and the 50 RegFair Board Members, I wish to thank the Congress and the heads of the affected Federal agencies for their support and continuing leadership in making the Federal regulatory enforcement and compliance environment fairer and friendlier to our Nation's 25 million small businesses.

Introduction

President Clinton, Congress, and the 1995 White House Conference on Small Business delegates all agreed on the need to make the regulatory enforcement and compliance environment fairer and friendlier for small businesses. Together they made the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) a reality. SBREFA, born through a bipartisan government and private sector partnership, sought concrete solutions to long-standing regulatory fairness concerns.

Too often Federal agencies and small businesses were not working in partnership to achieve important public policy goals with minimized costs and impact on affected industries. Too often, enforcement and compliance activities have bewildered, frustrated, and angered small business owners who struggle to comply. Too often, agencies were at a loss for how they could achieve their regulatory mandate without using punitive enforcement and compliance activities.

Created by SBREFA, the Small Business and Agriculture Regulatory Enforcement Ombudsman (National Ombudsman) and the regional Small Business Regulatory Fairness Boards (RegFair Boards) work to bridge the communication gap between the Nation's small business communities and Federal agencies. The Office of the National Ombudsman facilitates the development of specific solutions that address small business enforcement and compliance concerns. In building the bridge, the Office relies on small business and agency enforcement and compliance activity feedback. The National Ombudsman evaluates and rates agency enforcement and compliance activities and annually makes specific recommendations to improve the regulatory environment. For this reform process to be most effective, the National Ombudsman and the RegFair Boards work in concert with small businesses and agencies.

From program inception, the Office of the National Ombudsman and the RegFair Boards understood that small business owners want to communicate without fear to high-level, independent agency officials who will respond promptly to their comments. Enabling this dialog is one of RegFair's most important roles. At the same time, responsible officials throughout the government have demonstrated that they want to receive feedback and insure that positive policies are carried out within their agencies. Small businesses and the government agree that resources are better spent helping companies comply with regulations.

We recognize that no one has a monopoly on caring about the environment, worker's safety, or fraud, waste and abuse. These are concerns of both small business and the government, and we are here to facilitate the regulatory fairness dialog. Within this framework, the National Ombudsman, with the advice of the RegFair Boards, administers a unique and dynamic program that fosters regulatory enforcement and compliance fairness.

Last year, the Office of the National Ombudsman worked to maintain existing partnerships while building new ones. Reaching small businesses across the country is a top priority and a significant challenge. The Regulatory Fairness Program (RegFair) hearings, Associations of the Month, Board Member Outreach, and agency RegFair notification to small businesses, at the time of enforcement or compliance, all aim to inform small businesses about regulatory fairness. The National Ombudsman and RegFair Boards believe future inroads to the small business community require the development of new partners and expanding the role of existing partners.

Progress in reaching small businesses and improving the regulatory enforcement and compliance environment is occurring on many fronts. Many agencies have moved beyond simple cooperation with the National Ombudsman, and several have become active partners in informing small businesses about regulatory fairness and improving their enforcement and compliance practices.

SBA Administrator Aida Alvarez committed the agency to use existing program and field office marketing efforts to inform its small business customers about their rights to regulatory fairness and their right to comment on any Federal agency's enforcement and compliance activities. By utilizing SBA's substantial small business portfolio, small businesses that receive assistance from any of SBA programs will also learn about their right to comment on the enforcement or compliance activities of government agencies.

The U.S. Postal Service is joining the Office of the National Ombudsman in a major pilot project to distribute RegFair materials in selected Post Offices. The Department of Housing and Urban Development began distributing RegFair Information Cards with its small business marketing efforts. The EPA Small Business Ombudsman includes RegFair material and contact information in its small business regulatory resource book. These agencies are commended for the leadership in helping to inform small businesses about regulatory fairness, and in turn building a fairer regulatory environment.

In step with Administrator Alvarez's efforts to make the Small Business Administration (SBA) a twenty-first century leading edge institution, the Office of the National Ombudsman is redesigning its small business comment process to allow full small business participation via the World Wide Web. The changes will also provide RegFair Board Members direct access to comments and increase the depth of review. With assistance of the SBA Chief Information Officer, the redesign will be completed early in 2000. The National Ombudsman and the RegFair Boards expect a greater percentage of web site visitors will provide feedback on their regulatory enforcement and compliance experiences.

Building partnerships fosters dialog and feedback. The National Ombudsman is using partnerships to improve the regulatory environment and raise the bar of small business-agency cooperation. By hearing from small business leaders the program helps foster national and regional efforts that address nettlesome enforcement and compliance concerns. Agencies and small businesses working together on task forces produce practical results. One notable example involved bringing together a regional EPA office with representatives of dry-cleaning establishments. The project began by exploring ways to address the regulatory concerns of that industry, while addressing what cleaners needed to do to comply with environmental regulations. The final result of the collaboration on hazardous solvents will be a comprehensive guide that will make it for small businesses to prevent pollution of the air, water and land.

Each small business comment presents multiple opportunities. First, it provides the small business an opportunity to get a timely, high-level, independent review and response to its concern. Second, it gives the agency an opportunity to demonstrate its responsiveness and learn about the impact their field practices have on small business. Third, the comment provides the National Ombudsman and the RegFair Boards the opportunity to evaluate agency performance, dissect the enforcement or compliance activity, and obtain recommendations directly from the small business. Finally, it provides the Administration and Congress an opportunity to address needed structural reforms.

One way, the Office of the National Ombudsman utilizes its partnerships with small businesses and agencies is by developing specific recommendations to Congress and the Administration on changes needed to systemically improve the enforcement and compliance environment for small businesses. These recommendations come directly from small business comments and testimony as well as from agencies in their efforts to address matters of concern to small business. Evaluating agencies on the adoption and implementation of the recommendations sets standards for fair enforcement and compliance practices. The recommendations and evaluations provide RegFair's principal partners: the Administration, Congress, small businesses, and trade associations, a record of current performance and areas needing improvement.

RegFair partnerships provide concrete advances and solutions to regulatory enforcement and compliance concerns. RegFair's success at raising the standards of regulatory fairness and agency accountability depends on the breadth and depth of its partnerships. The partnerships come in many forms. There are

small business owners who provide feedback at RegFair hearings on agency enforcement activities. Joint small business—agency task forces are working on clean air compliance. Agency officials are addressing small business RegFair comments. RegFair Board Members are reaching out to their small business communities to inform owners about RegFair and listen to their concerns.

The results of RegFair partnerships also come in many forms. Partnership results may take the form of correction of staff errors, clarification of agency enforcement or compliance policies, or modifications in agency rules to make compliance practical for small businesses. For example, agencies effectively notify small businesses of programs that promote business prosperity, solve small business-agency concerns, or improve agency training. In all instances, partnership benefits flow to all small businesses as changes affect the enforcement and compliance environment and are not limited to an isolated agency activity or to an individual small business. Positive partnership experiences and outcomes can then change expectations and ways of thinking. Agency officials and small businesses gain confidence that they can work together to address important public policy directives without short-changing small business enforcement and compliance interests.

Last year was an important building year for the Office of the National Ombudsman and the RegFair Boards. The Office developed many additional mechanisms to sustain existing partnerships and establish new ones. Agencies are increasingly being held to higher standards and are evaluated and rated on their enforcement and compliance performance. Small businesses are participating in increasing numbers. As the founding partners expected, solutions to regulatory enforcement and compliance concerns are being identified in the experiences of small businesses and the cooperative relationships they are building with agencies. We are proud to be facilitators of this collaborative process.

Recommendations

The Office of the National Ombudsman and RegFair Boards are working with Federal agencies to create a more beneficial regulatory climate for the Nation's 25 million small businesses. More than just an annual effort, the recommendations are ongoing opportunities for agencies to define their relationships with small businesses.

Many Federal agencies have instituted, and additional agencies are encouraged to implement regulatory reform in the areas covered by the 2000 Recommendations as well as those made in past Annual Reports to Congress. The National Ombudsman's 2000 Recommendations follow immediately while the previous Annual Recommendations may be found in Appendix H. of this Report.

2000 Recommendations

The recommendations for the 2000 Report to Congress urge agencies to raise the bar so that their internal culture increasingly reflects one of support and encouragement toward small business compliance with the laws and regulations of this country. What is needed is an approach by agencies of encouraging and showing small businesses why and how to comply with regulations. Agencies should reject both the "gotcha" mentality with its traditional emphasis on fines and penalties, and an environment divorced from education and partnerships with small business.

The National Ombudsman's recommendations were derived from the small business concerns received through written comments and testimony, RegFair Board Member experiences, and from information supplied by other interested parties, including agencies through their testimony at RegFair hearings. They include the recommendation, a statement of the issue, and an example, if required for illustration.

Some or all of the recommendations shown below will be incorporated into the National Ombudsman's evaluation and rating of agencies for the National Ombudsman's 2001 Report to Congress. Proposed evaluative criteria for the evaluations will be shared with agencies, small businesses and the RegFair Boards for feedback. The National Ombudsman will consider all of their suggestions.

Recommendation 1
To the extent practicable and before nationwide implementation, agencies should empirically test new or significantly modified enforcement and compliance policies that may affect small businesses through cooperative pilot projects. The pilots should be developed in partnership with affected industries and stakeholders and should consider the varying impact of policies across major demographic factors. Finally, agencies should fully address the feedback from pilot participants.

Issue 1
Small businesses and agencies agree that too often agency requirements that are traditionally developed, analyzed and publicly commented on have major unforeseen consequences. For small businesses, unforeseen consequences, either alone or in concert with other requirements, may have devastating and even bankrupting consequences. Modifications to agency requirements, if they occur, often come too late to stem the harm caused by new or modified requirements. The unforeseen impact of new or modified requirements frequently results in extra layers of paperwork, increased operating or production expenses, reduced jobs and profits, as well as time-consuming, expensive litigation. Many small businesses conclude that agencies do not understand their industry, the impact of agency requirements, or worse, that they do not care about the repercussions. *(See 2000 Enforcement and Compliance Issues.)*

Small businesses do not want to be subjected to requirements that are only theoretically analyzed or evaluated by unrealistic, narrow studies. Businesses want pilot projects that study the impact of agency requirements on each covered industry. Small businesses understand agency public notice and comment procedures, but know that there are usually very significant differences between the theoretical and practical applications of any new or modified requirement when it is implemented. It may be that a requirement is too difficult to comprehend, not feasible, costly, conflicts with other requirements, is a threat to safety, or fails to achieve its purpose.

The private sector and some Federal agencies already make extensive use of pilot projects. The projects result in increased profits in the private sector and better requirements and procurement in the government. Pilot projects may increase up-front costs but these investments pay handsome dividends. With pilot projects, agencies will be able to fine-tune new requirements, increase voluntary compliance, reduce punitive enforcement and compliance activity and minimize the costs and difficulty of implementing the necessary changes. Most importantly, a regulatory enforcement and compliance process resulting from a pilot program adds credibility to the Government's goals and objectives, and addresses small business concerns.

Recommendation 2
Agencies should provide feasible compliance guidance to small businesses, but should not dictate the means by which small businesses achieve compliance.

Issue 2
Small businesses believe that agencies too often apply a one-size-fits-all approach to a particular regulatory requirement, rather than establishing the regulatory goals and allowing small businesses to achieve those goals in the most cost-effective and operationally efficient manner for their particular business. Businesses believe that agencies too often focus on the process as opposed to the goal, which in many instances makes it more difficult and expensive for small businesses to achieve compliance.

Example:
Roy Cohee, owns and operates C&Y Transportation (C&Y), a small trucking company in Casper, Wyoming, and has twenty-eight employees. C & Y have been in business for over thirty years. Mr. Cohee testified about his company's experiences with the U.S. Environmental Protection Agency (EPA) concerning allegations of a fuel spill at his site. EPA's inspection resulted in a list of deficiencies that were to be corrected within 30 days.

According to Mr. Cohee, he immediately began locating contractors to correct the deficiencies. However, in Wyoming, he could not find a single example of a twenty-five hundred-gallon trap needed to bring the used motor oil tank into compliance. When he called the EPA in Denver to obtain specifications for the containment device, he was told that they did not have that information and suggested that he look at others in the area. Mr. Cohee stated that the trap and other items needed to bring C & Y into compliance are mentioned in the Federal Register, but are listed as suggested items using words such as "should, recommend and suggested." Nevertheless, the EPA inspector insisted that C & Y construct the item, and Mr. Cohee estimated the cost of construction at nine to ten thousand dollars.

Recommendation 3
Provided a violation does not involve serious injury or harm, agencies should institute programs that give small businesses notice of violations and reasonable opportunities to come into compliance without being penalized. Agencies should also increase voluntary compliance reviews to give businesses the guidance they need without the fear of penalty.

Issue 3
Small businesses often feel that an agency's only mission is to try to catch violations and penalize the companies. They believe good faith efforts to comply with a multitude of complex and changing requirements should weigh heavily on how agencies handle small business violations. They believe agencies should work with them to achieve compliance and limit the routine use of punitive sanctions.

Example:
The Federal Aviation Administration (FAA) has a special program that protects from severe penalties those businesses that immediately report a rule violation. The FAA's Reporting and Correction Policies provide that, under most circumstances, if a company self-discloses a violation that is not intentional, corrects the condition immediately, and takes steps to prevent it from recurring, a reduced penalty or no penalty will be imposed. FAA also performs "courtesy evaluations" of pilots and aircraft, without risk of enforcement if deficiencies are corrected. The agency collects data on these incidents to determine whether there are problems with a rule that must be addressed.

Recommendation 4
When Federal agencies delegate enforcement authority to the states or other intermediaries, they should ensure that minimum Federal standards, including SBREFA, are met. This includes a flow-down of all Federal small business protections and cooperative objectives that guarantee small businesses their rights without the use of costly judicial remedies. Agencies should review and report on state government and other intermediaries' compliance with all applicable Federal standards.

Issue 4
Federal agencies frequently delegate enforcement and compliance responsibilities to state and local governments. Such delegation may be efficient for the Government by reducing activities like duplicative inspections, and good for small businesses by reducing the layers of government. Small businesses are concerned that Federal agencies are not sufficiently policing the delegations of power to guarantee that the state or local government provides small businesses their regulatory fairness rights, including their right to comment directly to the Office of the National Ombudsman.

Example:
Lalit Sarin of Shelby Industries in Shelbyville, Kentucky addressed the lack of consistency of EPA regulations among Federal, state and local governments. He indicated that when Federal agencies delegate down to the states, due process does not flow down. Mr. Sarin's concern was not being able to meet with local officials to discuss a violation, because the right to meet was not included as a part of the city ordinance. He had to use the courts and the threat of a lawsuit to secure his rights. Mr. Sarin believes that when agencies turn over regulations to be implemented by the state or the counties, they must also make sure that public laws like SBREFA are part and parcel of that package.

Recommendation 5
Agencies should make full use of Federal law that prohibits giving false information to the government or using the government as a tool to unjustly retaliate against employers. Agencies should notify individuals of their legal obligations to give truthful information and the penalties for giving false information. Agency staff should be well trained in evaluating the credibility of the information obtained and the information threshold necessary before undertaking an enforcement or compliance activity against a small business.

Issue 5
Small businesses believe that disgruntled former and current employees retaliate against them by filing false complaints with Federal agencies alleging non-existent regulatory violations. Small businesses feel that

even though Federal law prohibits the submission of false information, actual agency practice does not deter the submission of false information by disgruntled employees.

Recommendation 6
Agencies should carefully evaluate, in partnership with affected industries, the development and use of voluntary industry standards before considering or implementing new mandatory regulations.

Issue 6
Small business owners have told the Office of the National Ombudsman and the RegFair Boards that Federal agencies too often assume that new mandatory regulations are the best and most cost effective means of achieving policy objectives. The National Ombudsman and RegFair Boards agree with small business owners that agencies should consider whether a voluntary national standard, arrived at in cooperation with affected parties, meets agency objectives. *(See 2000 Enforcement and Compliance Issues: Companies 134 and 803.)*

Example:
The Department of Commerce's National Institute of Standards and Technology (NIST) has effectively utilized voluntary standards. The NIST has successfully worked with industries to adopt standards voluntarily that are practical, achieve their regulatory purpose, and in most instances improve the economics of the affected industry.

Recommendation 7
In an ongoing effort, Federal agencies should utilize internal offices that work with small businesses to inform small businesses about their rights to regulatory fairness, including the dissemination of RegFair material in mailings, at offices, and through existing outreach efforts. Such offices may include the Offices of Small & Disadvantaged Business Utilization and individual agency Ombudsmen.

Issue 7
Small businesses believe that agencies can do more to leverage their existing outreach efforts to educate small businesses about their rights to regulatory fairness at minimal costs.

Example:
In 1999, the Department of Housing and Urban Development began distributing the RegFair information card at its small business events. The FCC, EPA, and other Federal agencies launched notable efforts as well.

Recommendation 8
Agencies should conduct objective reviews of their implementation of SBREFA.

Issue 8
Small businesses have told RegFair that agency—small business partnerships would be strengthened by objective reviews of agency implementation of SBREFA.

Example:
The Office of the National Ombudsman received a copy of the Environmental Protection Agency Inspector General's 1999 SBREFA audit. RegFair recommends objective reviews in order for the Federal government to realize additional gains in its continuing efforts to improve the regulatory environment for small business.

Recommendation 9
Agencies should review and reduce their small business data collection and reporting requirements and eliminate duplication of requested information. Agencies should also periodically conduct field studies of the actual time small businesses spend complying with their reporting requirements.

Issue 9
Small businesses spend too many of their available working hours gathering data and completing reports for local, state and Federal agencies, without knowing why and without any benefit to the business. Small businesses believe agencies are not considering or do not understand that current reporting requirements divert too much time from small business operations.

Example:
Keith Price, vice president of finance for Shelby Industries in Shelbyville, Kentucky, offered testimony on the increasing paperwork burden resulting from the number of mandatory regulations, surveys, and applications that small businesses encounter on a daily basis. Data are requested by agencies, but the business is never informed of the results or sees a compilation of the data collected. Mr. Price illustrated his views by listing a number of reports that had to be completed for seven Federal agencies overseeing his small business. Although information requested was similar, agency forms were different and the small business had to answer each form separately. According to Mr. Price, agencies are not considering the duplication and actual time spent completing all their forms, which he estimated at 51 hours for all seven forms.

Recommendation 10
Agencies must provide well-trained staff for inspections or compliance audits. Staff should be well versed in the particular industry, in applicable law and regulations, and compliance assistance. Agency personnel should work with small businesses, and not only focus on sanctions.

Issue 10
Small businesses tell the Office of the National Ombudsman and the RegFair Boards that some agency staff that perform inspections or compliance audits are not well-trained, and sometimes are not familiar with the industries they inspect, much less the operations of those industries. *(See 2000 Enforcement and Compliance Issues.)*

Example:
Mr. Joe Ready, president of Advanced Custom Cabinets in Brentwood, New Hampshire, testified about an enforcement action by OSHA. The inspector required his small business to install a $54,000 dust collection system that Mr. Ready felt was completely unnecessary. Mr. Ready stated his company has an excellent reputation in his industry and that his insurers found no deficiencies with his facility or work practices. He also took issue with the attitude of the OSHA inspector. According to Mr. Ready, the agent conceded that he had no experience with woodworking or a woodworking shop at the start of the inspection and yet he required Mr. Ready to install a specific and expensive dust collection unit. According to Mr. Ready's testimony, other woodworking shops in his area are not required to have this system in place.

2000 Enforcement and Compliance Issues

For this year's report, there are three major enforcement and compliance issues that have arisen from the small business feedback received by the Office of the National Ombudsman.

1. Too frequently, agencies do not accurately estimate the impact of new regulations and regulatory actions on small businesses, which results in unnecessary and unintended business costs and restrictions.

2. Agencies can do more to involve small businesses in agency actions that have enforcement and compliance impacts.

3. There is a significant need to improve the training and supervision of enforcement and compliance staff on the proper use of discretion during enforcement and compliance activities.

Case Studies

1. Too frequently, agencies do not accurately estimate the impact of new regulations and regulatory actions on small businesses, which results in unnecessary and unintended business costs and restrictions.

Company 873[2] is a small home health care business in New England that provides in-home care to homebound seniors and people with disabilities. The company was recently notified by HCFA that it would have to implement a new data gathering and electronic reporting system called Outcome and Assessment Information Set (OASIS) by the Health Care Financing Administration (HCFA). Among other things the system is designed to track the appropriateness of care and the normal home health care costs associated with persons with certain ailments. The system is supposed to replace existing data gathering and reporting mechanisms and is expected to ultimately result in improved health care and lower costs for HCFA and home health care providers.

Company 873 is one of a number of small businesses that have either commented or testified that the costs of converting to OASIS and operating it were significantly higher than predicted by HCFA. Prior to putting the rule into effect, HCFA asked University of Colorado researchers to study the cost of conversion to and the operation of OASIS. The study resulted in an estimated cost of $2,400 to convert to OASIS per home health care agency. The study also concluded that the ongoing costs of operating OASIS would be lower than the data processes it was replacing.

Company 873 experienced costs of conversion that were several times greater than the estimate given by the University of Colorado and adopted by HCFA. The impact of the disparity between estimated and actual costs was heightened for the company because it operates under a cost reimbursement system with HCFA. In other words, it is not entitled to make a profit that might have otherwise been used to pay the additional expenses it incurred in converting to OASIS.

HCFA reviewed and responded to Company 873 and indicated that the agency was working to address the cost concerns, in light of the feedback it was getting. HCFA is working to increase the level of reimbursement for home health agencies to address the negative economic impact of converting to OASIS.

[2] Small businesses owners identified by a company number did not elect to disclose their identity publicly and so they are referred to by their RegFair comment tracking numbers.

Similar to Company 873, J.F. O'Neill Packing Co. (O'Neill) experienced economic losses that were not accurately accounted for by a regulatory action of the Department of Agriculture (USDA). O'Neill is a small family owned business in Omaha, Nebraska. It is one of a very few slaughter and fabricating plants in the U.S. certified by the European Union (E.U.) for export. O'Neill contracted with other exporters to the European Union to use the facility along with their own products for export. O'Neill's business was growing and prospering, as were its buyers in the E.U. and fellow contractors using the O'Neill facility. The company worked to ensure its product complied with E.U. rules concerning the use of hormones in cattle. The company worked with the USDA to be permitted to export its product to the E.U. for several years. Part of the export process required the USDA to analyze and certify to the E.U. that the product being exported was consistent with E.U. food health standards.

In mid-July 1999, without prior notification to O'Neill or other small businesses, the USDA suspended the E.U. beef export program. This action effectively shut down O'Neill. The company is now a small fraction of its former size, with correspondingly smaller revenues. Prior to the suspension, the USDA had been working with the industry to establish better testing and auditing procedures to improve overall compliance with E.U. standards. By not involving the industry in its action to suspend the program, the USDA significantly increased the negative impact of its decision. Once the company's animals are slaughtered, time is of the essence. Since the industry was not consulted on the decision and O'Neill was not given any advance notice, the company suffered a near bankrupting event—its cattle slaughtered with the intended market eliminated.

The USDA responded after it had suspended the certification program. The agency said that it had begun working with the industry to develop production controls that would sufficiently assure the agency that the meat it was certifying as hormone free, actually was. The agency did not address whether it had taken any steps to notify O'Neill, prior to suspending its meat certification, and relied on a letter to four trade associations to inform the industry. Later, the agency directly notified O'Neill about its efforts to resume the certification program.

In both situations, better agency discernment of the impact of its actions on small businesses, could have allowed the agency to carry out its legitimate regulatory mission, while mitigating the impact of its actions on small businesses. Relying on a study that was devised without the expertise of affected small businesses, or taking action without first consulting and notifying affected stakeholders, greatly increases the chances that agency actions will have unnecessary, unintended and damaging consequences for small businesses.

Among other solutions, agency adoption of Recommendation 1 contained in this Annual Report would greatly have improved agency estimates of the impact of their actions on small businesses. To the extent that agencies use cooperative pilot programs, the Office of the National Ombudsman and the RegFair Boards believe the Federal government will eliminate this major concern and give credibility to the agency's regulatory role. Private industry makes extensive use of pilot projects to determine the viability of new products and markets with great success.

2. *Agencies can do more to involve small businesses in agency actions that have enforcement and compliance impacts.*

Companies 134 and 803 are, respectively, Southern state and Heartland state small home health care agencies. The companies commented on HCFA implementation of the Balanced Budget Act of 1997 (BBA '97). The small businesses believe that HCFA's interpretation and implementation of the Act was unduly harmful to the industry generally and to their own companies in particular.

One of the requirements of BBA '97 was the institution of a surety bond requirement. The bond is required to insure that HCFA can recover payments that home health care agencies have billed incorrectly, improperly, or fraudulently. Congress set minimal bond requirements, but left the details for HCFA to define. HCFA implemented a bond requirement that set a minimum bond amount as the higher of $50,000 or 15 percent of payments. HCFA also detailed a number of requirements concerning the number of bonds and the required indemnification.

Company 134 was instructed to obtain a surety bond by HCFA's contractor. The small business sought the required bond from several bonding companies. As a result of the design of HCFA's cost reimbursement system the company did not have enough collateral to pledge for the bond. The small business owner would have to pledge personal assets and even then could not find a company that was willing to underwrite the bond required by HCFA.

Company 803 was also instructed to obtain a surety bond for nearly $350,000. The company has been in business for many years and had an exemplary compliance history. The company commented that HCFA's rule did not consider past compliance and treated it as though it was a new HCFA health care provider. The company invested significant effort and funds over the years to maintain its excellent compliance record and didn't believe it was appropriate to be lumped in with less scrupulous companies.

HCFA responded to the feedback it received from Congress, the industry and RegFair and delayed the implementation of the bond requirement several times. The agency heard from the bond companies and rewrote technical provisions in the rule to make bonding economically feasible for the bond companies. It also modified the bond requirement to reduce the overall cost for small businesses.

Partnering with the affected industries from the inception of this regulatory action would have dramatically changed the agency's analysis and conclusions with regard to the impact of the requirements. A Government and private sector partnership would likely speed up the implementation of the new policy, reduce the need for extensive agency modifications to the requirement, and most importantly, minimize any negative impact the new requirement might have on the industry. Recommendations 1, 6 and 9 in this year's Annual Report, are geared toward increasing the level of cooperation and involvement between small businesses and agencies and thereby reduce the small business regulatory burden. Recommendation 1 addresses the impact of enforcement and compliance on small businesses, Recommendation 6 addresses the use of voluntary standards verses mandatory regulations, and Recommendation 9 seeks to reduce the duplication of compliance requirements. The recommendations provide a good start for agencies in building better communication, understanding and solutions that benefit small businesses while still achieving public policy goals.

3. *There is a need to improve training and supervision of enforcement and compliance staff on the proper use of discretion during enforcement and compliance activities.*

Mechoshade is a small business in New York, New York that sells window coverings. The company has customers throughout the country and had sold merchandise to some buyers in California. The buyers contacted the company because the product was delivered with a few dirt marks. The company shipped the buyers some dry cleaning fluid by an air express carrier. The company packed the fluid into two jars and wrapped the jars in packing material inside a cardboard box.

The jars were discovered after they had been flown to California because the package had leaked. The Federal Aviation Administration (FAA) considered the fluid a health and safety hazard. The FAA issued a multitude of charges against the company for its single action. The company was unaware of any restriction and regularly uses the chemical in its plant. The company quickly informed the FAA that it would fully comply in the future and was apologetic for its violation.

FAA and the company agreed that no harm was caused to the passengers and crew of the plane, but the FAA demanded more than a warning. After the company contacted the Office of the National Ombudsman, the agency took the company's size, past compliance and likely future compliance into consideration when it reduced the penalties.

The FAA did not address the justification for the number of charges that it brought against the company. With civil regulatory enforcement and compliance activities, agency staffs yield significant discretionary power in the number and severity of violations that they may pursue against small businesses. Faced with maximum penalties on numerous violations for individual acts, small businesses frequently feel compelled to settle with agencies.

Company 824 presents a different perspective on the importance of proper use of agency discretion. Company 824 is a small Western state business that operates a laboratory facility regulated by the Food and Drug Administration (FDA). An agency employee, who was very professional and polite, inspected the company in 1999. The company spent significant resources preparing for and working with the inspector. Company 824's particular issue concerned paperwork requirements. The inspector was working from the same regulation that the company had been working from. The regulation itself was written in a way to reduce the heavier burden that smaller laboratories face in complying with record keeping requirements.

The inspector ordered the company to change its record keeping system in a way that would increase costs without, as the company believes, an increase in product quality or safety. The small business believes that the record keeping system implemented at the behest of the inspector might have to be changed again should a different inspector visit in the future. The company believes its previous system was in full compliance and that the inspectors should be better trained to recognize systems that achieve the goal sought by the underlying regulation. The business also believes that more safeguards should be in place to allow small businesses to contest discretionary decisions of agency staff. After the company contacted the Office of the National Ombudsman, the FDA responded that it does have specific protocols in place to address these discretionary staff decisions and recommended that the small business contact the appropriate office to seek a resolution.

Agency staff exercise tremendous power when they undertake enforcement and compliance activities. With individual power comes the opportunity for mistakes. While training alone does not guarantee the proper use of discretion, training with regular oversight and reporting mechanisms can help insure that personnel are properly carrying out the intent and requirements of regulations. The impact of improper agency discretion is one of the chief reasons for the Office of the National Ombudsman's Recommendation 10, contained in this Annual Report. Thorough training and excellent oversight would greatly reduce the improper use of discretion during enforcement and compliance activities. Agency oversight practices might also provide small businesses with better vehicles to voice their concerns.

The State of Federal Agency Regulatory Enforcement Fairness for Small Businesses

Many Federal agencies have instituted regulatory enforcement and compliance reforms based on the evaluations and recommendations from the National Ombudsman's first and second Annual Reports to Congress on regulatory fairness.

A major goal and continuing theme of the RegFair Program in its third year has been to encourage Federal agencies to create friendlier, non-punitive regulatory environment for the Nation's 25 million small businesses. The agency evaluations and ratings, required under the statute and included in each of the National Ombudsman's Annual Reports, highlight areas where agencies may make additional reforms for small businesses.

The 2000 Report to Congress continues the evaluations and ratings of previous years and develops some additional areas of evaluation. These areas are:

- The quality, thoroughness and timeliness of agencies' responses to small business comments;
- Agency responsiveness to specific regulatory fairness questions based on individual small business comments;
- Agency implementation of the recommendations contained in the National Ombudsman's 1999 Report to Congress; and
- Agency response and participation in the ten RegFair hearings held in 1999.

The Office of the National Ombudsman also requested each Inspector General to establish a protocol under which appropriate small business comments may be referred to the Inspector General in a manner that protects the identity of the small business, as required by SBREFA. Included in this report is an evaluation and rating of the Inspectors' General responses.

Evaluating Agency Enforcement and Compliance Activities

Learning from the Enforcement and Compliance Experiences of Small Businesses

Small business owners file comments with RegFair for two chief reasons. First, small businesses want timely responses to their concerns from high-level, independent agency officials who are in positions to review and address their concerns. Second, small businesses work with the Office of the National Ombudsman and RegFair Boards to improve the Federal regulatory enforcement and compliance environment.

The National Ombudsman developed internal and external mechanisms that maximize the impact that each small business comment has on the regulatory environment. Each comment becomes a case study with the potential for significant national impact.

By including a series of regulatory fairness questions, like those in the following sample list, as the focus of small business comments sent to agencies, the Office of the National Ombudsman systematically asks agencies to analyze how effective they are at consistently ensuring a fair regulatory environment. Responding to the questions requires agencies to study how their own policies and procedures either foster or deter a fair regulatory environment for small businesses. In instances of substantiated regulatory enforcement concerns, agencies describe solutions they will use to eliminate or greatly reduce the problems within their agencies or processes by which they may better monitor their own performance. The personnel or policy changes that are brought about by the comments of individual small business owners have

significant positive impacts on the overall enforcement and compliance environment. Individual small business comments in effect help hundreds and thousands of other small business owners, many of whom have not participated in the RegFair.

The National Ombudsman and the RegFair Boards use the testimony and written comments to identify broad enforcement and compliance issues. The enforcement and compliance issues are reflected in the National Ombudsman's Annual Recommendations, agency evaluations, ratings, and the major enforcement and compliance issues.

In the 1999 Report to Congress, the National Ombudsman sought to enhance and expand the evaluations conducted on specific Federal agency enforcement and compliance activity, based on comments received directly from small businesses. Two new evaluations and ratings were introduced in the 1999 Report. The first evaluated and rated the timeliness of agency responses to small business comments. The second evaluated and rated the overall quality and thoroughness of each response.

Small business owners have told RegFair that their businesses are hurt by the excessive length of time it takes Federal agencies to hear their requests, carry-out regulatory enforcement or compliance activities and review their appeals. Small business owners believe that justice delayed can be justice denied.

The National Ombudsman and the RegFair Boards have also heard from small businesses that agencies set and strictly enforce short deadlines during an enforcement and compliance activity. At the same time, agencies do not comply with their own response time commitments. The RegFair Boards recommended that evaluating agencies based on the timeliness of their responses to small business comments would be a good substitute indicator of an agency's overall timeliness with small businesses and might help sensitize each agency to the impact its deadlines have on small businesses.

The quality and thoroughness of the agency responses are similarly very important to small business owners and the regulatory reform opportunities presented by each small business comment. Small business owners want to know that their comments are being fully considered. To the extent a Federal agency does not respond to a regulatory fairness question presented by a small business there is no documentary evidence that the agency heard, understood, and considered the issue(s) presented.

Thorough and thoughtful agency responses help the National Ombudsman and the RegFair Boards learn more about the enforcement and compliance concerns as well as where potential solutions may lie.

Additional Evaluations for the 2000 Report to Congress

In the continuing effort to enhance the assessment of Federal agency enforcement and compliance activities, agencies are evaluated and rated in an additional area. The evaluation and rating is on the responsiveness of agencies to the National Ombudsman's regulatory fairness questions.

Starting in mid-1998 and continuing through 1999, the National Ombudsman asked Federal agencies to review and respond to small business comments as well as a series of regulatory fairness process questions.

The questions are designed to elicit agency consideration of basic process issues that the National Ombudsman and RegFair Boards believe form the structure of a fair enforcement and compliance environment for small businesses. Small businesses often state that it is not fair for them to be severely penalized for violating a rule of which they were unaware. Indeed, when significant numbers of responsible small business owners are unaware of a rule that impacts their industry, the Federal agency has not effectively communicated and educated small businesses on their regulatory compliance requirements. When an agency's efforts to educate small businesses on a regulatory enforcement requirement are not

successful or extensive enough, agency enforcement activity may be within its authority and yet still not uphold basic regulatory fairness standards.

The National Ombudsman's questions help illustrate to agencies that the issue of regulatory fairness includes, but also goes beyond agency authority to take an enforcement or compliance action. The questions seek to institutionalize regulatory fairness issues within each Federal agency and bring the small business perspective to bear on each enforcement or compliance activity.

A representative sample of the basic process questions follow. These questions are posed in modified forms appropriate for a given comment and the level of identity disclosure the small business owner elects. (Small business owners may elect to disclose their company's identities to agencies so that the agencies may review the actual circumstances of the enforcement or compliance activities and how their regulatory fairness standards were applied to the companies.)

Sample List of Regulatory Fairness Questions:

(i) why and how the enforcement or compliance action was taken;

(ii) whether and how small businesses were notified of applicable requirement(s);

(iii) whether and how the agency considered the economic impact of the requirement on small businesses;

(iv) whether the small business had notice of the enforcement or compliance action and was given adequate opportunities to correct the cause(s) of the violation(s);

(v) how was the enforcement or compliance action determined;

(vi) whether the small business' compliance history was factored into the determination;

(vii) whether and how the agency considers the economic impact of the restriction, denial, penalty, recoupment, or repayment terms on the small business;

(viii) whether the agency considered the small business' mitigating circumstances;

(ix) whether the agency's policies and procedures were followed;

(x) whether and how the agency's regional and program offices were responsive to the small business;

(xi) what policies and procedures does the agency have in place to: (a) ensure that excessive enforcement and compliance activities do not take place; and (b) monitor internal compliance with its policies and procedures, as well as the responsiveness to small businesses of the agency's offices; and

(xii) why the agency believes the specific enforcement or compliance action reflects the requirements of SBREFA; or whether the agency should reconsider its enforcement or compliance action, in this and in future matters, in light of the small business' comments and the requirements of SBREFA.

Quality, Thoroughness, and Timeliness of Agency Responses

Evaluative Table 1[3]

Adequacy and Thoroughness of Agency Responses to Small Business Comments in 1999

Agency	*Response to Small Business Comment*
Department of Labor	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Federal Deposit Insurance Corporation	●
Federal Energy Regulatory Commission	●
Immigration and Naturalization Service	●
Pension Benefit Guarantee Corporation	●
Small Business Administration	●
Social Security Administration	●
Customs (Treasury)	◗
Department of Transportation	◗
Food and Drug Administration (HHS)	◗
Housing and Urban Development	◗
Internal Revenue Service (Treasury)	◗
Department of Agriculture	⊙
Health Care Financing Administration	⊙

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory

Rating Criteria for Evaluative Table 1

● Excellent	All of the small business' issues were fully addressed. The response demonstrates a thorough and reflective review of the issues or questions. Courses of action are discussed for any substantiated concerns.
◗ Good	The response addressed most of the small business' issues. The response demonstrates the agency gave the issues or questions serious consideration during the agency review. Where applicable, agency reaction to substantiated small business or RegFair concerns is not addressed in the response.
⊙ Average	The response addressed most of the small business' issues. The issues or questions that were addressed in the agency response were answered in a moderately complete fashion.
○ Unsatisfactory	The response did not address a significant number of the small business' issues. The issues or questions that were addressed in the agency response were answered in a very minimal fashion.

[3] The number of agencies listed above reflects agencies that have provided a final response to small business comments reviewed in 1999. There are additional comments on other agencies for which RegFair has not received adequate final agency responses. Those comments were not evaluated at the time this report was printed. Evaluative Table 3 lists additional agencies because RegFair has received initial responses on current comments from a greater number of agencies.

Evaluative Table 2

Adequacy and Thoroughness of Agency Response to the National Ombudsman's Regulatory Fairness Questions for 1999

Agency	*Response to National Ombudsman's Questions*
Department of Transportation	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Federal Energy Regulatory Commission	●
Housing and Urban Development	●
Pension Benefit Guarantee Corporation	●
Small Business Administration	●
Customs (Treasury)	◗
Department of Agriculture	◗
Department of Labor	◗
Federal Deposit Insurance Corporation	◗
Food and Drug Administration (HHS)	◗
Health Care Financing Administration (HHS)	◗
Internal Revenue Service (Treasury)	◗
Social Security Administration	◗
Immigration & Naturalization Service	⊙

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory

Rating Criteria for Evaluative Table 2

● Excellent	All of the National Ombudsman's questions were fully addressed. The response demonstrates a thorough and reflective review of the issues or questions. Courses of action are discussed for any substantiated concerns.
◗ Good	The response addressed most of the National Ombudsman's questions. The response demonstrates the agency gave the issues or questions serious consideration during the agency review. Where applicable, agency reaction to substantiated small business or RegFair concerns is not addressed in the response.
⊙ Average	The response addressed most of the National Ombudsman's questions. The issues or questions that were addressed in the agency response were answered in a moderately complete fashion.
○ Unsatisfactory	The response did not address a significant number of the National Ombudsman's questions. The issues or questions that were addressed in the agency response were answered in a very minimal fashion.

Evaluative Table 3

Timeliness of Initial Agency Responses Since RegFair Inception

Agency	*Overall Weighted Rating*[4]	*2000 Rating*	*1999 Rating*
Commodities Future Trading Commission	●	NC	●
Customs (Treasury)	●	●	●
Federal Deposit Insurance Corporation	●	NC	●
Federal Energy Regulatory Commission	●	●	⊙
National Labor Relations Board	●	●	NC
Occupational Safety & Health Administration	●	NC	◗
Pension Benefit Guaranty Corporation	●	●	NC
Securities and Exchange Commission	●	NC	●[5]
Small Business Administration	●	●	●
Equal Employment Opportunity Commission	◗	●	◗
Internal Revenue Service (Treasury)	◗	⊙	◗
Department of Agriculture	⊙	○	●
Department of Transportation	⊙	○	⊙
Environmental Protection Agency	⊙	●	⊙
Department of Defense	○	NC	◗
Department of Justice	○	NC	○
Department of Labor	○	○	◗
Federal Communication Commission	○	○	⊙
Food and Drug Administration	○	○	⊙
Health Care Financing Administration (HHS)	○	○	NC
Housing and Urban Development	○	○	●
Immigration and Naturalization Service (Justice)	○	○	●
Social Security Administration	○	NC	○

Key: ● = Excellent; ◗ = Good; ⊙ = Average; ○ = Unsatisfactory; **NC** = No Comments

Rating Criteria for Evaluative Table 3

● Excellent	The agency's average initial written response time to small business comments was within 45 days of RegFair transmitting comments to the agency for its review and response.
◗ Good	The agency's average initial written response time to small business comments was between 46 and 60 days of RegFair transmitting comments to the agency for its review and response.
⊙ Average	The agency's average initial written response time to small business comments was within between 61 and 90 days of RegFair transmitting comments to the agency for its review and response.
○ Unsatisfactory	The agency's average initial written response time to small business comments was greater than 90 days of RegFair transmitting comments to the agency for its review and response.
NC No Comments	There were no small business comments sent to agency during the rating period.

[4] Reflects the average agency initial response time since 1997.
[5] Reflects correction to 1999 Report to Congress.

Agency Responses to the 1999 Recommendations

This section of the 2000 Report evaluates and rates agency responses to the first five recommendations contained in the National Ombudsman's 1999 Report to Congress. All recommendations are ongoing and are intended to create a friendlier, fairer, regulatory enforcement and compliance environment for the Nation's 25 million small businesses.

The National Ombudsman's 1998 and 1999 Annual Reports to Congress on Regulatory Fairness each presented ten recommendations for Federal agencies to implement. The recommendations are intended as a helpful guide for agencies undertaking regulatory enforcement and compliance activities with respect to small businesses. The recommendations were derived from small business comments, RegFair hearing testimony, and the experiences of RegFair Board Members as small business owners and as 1995 White House Conference Delegates. If fully implemented, the recommendations will help agencies improve the regulatory enforcement environment.

In April 1999, RegFair Board Members and agencies were asked to provide input on the rating criteria to be used to evaluate agencies for the National Ombudsman's 2000 Report to Congress. Specifically, the Acting National Ombudsman requested the Boards and the agencies to provide ideas, comments and suggestions for the criteria by which agency efforts to implement the five major 1999 Recommendations would be evaluated.

Those responses were reviewed and, where appropriate, incorporated into draft evaluation criteria. The final evaluation criteria used to evaluate agency implementation of the five major recommendations were distributed, and agencies were requested to provide a status report on their efforts to implement the recommendations.

Initial agency responses were reviewed and, in some cases, agencies were asked to clarify their responses on specific recommendations. The complete responses were reviewed to evaluate steps agencies have taken to implement the recommendations and improve the regulatory enforcement environment for small business.

Agency efforts to achieve the same ends sought in the recommendations, but by different means, were considered in evaluating and rating the agency's performance. Also considered were substantiated instances of enforcement or compliance activity that appeared inconsistent with agency responses to the recommendations.

In the evaluation, all agency responses, including responses to the draft of the 2000 Report to Congress were used to rate agencies. Evaluative Table 4 shows that five agencies achieved a rating of *Good* or *Excellent* on all five recommendations. Those agencies are the Equal Employment Opportunity Commission, the Federal Trade Commission, the Occupational Safety and Health Administration, the Pension Benefit Guarantee Corporation and the Department of Transportation.

Three agencies received an *Unsatisfactory* rating for all five recommendations. The Department of Defense, the General Services Administration, and the Department of State received an *Unsatisfactory* rating for all five recommendations because they either did not supply RegFair with the status of their implementation or they did not implement the recommendations.

Applicability of SBREFA

As stated in the National Ombudsman's 1999 Report to Congress, Section 222 of SBREFA is part of "Subtitle B--Regulatory Enforcement Reforms." Section 221 contains the "definitions" applicable to Subtitle B. Section 221 adopts the Freedom of Information Act (FOIA) definition of "agency." That

definition states that agency means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency...." (5 U.S.C.§551). Accordingly, the National Ombudsman, with advice from the regional RegFair Boards, has concluded that Section 222 applies whenever a Federal agency, as defined above, exercises regulatory enforcement or compliance authority with respect to a small business concern (15 U.S.C. Sec 657 (b)(2)(B)).

In determining which agencies are covered under the Regulatory Fairness Program, the National Ombudsman is strictly guided by the statute. In Section 221 of SBREFA, Congress adopted FOIA's broad definition of "agency," to define the agencies covered under Section 222 of SBREFA. Moreover, Section 222 addresses "each agency with regulatory authority over small businesses." Accordingly, the Regulatory Fairness Program has rejected the position of some agencies that they are not covered by SBREFA because they are not a regulatory agency. In other words, as required under Sections 221 and 222 of SBREFA, an agency can exercise "regulatory authority over small businesses" without being a regulatory agency.

Two agencies, the Department of Defense and the General Services Administration, despite the broad statutory definition, correspondence, discussions with the National Ombudsman, and a letter from the Subcommittee on Regulatory Reform of the House Small Business Committee, have taken the position that Section 222 of SBREFA does not apply to them. *(See the National Ombudsman's 1999 Report to Congress, at 15.)*

In Section 222 of SBREFA, Congress also addressed "actions by agency employees conducting compliance or enforcement activities with respect to the small business concern." As stated in the 1999 National Ombudsman's Report to Congress:

> *In keeping with Congressional intent, as manifested by the statutory language, RegFair has not limited small business concerns to fines and penalties. The National Ombudsman believes that Congress did not intend such a narrow scope, or it would have used the words "fines" and "penalties." The Regulatory Fairness Boards and the National Ombudsman believe this is significant because, as seen in the feedback received by RegFair through written comments, testimony, and RegFair Board contact, small businesses have significant regulatory enforcement and compliance concerns which are not restricted to fines and penalties. (Id. At page 7.)*

Rating Criteria for Evaluative Table 4

Issue 1:
Small business owners believe that enforcement or compliance activity can be arbitrary, often depending on the training and/or attitude of the agent responsible for performing the activity.

Recommendation 1:
Develop a regulatory fairness protocol for Federal agency staff who undertake enforcement or compliance activities involving a small business. This protocol may include a form containing information such as a check list for the following:

- Consideration of the size of the business when determining the enforcement or compliance action;
- Consideration of the economic impact of the enforcement or compliance action on this small business and on small businesses generally;
- Consideration of any mitigating circumstances the small business was dealing with;
- Consideration of a lesser action; and
- Whether the small business had sufficient notice and appropriate opportunity to correct the cause of the violation.

Evaluation Criteria for Recommendation 1:

Excellent	The agency indicates it has developed and is enforcing a regulatory fairness protocol for staff undertaking enforcement or compliance activities involving a small business. According to the agency, the protocol is frequently and clearly communicated to staff through internal newsletters, meetings with supervisors, training or other clearly designated avenues. The protocol includes all five of the suggested check list items shown above. Staff, who have small business enforcement or compliance responsibilities, are partly rated based on their proper use and application of the regulatory fairness protocol. The agency shares the protocol with individual small businesses at the outset of each enforcement or compliance activity as well as the results of the protocol's application to each small business. The agency has specifically defined how small businesses will be identified and at what points during an enforcement or compliance activity the protocol will be applied.
Good	The agency indicates it has developed a regulatory fairness protocol for staff undertaking enforcement or compliance activities involving a small business, and that the protocol has been clearly communicated to that staff. The protocol includes at least three of the five suggested check list items shown above, in some form. The agency shares the protocol with individual small businesses at the outset of each enforcement or compliance activity.
Average	The agency's response indicates one of the following: • That it has developed a regulatory fairness protocol for staff undertaking enforcement or compliance activities involving a small business, but offers no further information on the protocol or how it is communicated to staff; or • The agency indicates that although it does not have a protocol in place, it will develop and institute a protocol within a specified time period. According to the agency, the protocol includes one of the five suggested items shown above.

0 Unsatisfactory	The agency's response indicates one of the following: • the agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information; • the agency indicated it does not have a protocol and offers no indication of whether or not a protocol was being planned or developed; or • the agency states that it has developed a protocol, but gives no further information.

Issue 2:
The economic viability of small businesses may be threatened by agency enforcement or compliance activities.

Recommendation 2:
Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement or compliance action threatens the economic viability of the business. The reviewing entity should have the authority to provide for alternative payment arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

Evaluation Criteria for Recommendation 2:

Excellent	The agency's response indicates it has established an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability. This avenue has the authority to provide for alternative payment arrangements, alternative enforcement or compliance actions, or other arrangements. According to the agency, it has made extensive use of appropriate media such as newsletters, its web site, direct mail and face-to-face contacts with small businesses, trade associations, and other interested parties to inform the small business community of the availability of this avenue.

Good	The agency's response indicates it has an established an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability. The avenue has some authority to examine and change the agency's enforcement or compliance action, or provide for alternative arrangements.

Average	The agency's response indicates one of the following: • The agency will establish within a specified time period an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability; or • It has established an avenue with limited authority to examine and change agency enforcement or compliance action, or provide for alternative arrangements. According to the agency, it has tried to inform small businesses of the availability of this avenue through instruments such as published materials, newsletters, its web site, and direct mail to small businesses, trade associations, and other interested parties.

0 Unsatisfactory	The agency's response indicates one of the following: • the agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information; • the agency does not have such an avenue and offered no information on whether an avenue was being planned or developed; or • the agency does not have or plan to establish an avenue through which a small business can expeditiously raise a concern with an enforcement or compliance action that threatens its economic viability.

Issue 3:
Small business owners believe that Federal agencies enforcement and compliance activities are unfair to small businesses compared to large corporations, and that agencies sometimes "target" small businesses because they do not have in-house legal counsel.

Recommendation 3:
Federal agencies should publicize data on agency enforcement and compliance activities, annually. Information gathered should improve agency self-assessment of its fairness to small businesses at all stages of enforcement and compliance activities as well as small business understanding of those activities. Agency heads could select data they believe most relevant to their agency's statutory authority, requirements or mission. Examples of appropriate data include the following:

- Number and type of enforcement and compliance activities, with regional and program office breakdowns;
- Inspections, on-site visits, audits, or similar field activities;
- Activities involving licensed versus unlicensed facilities;
- Small business feedback, compliments and complaints with agency responses;
- Number of fines, penalties, restrictions, license suspensions, or other debarments and similar actions;
- Administrative, final agency, and judicial appeals and the cost of such activities; and
- Use and success of informal and formal appeal channels for small versus large businesses.

Evaluation Criteria for Recommendation 3:

Excellent	The agency's response to recommendation 3 indicates that it collects and publicizes data on its enforcement and compliance activities annually, and that it uses the information gathered to examine and improve its fairness to small businesses at all stages of enforcement and compliance activities. According to the agency, it also uses that information to improve small businesses' understanding of its enforcement and compliance activities through the use of newsletters, web sites, direct mail and face-to-face contacts with small businesses, trade associations, and other small business representatives and agents.

Good	The agency collects and publicizes data on its enforcement and compliance activities occasionally. The agency plans to begin examining data for use in improving its fairness to small businesses or to help improve small businesses' understanding of its enforcement and compliance activities. The latter is communicated to the small business community in multiple ways.

0 Average	The agency's response indicates one of the following: • The agency collects and publicizes data on its enforcement and compliance activities but did not indicate plans to examine it for information on fairness or small businesses' understanding; or • The agency does not collect data, but gave specific plans to begin doing so. It also plans to begin examining data for information on fairness and small businesses' understanding of its enforcement and compliance activities, and to communicate this to the small business community.

0 Unsatisfactory	The agency's response indicates one of the following: • the agency did not respond to the recommendation, or responded to the recommendation by offering no relevant information; or • the agency does not collect data on its enforcement and compliance activities and offered no indication of plans to begin collecting such information.

Issue 4:
Small businesses want their issues raised with government officials who are able to independently address and answer small business concerns, and guard against retaliation by ensuring that the reviewing official does not have a direct conflict of interest. Review at a high level means the agency can measure its effectiveness at implementing the principles of SBREFA, as well as whether its own internal policies to protect small business are effective. They want review officials who are able to independently address and answer small business concerns, to the point of changing agency policy for all small businesses, if appropriate.

Recommendation 4:
Agencies heads should certify to the National Ombudsman that their designated RegFair Program representatives are independent of enforcement or compliance activities.

Evaluation Criteria for Recommendation 4[7]:

1 Excellent	For each RegFair request to review and respond to a small business comment, the agency designates a representative who is independent of the enforcement or compliance action commented on by the small business.

0 Unsatisfactory	The agency's response indicates one of the following: • The agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information; • The agency has not designated and has no plans to designate RegFair Program representatives who are independent of enforcement or compliance activities and offers no information on whether this may be considered in the future; or • The designated RegFair representatives are not independent of enforcement or compliance activities.

Issue 5:
Small business owners are concerned that agency enforcement and compliance personnel are not familiar with the application of the agency's rules and regulations to small businesses, and do not always consider the principles of SBREFA when considering how to apply those rules.

Recommendation 5:

[7] On Recommendations 4 and 5, agencies have fewer possible ratings due to the nature of the recommendations.

Federal agencies should provide formal training on a periodic basis for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program. The training should sensitize employees to the unique needs of small business.

Evaluation Criteria for Recommendation 5:

Excellent	The agency's response provided details about formal and periodic training for all enforcement and compliance staff that work with small businesses on the regulatory fairness rights of small businesses, including RegFair. The training is designed to sensitize employees to the unique needs of small business.
Good	The agency's response indicates one of the following: • The agency provides training on the regulatory fairness rights of small businesses, including RegFair, but provides no additional information about the training or whether it sensitizes employees to the unique needs of small business; or • The agency plans to institute formal and periodic training for enforcement and compliance staff that work with small business on the regulatory fairness rights of small businesses, including RegFair by a specific date. The training will focus on sensitizing employees to the unique needs of small business.
0 Unsatisfactory	The agency's response indicates one of the following: • the agency did not respond to the recommendation, or responded to the recommendation, but offered no relevant information; or • the agency did not indicate whether it has formal training for enforcement and compliance staff on the regulatory fairness rights of small businesses and does not indicate plans to institute such training.

Section Summary

SBREFA was intended to foster a regulatory enforcement environment that is sensitive to the unique needs and concerns of small business. The Act was also intended to change agency practices and culture so that those needs and concerns are taken into account by agencies in their regulatory enforcement and compliance activities, and to foster positive dialogue and partnership between Federal agencies and small businesses.

Overall, it appears that most agencies are making efforts to apply the principles of SBREFA to the enforcement and compliance activities they undertake with regard to small businesses. The majority of agencies have designated high-level, independent officials to review small business comments. Most agencies have or are instituting formal and periodic training on SBREFA and the regulatory rights of small businesses for personnel that have enforcement or compliance responsibility with regard to small business.

The evaluations are helpful in measuring agency inclinations toward small businesses. However, the National Ombudsman has no immediate method of determining the extent to which agencies are enacting the efforts and programs described in their written responses to the recommendations. The Office of the National Ombudsman currently evaluates whether agency personnel are carrying out these policies in the field, by matching agency responses with small business comments received, through testimony offered in RegFair hearings, and from the daily experiences of RegFair Board Members. For further feedback on agency field practices refer to the RegFair Boards Perspectives section and Small Business Perspectives sections, which illustrate matters raised by small businesses at the RegFair hearings.

Referrals to Federal Agency Inspectors General

SBREFA requires the National Ombudsman to establish the means to refer, in appropriate circumstances, comments from small businesses to agency Inspectors General. Specifically, the National Ombudsman is directed to develop a "...means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978. (5 U.S.C. App.)" (15 U.S.C. § 657).

As reported in the 1999 Report to Congress, the Office of the National Ombudsman established a protocol with each agency's Inspector General, to refer enforcement or compliance activities that have the appearance of impropriety on the part of agency personnel.

Of the 37 Federal agencies identified under Section 222 of the Act, 30 agencies were identified as having an Inspector General. Some Inspectors General are responsible for more than one agency. For example, the Inspector General of the U.S. Department of the Treasury is responsible for the Department of Treasury and for the U.S. Customs Service.

Agencies were contacted by the Office of the National Ombudsman to ensure that the identity of the small business, referred by RegFair to an agency Inspector General, is treated with the level of confidentiality provided other employee complaints received by the Inspectors General.

As Evaluation Table 5 illustrates, RegFair has reached agreement with all 30 agency Inspectors General that they will seek to protect the identity of the individuals and small business concerns making comments on a confidential basis, to the same extent as employee identities are protected under the Inspector General Act.

Evaluation Table 5

Cooperation of Inspectors General in Establishing Confidential Small Business Referrals

Agency	*Response*
Agriculture	●
Commerce	●
Commodity Futures Trading Commission	●
Consumer Product Safety Commission	●
Defense	●
Education	●
Energy	●
Environmental Protection Agency	●
Equal Employment Opportunity Commission	●
Farm Credit Administration	●
Federal Communications Commission	●
Federal Deposit Insurance Corp.	●
Federal Trade Commission	●
General Services Administration	●
Health & Human Services	●
Housing and Urban Development	●
Interior	●
Justice	●
Labor	●
National Aeronautics and Space Administration	●
National Labor Relations Board	●
Pension Benefit Guaranty Corporation	●
Securities and Exchange Commission	●
Small Business Administration	●
Social Security Administration	●
State	●
Tennessee Valley Authority	●
Transportation	●
Treasury	●
Veterans Affairs	●

Key: ● = Satisfactory; ○ = Unsatisfactory

Agency Participation in RegFair Hearings

Over the last three years, RegFair has convened 30 public hearings nationally, with 22 of the 37 agencies participating in varying degrees. Some agencies have participated at more than one hearing each year. In 1999, 17 agencies presented testimony, a notable increase over prior years. Six agencies had not previously participated in these public forums.

The Office of the National Ombudsman continually strives to improve the quality and value of the public hearings. Beginning with the 2000 public hearings, participants will be provided copies of the National Ombudsman's recommendations. This will help small businesses learn of the progress that has been made on regulatory fairness and further monitor agency implementation of the Recommendations.

In 1999, participation results similar to those in 1998 were achieved. In each of these two years, over 650 individuals attended the hearings, and nearly 150 small business representatives offered testimony. In 1997, approximately 450 individuals attended the hearings, and more than 100 provided testimony on their experience with regulatory enforcement. Transcripts of the proceedings for both 1998 and 1999 are posted on the RegFair web site, which can be accessed from the Small Business Administration's home page, under the topic titled Regulatory Fairness, or directly at www.sba.gov/regfair. Beginning with the 2000 RegFair hearings, we will also post on the RegFair web site, the written testimony submitted to RegFair by small businesses and agencies.

Many agencies have demonstrated their commitment to regulatory fairness for small business by participating in the public hearings. For example, the IRS, OSHA, EPA, SBA and the Department of Transportation deserve recognition for sending agency representatives to hearings at which they were not invited to testify. The agency representatives attended to hear small business comments and answer on-the-spot questions.

Past hearing successes are strengthening RegFair's relationships with SBA's Regional and District Offices. These improved relationships have resulted in a more varied base of small business owners attending the hearings, and have garnered more diverse testimony.

With the exception of the General Services Administration, every agency requested to testify at a 1999 hearing accepted that invitation, submitted written testimony, and came prepared to discuss the agency's implementation of the recommendations.

We commend the exemplary multi-year hearing participation records of the following agencies:

Internal Revenue Service
Environmental Protection Agency
Food and Drug Administration
Department of Transportation
Occupational Safety and Health Administration
Department of Labor
Small Business Administration

Special Thanks

We were greatly honored to have Congressional participation at every regional hearing this year. Congress is an essential partner to achieving regulatory fairness for small businesses. The involvement of U.S. Senators and U.S. Representatives at the public hearings helps demonstrate to the small business participants what a truly great partnership they have advocating on their behalf.

Our special thanks goes to the following Senators and Members of Congress for their active involvement in the regulatory fairness hearing process:

Region I, New England States, Hartford, Connecticut, June 24, 1999

Senator Christopher Dodd
Senator Joseph Lieberman
Congressman John Larson
Congressman Sam Gejdenson
Congresswoman Rosa DeLauro
Congressman Christopher Shays
Congresswoman Nancy Johnson

Region II, Mid-Atlantic States, Buffalo, New York, September 13, 1999

Congressman John J. LaFalce
Congressman Jack Quinn
Congressman Thomas Reynolds

Region III, South Atlantic State, Pittsburgh, Pennsylvania, August 19, 1999

Congressman Phil English
Congressman Mike Doyle
Congressman Bill Coyne

Region IV, Southeastern States, Louisville, Kentucky, June 11, 1999

Senator Jim Bunning
Congressman Ken Lucas
Congresswoman Anne Northup

Region V, Midwest State, Madison, Wisconsin, September 9, 1999

Congresswoman Tammy Baldwin

Region VI, Southern State, Little Rock, Arkansas, March 4, 1999

Senator Blanche Lincoln

Region VII, Heartland States, Omaha, Nebraska, May 11, 1999

Senator Chuck Hagel
Congressman Lee Terry
Congressman David McIntosh

Region VIII, Rocky Mountain States, Casper, Wyoming, August 4, 1999

Senator Craig Thomas
Senator Michael Enzi
Congresswoman Barbara Cubin

Region IX, Western State, Las Vegas, Nevada, March 12, 1999

Senator Harry Reid

Region X, Northwestern States, Portland, Oregon, July 7, 1999

Senator Patty Murray
Congressman Brian Baird
Congressman David Wu

Sharing the Perspectives of the RegFair Boards and Small Businesses

Federal agencies and small businesses are together making progress in development of a fairer and friendlier regulatory enforcement and compliance environment. To the extent that agencies are changing their policies and procedures to meet the regulatory fairness standards, the RegFair Board Member and small business experience provide valuable feedback on the level of success agencies have achieved. The feedback underscores the need for agencies to internally monitor their enforcement and compliance practices in the field. These perspectives are shared with the agencies and agencies are asked to examine the specific concerns raised.

Perspectives of the RegFair Boards

RegFair Board Members are the direct link to small business communities throughout the nation. As national small business leaders and advisors to the National Ombudsman, Board Members provide the small business perspective on the Federal enforcement and compliance environment. They alert RegFair to emerging trends, identify enforcement and compliance concerns and successes, and provide feedback on agency efforts to improve the regulatory enforcement environment.

Below is a summary of feedback received from RegFair Board Members, indicating differences between agency commitments to the Office of the National Ombudsman and individual performances by regulatory enforcement officials. The feedback also relates to agency practices that demonstrate a friendlier, solution-oriented enforcement and compliance environment. Each issue is associated with the Board Member who principally addresses it.

Perspective of RegFair Board Member Joann Stockdale

Occupational Safety and Health Administration (OSHA) issued a new regulation regarding the training and certification of forklift drivers that was effective December 1, 1999. Ms. Stockdale, whose company uses a forklift, was unable to obtain any compliance guidance on the regulation, which required changes in industry compliance practices. While in-house training on the forklift by the safety manager had been acceptable previously, OSHA's new rule mandates formal training that must be conducted by a certified trainer, or the business must provide off-site training for its employees. The new regulation also requires forklift drivers to pass a driving test. Ms. Stockdale reports that she was very lucky to have learned about the requirement and that securing the necessary training in such a short period of time was consuming and needlessly expensive.

The RegFair Board Member concluded that OSHA is doing an ineffective job of notifying small businesses about new mandatory requirements. She believes this is a systemic problem, stating that small businesses currently rely on word of mouth to learn of new rules. Ms. Stockdale concludes that OSHA is not effectively informing small businesses of changes in rules and regulations, appearing to contradict its response to the National Ombudsman's 1998 Recommendations. She suggests that agencies implement new rules twice a year, and mail notice of new rules to businesses based on their Standard Industrial Classification (SIC). This would make it easier for the agency to inform all affected small businesses of rules changes and would give them sufficient time to comply. It would also make it easier for small business trade associations to become informed of changes, and in turn, inform their members.

Perspective of RegFair Board Member Dan Morgan

Mr. Dan Morgan, chair of the Region VII RegFair Board, reports that USDA's Agriculture Marketing Service inspectors have done a good job of working with producers in his region. The inspectors have been

responsive in disseminating information about testing procedures and auditing procedures for labeling requirements.

Mr. Morgan reports that enforcement and compliance actions by USDA's Food Safety Inspection Service have created problems for many small businesses in his region. The problems began in May 1999, with new export shield color requirements on export documents. The wrong export documents issued by FSIS resulted in product being detained in foreign ports. This detention in ports greatly increased the cost of doing business. Increased costs borne by the exporters included new laboratory testing, holding fees, late payment, canceled purchase orders, increased production costs from the cattle producers because of their inability to ship. Targeted inventories for this market were liquidated at substantially reduced prices. Entire markets for producers were lost because of ineffective negotiators within FSIS and lack of communication about export document requirements from the Washington, D.C. to the local field offices. It appears that no thought was given to the effects of actions by FSIS on small business. No person with independent authority to solve problems stepped forward to assist producers and small business.

Small business testimony at the regional RegFair hearing indicates that "rogue" FSIS inspectors are simply transferred to another plant, instead of being disciplined or fired. Transferring a "rogue" inspector to another plant simply moves the compliance problems to other small businesses.

Mr. Morgan reports that AMS inspectors work in cooperation with small producers in his region and effectively disseminate information and inform small businesses about new regulations.

Another issue brought forward by Mr. Morgan concerns FSIS' ineffective implementation of its own meat tagging requirements. The requirement called for export certificates to be printed with a blue shield rather than the customary black shield. Mr. Morgan reports that the agency failed to use the blue shield and E.U. officials quarantined the meat because of the wrong shield color. The impact of the USDA's actions, Mr. Morgan reports, was the loss of purchase orders, and unnecessary storage and testing fees. The impact of USDA's actions cost Mr. Morgan's small business $100,000 in revenue, additional fees and expenses, and lost market share. He said that the FSIS did not provide an avenue for an expedited review, nor a "problem-solver" who could provide a response.

Perspective of RegFair Board Member Scott George

RegFair Board Member Scott George raises a number of important enforcement and compliance concerns. He presents feedback on agency deficiencies in notifying small businesses about agency rules, giving negative ratings to staff who treat small businesses poorly, and failing to protect small businesses from retaliation.

Mr. George notes that the Immunization and Naturalization Services (INS) informed RegFair at the Region VII hearing that its rules do not allow any enforcement or compliance flexibility or allowances for business size. Mr. George believes this is a clear indication that INS is not complying with SBREFA and the Regulatory Flexibility Act.

Mr. George also suggests that testimony provided at the 1999 Region VII RegFair Board Hearing indicates that since 1978, the EPA has adequately notified the public about the dangers of lead paint in terms of leasing residential space. A rule revision in June 1999 expands notification requirements. According to the rule, renters must now be notified of potential lead paint hazards on painted surfaces of two or more feet.

The lead paint rule requires anyone performing the work to give advance notice to residents who might be affected. Acknowledgment that the residents have received the notices must be kept for three years, and failure to comply results in penalties of up to $25,000 per day.

Many groups are affected by the rule, such as heating & air conditioning contractors, electricians, plumbers, or remodeling contractors, Mr. George believes that the EPA has inadequately notified affected small businesses of the new requirement. His own canvass of small businesses showed that few small business owners in his area are aware of the new rule. Those who knew of the rule learned about it through their own trade associations.

Adding import to that belief, RegFair Board Member Larry Mocha spoke with 15 members of the Air Conditioning Contractors of America recently and only one member had heard of the lead paint requirement. Board Member Joann Stockdale also spoke with small contractors who were unaware of the requirement.

The Office of the National Ombudsman contacted EPA on this issue and its initial response was that they have taken no enforcement actions on this new rule against contractors performing renovation. Board Members have indicated their concern that EPA may be creating an uneven playing field for small business. The EPA needs to clarify whether and how the rule applies, so that all contractors are following the same compliance practices.

Among recent success stories, Mr. George notes that Region VII and Region VIII OSHA offices have been working with the Kansas Oil Extraction Association and the Home Builders Association of Metropolitan Denver, respectively, to develop cooperative compliance assistance programs. Some of these efforts have resulted in simple and understandable guides for small businesses and their employees. The OSHA-small business partnerships are focused on areas of major safety risk and have tremendous potential benefits in reducing accidents and injuries, as well as reduced regulatory violations and insurance premiums. In several areas of the country, OSHA is offering small business forums to explain the agency's small business assistance programs. The forums have also been used as a vehicle to inform small businesses about their rights to regulatory fairness and to comment to the Office of the National Ombudsman on any Federal agency's enforcement or compliance activity. These forums are also in step with the National Ombudsman's current Recommendation 3, which calls for agencies to provide feasible guidance for small businesses to comply with regulations.

Perspectives of Small Businesses

RegFair provides small businesses with an opportunity to present their perceptions throughout the year at RegFair public hearings. The following are examples of concerns raised by small businesses that the Office of the National Ombudsman and RegFair Board Members believe raise concerns that should be addressed by the affected agencies. The testimony will be sent to agencies for response in a manner similar to the way small business comments are sent to agencies. The testimony and agency responses will be taken into account where it is necessary to re-evaluate prior ratings as to agency implementation of the National Ombudsman's Recommendations.

NuTech Laundry & Textiles
Mr. Jack Robinson, owner of NuTech Laundry & Textiles in Maryland, testified at the Region III RegFair Board Hearing, that INS enforcement actions cost him many employees and substantial revenue and created conditions under which the company defaulted on SBA loans and IRS tax payments. One year later, NuTech had still not received an expedited review of the enforcement action. Mr. Robinson stated in his testimony that "[t]here has been nothing adjudicated[on our case]. We have no criminal charges against us whatsoever. They cited us for civil penalties [that] they have not enforced. At the time they gave us the notice, we filed an appeal, and there's been no action for a year."

Carlson & Dreffs
Mr. Bill Dreffs, a small business owner who testified at the Region VII hearing, had a USDA "Federal inspector, who had worked closely with me for 15 years, along with three different circuit supervisors above him. I had received extreme efforts of cooperation to work together with me during that 15-year tenure. However, when the new inspector, a Dr. Hauser, took over in February and a new circuit supervisor was assigned to me, everything that we had established and practiced in the prior 15 years changed dramatically." Mr. Dreffs said that the new circuit supervisor was verbally intimidating, unresponsive to requests for compliance assistance, retaliated against his company for challenging his decisions, and wrongly shut down his plant and then delayed the reopening, causing him to needlessly lose business. He also is concerned about the excessive enforcement and compliance activities he endured due to a running dispute between his USDA Inspector-in-Charge and Dr. Hauser. Mr. Dreffs feels he was forced to withdraw from the USDA Voluntary Inspection Program because the circuit supervisory was implicitly determined to put Mr. Dreffs company out of business. Even after he withdrew from the voluntary inspection system, Dr. Hauser and other USDA employees took additional enforcement and compliance actions that Mr. Dreffs believes are evidence of retaliation and harassment. With Mr. Dreffs' permission, his concern has been referred to the USDA's Inspector General.

National Meat Association
Ms. Rosemary Mucklow, Executive Director of National Meat Association, testified at the Region VII RegFair Board hearing about a small meat packing plant that felt it was being harassed by a USDA inspector. The plant owner had filed a complaint about the inspector, which stated that the inspector was, " . . .unprofessional, demeaning and [used] abusive language delivered in a loud manner to me in public in front of my employees. Avoidance and willful obfuscation by the inspector of any effort to be a resource of accurate information about the details of the inspection program, establishment of time limitations to answer questions and so on, not provided by regulation, with the intent to confuse and pressure the company. And, finally, an accusation that the company and/or one of its employees had falsified records. A very serious violation of many Federal laws."
According to Ms. Mucklow, the small business owner told the agent's supervisor he was afraid of retaliation and the supervisor said he would look into the matter immediately upon his return from a training seminar, in two weeks. Nevertheless, the business owner remained fearful because under agency rules, the agent involved would have received a copy of his letter two weeks previously. The business owner then wrote to the district manager to protest the business's loss of production due to the agent's actions. The losses appeared, to the business owner, to be due to over-inspection, intimidation, harassment and retaliation.

According to Ms. Mucklow, the agent made a claim of verbal harassment against the company and that claim was the basis of shutting down the plant for 15 hours. The small business owner said that this was merely one incident in a pattern of intimidation that continued through many inspections, false accusations, and harassment, even when the agent's supervisors were present, and lasted until the agent was transferred for training.

Addressing Enforcement and Compliance Practices
In all instances the enforcement or compliance issues identified above are of concern to the small business community generally. RegFair seeks to address enforcement and compliance concerns systemically by working with small businesses and agencies to develop prophylactic measures that reduce or eliminate the occurrence of improper regulatory enforcement and compliance activities. The reader will note from Evaluative Tables 1 and 2, that agencies only achieve the highest evaluative ratings from the National Ombudsman if they specifically address the causes of the enforcement or compliance concerns.

Helping Small Business

RegFair has made an ongoing commitment to publicly air small business' ideas and suggestions. For the past three years, the Office of the National Ombudsman and RegFair Boards have listened carefully to what the small business community had to say about Federal regulatory enforcement and compliance activities. Among the suggestions, ideas and concerns offered, small businesses want the Regulatory Fairness Program to help them achieve agency accountability in regulatory enforcement and compliance activities.

The Office of the National Ombudsman and the Regulatory Fairness Boards have worked diligently to address this concern and to help small businesses hold agencies accountable for their regulatory enforcement and compliance activities in the following ways:

- Requested that agencies notify small businesses, in plain written language, of their right to comment through the RegFair program at the commencement of a regulatory enforcement or compliance activity;
- Requested high-level, independent agency reviews of small business comments sent to them by RegFair. This guards against retaliation and ensures that small business concerns will be heard and responded to by agency representatives that can make systemic changes to address those concerns;
- Obtained meaningful agency reviews and written responses to small business comments and regulatory fairness questions;
- Held ten RegFair hearings throughout the country, where small businesses and agencies have an opportunity to attend, testify and answer questions on enforcement and compliance activities. With the transcripts made available on the World Wide Web the dialogue is extended nationally to Members of Congress, small businesses, and trade associations;
- Stressed matters of concern to small businesses in addition to small business comments; and
- Helped small businesses and agencies develop goals-driven compliance programs.

Notification of Small Business' Right to Comment

The Office of the National Ombudsman has worked to ensure that agencies provide small businesses with clear, written notification of their right to file comments, addressing any agencies' regulatory enforcement and compliance activities directly with the Office of the National Ombudsman, or their regional Regulatory Fairness Board. The Office of the National Ombudsman insisted that, to be most effective, the written notification language must be provided at the time of the regulatory enforcement and compliance activity.

The notification language also informs small businesses that the National Ombudsman, with advice from the RegFair Boards, evaluates and rates the enforcement and compliance activities of these Federal agencies, and issues an Annual Report on its findings to the Congress and the affected agencies.

The EPA provides an example of the broad scope of that right. The EPA's Office of Enforcement and Compliance Assurance produced an information sheet that among other useful information provides small businesses notice that they can comment on any Federal regulatory enforcement or compliance activity with the Office of the National Ombudsman and RegFair Boards. The information sheet is also provided to tribally owned small businesses.

The EPA provides the notice at the commencement of regulatory enforcement actions as well as remedial enforcement activities under:

i. the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"),
ii. the provisions of the Resource Conservation and Recovery Act ("RCRA") concerning corrective action and remediation of underground storage tanks, and
iii. the provisions of the Oil Pollution Act and Clean Water Act section 311 concerning remediation of oil and hazardous substances spills.

EPA has identified the following enforcement or compliance activities when small businesses are notified of their right to comment. They include:

a. inspection
b. warning letter
c. reminder notice or letter
d. compliance audit program or incentive letter or notice
e. information collection request
f. Subpoena
g. show cause letter
h. administrative search or other warrant
i. stop sale, use and removal order (SSURO)
j. notice of violation or other notice letter
k. administrative complaint
l. administrative order or administrative penalty order
m. Superfund general or special notice
n. cost recovery demand letter

The EPA has instructed its employees to err on the side of providing the right to comment notice to small businesses. We commend the EPA for this effort to comply with both the letter and spirit of SBREFA's notice requirements

High Level, Independent Agency Review and Guarding Against Retaliation

The National Ombudsman requested that agencies designate a high-level official, independent of the regulatory enforcement or compliance activities referred to in each small business comment. The official(s) will review small business comments directed to the agency by RegFair.

This procedure provides meaningful and credible agency reviews, and ensures that agencies, at the highest levels, are made aware of small business feedback whether it be a compliment, concern, or mixture of the two. High-level officials are in positions to monitor agency effectiveness at listening and responding to small businesses, and to make changes to agency policies and procedures to eliminate concerns and replicate successes.

The high-level, independent review helps ensure that the small business' identity is not revealed to the individual(s) who took the enforcement or compliance activity, and guarantees that responsible officials are made aware of any retaliation concerns.

It is important that agency officials who can take effective remedial and deterrent actions are notified of the retaliation concerns. Continually emphasized is the need for agencies to stress zero tolerance with respect to employees who retaliate against small businesses, and to strictly ban even the appearance of retaliation against small businesses.

In instances where there is an indication that retaliation may have occurred against a small business, the Office of the National Ombudsman refers the concern to the agency's Office of the Inspector General for its review and appropriate action on the allegation. The Office of the National Ombudsman has established a protocol by which to make these referrals and maintain the confidentiality of the small business to the extent permitted by law. We are please to report that all Inspectors General are fully cooperating with RegFair and will protect the identity of any referred small businesses as required by SBREFA. To date the Office of the National Ombudsman has made three referrals to agency Inspectors General. In two of these referrals, the Inspectors General did not find any retaliation. In the third instance, there is no result to date.

Small Business Comments

In addition to requesting high-level, independent reviews of the enforcement or compliance activity, the Office of the National Ombudsman asks agencies to consider and respond to each small business comment received, and also answer the National Ombudsman's specific questions about the regulatory enforcement or compliance activity taken. The process provides government accountability and responsiveness in action. *(See The State of Federal Regulatory Enforcement Fairness for Small Businesses: Evaluating Agency Enforcement and Compliance Activities: Learning from the Enforcement and Compliance Experiences of Small Businesses, Page 16.)*

For each small business comment, the Office of the National Ombudsman asks agencies how the enforcement or compliance activity was determined, and whether the agency considered a lesser enforcement or compliance activity. Agencies are asked whether the small business had sufficient notice and an adequate opportunity to correct the violation. Also of interest is whether and how the agency considered the economic impact of the enforcement or compliance activity on the small business in question. Finally, agencies are asked how they believe the enforcement or compliance activity taken reflects the requirements of SBREFA.

With the RegFair Comment process, small businesses hold agencies accountable to the principles of SBREFA, before Congress.

RegFair Board Hearings

The 1999 hearings were more geographically dispersed than in previous years. Some were held in urban centers and others in rural areas of the United States, reflecting increased representation by agricultural and livestock interests. No matter where the hearings are held, they serve the same purpose. They introduce the National Ombudsman and the RegFair Board members to diverse sectors of the small business community, increase awareness of the small business owners' rights to regulatory fairness, and bring small business issues and recommendations to the attention of the Administration and Congress.

The hearings allow RegFair to gauge the success of agency compliance efforts and introduce regional and local small business issues into the national regulatory fairness debate. Small businesses testify concerning their Federal regulatory experiences. Federal agencies in attendance listen and learn about the enforcement and compliance issues that are of concern to the region's small businesses. Since the hearing transcripts are posted on the World Wide Web, agencies not in attendance may still read about the concerns voiced at the hearings. Whether in attendance or not, agencies use the hearing feedback to measure the success of their regulatory activities and develop solutions that address small business concerns.

Matters of Concern to Small Businesses

Small businesses have significant regulatory enforcement and compliance concerns that are not limited to, a specific enforcement or compliance activity. These concerns may be voiced in general terms.

As mentioned in the National Ombudsman's 1999 Report to Congress, the Office of the National Ombudsman, with advice from the Regulatory Fairness Boards, have determined that these general enforcement or compliance concerns of small businesses are covered under the Regulatory Fairness Program as a "matter[] of concern to small businesses" and the statutory responsibility of "evaluating the enforcement actions of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency." *(15 U.S.C. § 657 and National Ombudsman's 1999 Report to Congress, page 8)*

RegFair has been addressing matters of concern to small businesses through the enforcement and compliance issue case studies and its recommendations to Congress and the affected agencies. This year RegFair developed the mechanisms to identify and address more of these matters of concern to small business. Based directly on the small business feedback at hearings and through their written comments, the Office of the National Ombudsman, with the advice of the Regulatory Fairness Boards, has identified several general enforcement and compliance matters of concern to small business. The involved Federal agencies will be sent a synopsis of the issue and asked to review the concern and identify any remedial steps the agency will take to address the matter of concern to small business.

Rather than merely learning about matters of concern to small businesses in the Annual Report to Congress and the affected agencies, this process provides agencies an earlier and more regular opportunity to learn about, consider, and address these enforcement and compliance concerns. The process also increases the impact that small business testimony and written feedback has on the regulatory enforcement and compliance environment.

The review process heightens the impact of Section 222 of SBREFA, as RegFair helps to ensure that positive changes occur in both the Federal regulatory culture and the enforcement and compliance operating environment for small businesses.

Helping Agencies Develop Results-Driven Compliance Programs

A Comprehensive Dry Cleaners Guide

On October 21, 1998, the Office of the National Ombudsman and the Rocky Mountain Regional Regulatory Fairness Board Members met with Denver EPA officials, including EPA Regional Administrator Bill Yellowtail. The meeting was initiated through the efforts of RegFair Board Member, Albert Gonzales. The purpose of this meeting was to identify everyday SBREFA issues and to examine whether a joint endeavor was feasible.

During this initial meeting, one of the issues raised was that of "retribution" and the perception of fear held by the small business community. The group agreed that one way to assuage that fear was through open communication from the enforcement personnel. An excellent example of this type of communication was the "Notice of Rights at Time of Enforcement" language that was held out as one of the basic tenets of the RegFair Program.

Over the next 5 months, discussions were held between the Office of the National Ombudsman and the Denver EPA to determine an appropriate area where a joint endeavor to improve industry compliance, might be possible. In early February, it was decided to try to build upon the success of the National Association of

Homebuilders and OSHA. The result of that effort was a guidebook summarizing OSHA's regulations in an effort to increase compliance without resorting to fines or penalties. EPA and the National Ombudsman agreed to create a similar project for the dry cleaning industry, given that it was highly regulated and relatively active both regionally and nationally.

Over the next few months, the Office of the National Ombudsman identified potential participants, including Mr. Warren Toltz, a RegFair Board Member and owner of a number of dry cleaning establishments in Denver. Representatives from the Rocky Mountain Fabricare Association, owners of other dry cleaning establishments, as well as a representative from a dry-cleaning supply company were also recruited. The project explores ways to address the regulatory concerns of the Denver area dry cleaners, while increasing their compliance with EPA guidelines.

The Dry Cleaner Workgroup Committee focused on the existing compliance models available to the industry on both the Federal and state levels. Although the responsibility in individual cleaning establishments lies with all employees, the group decided to develop this guide for the owners. The goal was to develop a handbook outlining simplified procedures for increasing compliance with EPA regulations affecting the dry cleaning industry that the owners could use as a plain language guide.

The group agreed to hold an ongoing series of discussions, and expanded their meetings to include representatives from the Colorado Environmental Protection Agency (CEPA), as well as representatives from Colorado Air Pollution Control Department and the Department of Public Health and Environment. Both state agencies were charged with compliance and oversight responsibilities. The group inventoried existing dry-cleaning guides and began compiling materials.

Throughout the summer of 1999, a number of productive meetings centered around creating materials that would provide a general overview of environmental regulations affecting dry cleaning establishments, including the environmental impacts of the dry cleaning industry on air, land and water quality. The group focused on preparing a document that is easy to read and user-friendly, yet inclusive enough to cover all the requirements. The ultimate goal of the document was the reduction and elimination of pollution from the dry cleaning process.

On September 16th, a refined draft was presented by CEPA and reviewed by the group. After some minor editing, the working group agreed to present a final draft to the participants at the Rocky Mountain Fabricare Association's annual meeting for the purpose of obtaining feedback from potential users.

On October 27th, the group discussed the Fabricare Association's reaction to the draft document. Presently, the document is being revised based on input from the Fabricare Association. Additional input from OSHA has been sought. During this final review process, the group is concentrating on assessing the document's clarity.

The Dry Cleaner Workgroup Committee continued to meet from November through February 2000. The main focus of these meetings was to finalize a guide that would be appealing to the dry cleaners and would contain all the regulatory requirements and pollution prevention practices in one concise document. This comprehensive document would address the practical considerations of the dry cleaning industry and has evolved into a document that is unique, enticing and user-friendly. The workgroup believes that this guide will enable dry cleaners to better understand environmental regulations and encourage pollution prevention practices.

Rollout of the final product, entitled "Pressing Concerns: A Simplified Guide to a (Dry) Cleaner Environment" is projected for April 2000.

Agency Best Practices

A major goal of the National Ombudsman and the Regulatory Fairness Boards in putting forward these best practices is to provide a means through which agencies may obtain new ideas to incorporate a small business-friendly approach into their internal processes and procedures.

Best practices detail how agencies incorporated small business-friendly policies and procedures into their regulatory enforcement and compliance efforts. This year's best practices are not restricted to last year's recommendations, but rather are illustrative of novel approaches developed by agencies to accomplish voluntary compliance by the small business community through implementation of recommendations from prior reports. The National Ombudsman and RegFair Boards hope that publicizing these examples of best practices will assist small business advocates and agencies in their own efforts to develop innovative solutions to enforcement and assist compliance concerns.

The examples contained in this report include agencies' efforts to communicate with their small business customers to achieve greater compliance. Some of these practices describe partnering between two agencies to educate small business to increase their awareness of the law. Other practices describe agencies' inventive efforts to actively seek out private sector input for improved customer service. By no means is this listing all-inclusive, but rather it contains a sampling of those practices which best demonstrates the ground-breaking efforts to create that "bond of trust" between regulator and regulated that is essential to creating a regulatory environment that is based on voluntary compliance. Therefore, this section of the report shares specific measures that have been put into practice by a number of agencies and the National Ombudsman highly encourages other agencies consider similar measures, where appropriate.

Consumer Product Safety Commission

The Consumer Product Safety Commission's (CPSC) Fast-Track Product Recall Program:

CPSC conducts an average of 350 product recalls each year. Under the Consumer Product Safety Act, firms are required to report potentially hazardous products to the Commission. Traditionally, when a firm reports, the CPSC staff conducts any necessary investigation and makes a preliminarily determination of whether the reported product is defective and presents a substantial hazard.

Some firms that were inclined to recall the product themselves found that the CPSC's formal evaluation process held up the recall. In response to those concerns, in March 1997, CPSC adopted the Fast-Track Product Recall Program as a voluntary alternative to the traditional procedure.

Under the Fast-Track Program, CPSC staff does not make a preliminary hazard determination if a firm provides the necessary full report information and initiates an acceptable consumer-level recall within 20 working days of its report. The Fast-Track Program eliminates CPSC's need to determine whether there is a defect. Instead, if it approves the corrective action, the recall can begin.

Fast-Track has made it easier for firms to recall potentially dangerous products. The program focuses on results, not process. By streamlining CPSC review, Fast-Track makes compliance with the law less burdensome and less costly, which is a particular benefit for small businesses.

Drug Enforcement Administration

The Drug Enforcement Administration's (DEA) Diversion Control Program emphasizes cooperation and voluntary compliance with regulated industries.

DEA has institutionalized a policy of graduated enforcement actions depending on the severity of the violations involved as well as the violation history of the company.

For lesser violations, DEA relies on actions designed to foster compliance, including: meeting with a company's management; a formal Letter of Admonition to which the company may respond, or informal hearings in which anyone against whom civil action is being contemplated has an opportunity to present his/her views and proposals for bringing violations into compliance with the law.

As a rule, revocation proceedings, and civil/criminal action are pursued only in those instances where willful violations of the law or regulations have occurred or in cases where the violations present a substantial threat to the public's health and safety. DEA may suspend all or part of a civil penalty, provided that the registrant does not violate the laws or regulations in the following year.

OSHA

Small Business Forums:
In March 1999, OSHA held a successful small business forum in Washington, DC. OSHA has instructed its ten Regional Offices to conduct similar forums in the regions on a continuing basis and is planning another national forum in the DC area in early spring.

New pilot partnerships:
OSHA has created a partnership with contractors in Southern Florida called "CARE" (Construction Accident Reduction Emphasis). CARE is a joint venture with Southern Florida's builders that the agency hopes will reduce the comparatively high accident rate in the construction industry.

OSHA is also working with the Home Depot chain to create a pilot program in which OSHA's local offices will work with Home Depot Safety Managers to provide instructors and materials to conduct a program for small business contractors on Safety in the Workplace. The first pilots will be in Dallas, Texas and Atlanta, Georgia. If successful, OSHA plans to expand the program to other Home Depots across the country, and make similar proposals to other major home improvement centers.

Environmental Protection Agency:

Request for Inspector General Review of EPA's Implementation of SBREFA.
EPA's Office of Enforcement and Compliance Assurance (OECA) specifically requested that a review of EPA's implementation of SBREFA be included in its Inspector General's assessment of EPA's activities. The Inspector General's survey focused on EPA's compliance with the Act in establishing policies and programs to support the rights of small entities in enforcement actions.

The Inspector General determined, based on a review of minutes from SBREFA hearings, SBA's Reports to Congress and small business comments on EPA enforcement actions, that "OECA's responses adequately address the concerns of the Ombudsman and small business."

Federal Communications Commission (FCC)

In November 1999, the Federal Communications Commission (FCC) created an Enforcement Bureau which centralizes the agency's enforcement functions. This initiative consolidated enforcement functions and personnel from four other bureaus, maximizing FCC consumers ability to obtain quick, clear and consistent information about their rights under communications law. The FCC expects this reorganization to facilitate action on matters involving Regulatory Fairness Program rights, including outreach and formal enforcement efforts.

Internal Revenue Service

During 1999, the IRS continued its Problem Solving Days (PSD), on a monthly basis (frequently on Saturdays, evenings as well as weekdays) at district offices. Customer satisfaction surveys and employee surveys were conducted at each PSD and an outside contractor also provided monthly analysis reports. Mandatory PSDs are scheduled at every district at least once every other month during calendar year 2000.

The IRS partnered with the SBA to place IRS small business tax forms and publications, and an informational CD-ROMs at all Business Information Centers (BIC) and One-Stop Capital Shops. These resource centers are the primary source of information for prospective and start-up business enterprises. The IRS enhanced this partnership with the SBA by placing IRS technical specialists at four BICs. The pilot program's goal was to educate small businesses on tax related issues and improve tax understanding and compliance.

The third notable practice of the IRS concerns establishing Citizen Advocacy Panels (CAP) in all four IRS regions. The CAPs are comprised of seven to twelve representative citizens and the local Taxpayer Advocate. The mission of the CAP is to:

- Provide citizen input into enhancing IRS customer service by identifying problems and making recommendations for improvement of local systems and procedures;
- Elevate identified problems to the appropriate IRS official and monitor the progress to affect change; and
- Refer individual taxpayers to the appropriate IRS office for assistance in resolving their problems.

Open public meetings have been held at least twice a year in various locations throughout the tax districts to solicit customer service issues, obtain information, identify taxpayer concerns, and solicit feedback on proposed panel recommendations for improvement. These meetings will continue throughout 2000.

One of the CAPs will focus on small business issues and include small business owners. The IRS will assess the impact of these CAPs before deciding when and how to expand the program.

Small Business Administration

In mid-1999, Administrator Aida Alvarez committed SBA to actively informing its extensive small business portfolio about RegFair. SBA program and field offices are beginning to include RegFair material in their mailings to small businesses, at small business events, and in their office displays.

Over the course of several years, SBA's RegFair educational efforts will reach many of the 25 million small business owners across the country. These ongoing efforts will inform small businesses of their right to comment with RegFair on any Federal agency's regulatory enforcement or compliance activity. Businesses that contact SBA for virtually any reason, including start-up advice, loan guarantees, equity investments, and government contracting will receive information on their rights to regulatory fairness.

By aggressively informing small businesses about RegFair, the SBA will greatly extend the regulatory fairness dialogue and make it more geographically and economically representative. SBA's efforts will also reach more minority and women owned small businesses.

Department of Transportation

According to the Department of Transportation (DOT), its agencies have special programs that protect from enforcement those who immediately report a rule violation so the agency can determine whether there are problems with a rule. For example, the FAA's Reporting and Correction Policies provide that, under most circumstances, if a company self-discloses a violation that is not intentional, corrects the condition immediately, and takes steps to prevent if from recurring, a reduced penalty or no penalty will be imposed. FAA also performs "courtesy evaluations" of pilots and aircraft, without risk of penalty if deficiencies are corrected.

Agency Training for Enforcement / Compliance Personnel

The National Ombudsman's 1999 Report to Congress included a recommendation that Federal agencies should provide formal, periodic training for enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program.

Several of the agencies have implemented this recommendation. The Securities and Exchange Commission (SEC) has developed a training module for employees who serve as examiners to small business broker-dealers. The module includes training on SBREFA, and specific segments on RegFair. SEC examiners are instructed that they must be sensitive to how small firms achieve compliance, and to examine whether the ways they achieve it make sense under their circumstances.

The U.S. Department of Commerce instituted a formal training program for employees at the National Oceanic and Atmospheric Administration (NOAA). The Department conducts the training that includes a presentation covering the provisions of SBREFA, an explanation of the RegFair program and the recommendations from the National Ombudsman's two previous reports. A hard copy of the presentation was provided to each attendee and circulated to all NOAA enforcement personnel.

Marketing Initiatives with Small Businesses

Moving RegFair On-Line

Small businesses are increasingly integrating the Internet into their business operations. They are using the World Wide Web to interact with private business partners and access needed information from their government. Research findings in a July 1999 report on the subject by the SBA's Office of Advocacy indicate the following:

a. Between 1996 and 1998 the percentage of small businesses with Internet access nearly doubled from 22 percent to 41 percent;
b. Thirty-five percent of small business owners maintain a web site;
c. Seventy-eight percent of small business owners have web sites primarily to reach new and potential customers. Small businesses use the Internet for e-mail, customer-based identification, advertising, consumer sales, business-to-business transactions, and research; and
d. Small businesses utilizing the Internet have higher revenues, averaging $3.79 million in 1998 compared to $2.72 million overall.

In early 1999, the Office of the National Ombudsman recognized that there was a large number of small-business visitors to the RegFair web site who were not filing comments on their Federal regulatory enforcement and compliance experiences. As a result, the Office of the National Ombudsman, with the advice of the RegFair Boards, re-engineered its workflow processes and designed a database and web site that would bring the RegFair program to any small business person with access to the Internet. With assistance from SBA's Chief Information Officer, RegFair initiated development and implementation plans for a new web-based comment process.

Since the Regulatory Fairness program was established, technology has made the program more accessible to small businesses. For example, a toll-free information line and fax-back service were established at 888-REG-FAIR (888-734-3247). During the program's first-year, an informative web site was created for small businesses and their professional associations to visit. The site provided a description of the program's mission, material on the Small Business Regulatory Enforcement Fairness Act, contact information for the Office of the National Ombudsman and the Regulatory Fairness Board Members, the one-page Federal Agency Appraisal Form, and other background and marketing information.

Starting in 1998, the program added on-line transcripts of each regional Regulatory Fairness Board Hearings held across the country. This addition made it possible for Members of Congress, the Administration, RegFair Board Members, and business associations to learn about the regulatory enforcement concerns of small business owners. Numerous stakeholders in the regulatory reform arena have stated that the addition of hearing transcripts has been a tremendous benefit to their own efforts to improve the regulatory environment.

With the Office of the National Ombudsman's initiative on web-based comment filing, small businesses will be able to complete RegFair's one-page Federal Agency Appraisal Form, write their comments, and attach supporting documents all through a standard web browser. Small business owners who file on the World Wide Web will have the same choices with regard to either disclosing or protecting their identity. All information is encrypted and can be viewed only with the appropriate user ID and password. Businesses may elect to disclose their identities to RegFair, RegFair and the affected agency, or to the public.

Small businesses may also choose to receive correspondence from the Office of the National Ombudsman by E-mail, fax, or U.S. Mail. Additionally, small business owners will be able to track the status of their comments and any agency response by logging onto the RegFair web site.

When a business owner submits an enforcement or compliance comment, the Office of the National Ombudsman determines program jurisdiction, identifies regulatory fairness issues, drafts specific questions for Federal agencies, and provides the agency with the comment itself or a version of the comment which may include the small business's identity. When the agency responds to the comment, the small business will be notified and may read and print the response with a web browser. *(See Helping Small Businesses Achieve Accountability.)*

Web-based comment filing will have two benefits. First, it will become very convenient for small businesses to share their enforcement compliance experiences, obtain independent, high-level reviews, and help the Administration, Congress, National Ombudsman and Regulatory Fairness Board Members improve the regulatory environment for small businesses. Second, web-based comment filing will also reduce the time needed by the Office of the National Ombudsman and the Federal agencies to review and take action on each small business submission.

During the first quarter of 2000, comments submitted by small businesses through the RegFair web site will be sent to high-level, independent agency officials electronically. Once authorized, Federal agency representatives will electronically retrieve small business comments and the National Ombudsman's regulatory fairness questions from the RegFair web site. Agency officials will be assigned user IDs and passwords to obtain the comments as well as to deliver their responses. As with the paper-based small business comments, the small business' identity will be protected by the Office of the National Ombudsman unless the small business chooses to disclose its identity.

By moving the transmission of small business comments to Federal agencies on-line, agency receipt of each small business comment will be more easily assured, and response times will be more easily tracked, further reducing RegFair's response time to small businesses.

RegFair Board Access to Regional Comments via the World Wide Web

RegFair strives to enhance the ongoing advisory role of the RegFair Boards. In 1999, RegFair initiated quarterly Regulatory Review conference calls that are dedicated to the discussion of current comments and other small business feedback. By dedicating a series of calls to substantive enforcement and compliance concerns the Board Members provide contemporaneous advisory involvement in the ongoing comment review process.

During the second half of 2000, web-filed small business comments will be available to the RegFair Board Members. Direct access to the small business comments will:

a) enhance Board Member knowledge of regulatory enforcement or compliance concerns in his or her region;
b) allow Board Members to be contemporaneously involved in giving advice relating to the comment evaluation; and
c) allow Board Members to work on regulatory fairness concerns at times that are convenient to their schedules.

A web-based comment filing system is also being designed to enhance Board Member access and advisory involvement in the individual comment review and evaluation processes, and to allow greater communication between Board Members and small businesses. The software being developed will automatically notify, by e-mail, regional Board Members of any new regional comments. The e-mail will

link the RegFair Board Members to web page(s) containing the actual comment text and, in many cases, supporting documents. The system will later notify board members of the agency responses and again link them with the response. The comment documents that Board Members will be able to access electronically will be appropriately password protected and encrypted. The process will also allow RegFair Board Members to electronically append their advice to individual comments.

RegFair Board Members are very enthusiastic about the web-based comment review capability and look forward to their heightened involvement with the small business comments. *(Also see Outreach: RegFair Outreach Innovations, RegFair Internet Web Site.)*

Marketing RegFair through SBA's Program and Field Offices

Administrator Alvarez has committed SBA to help make the Regulatory Fairness Program a household name among small business owners throughout the country. The Administrator wants to leverage SBA's portfolio of small businesses, to make them aware of the RegFair Program and their right to comment on any Federal agency enforcement or compliance activity. To achieve the Administrator's goal, the Office of the National Ombudsman is working with SBA's program and field offices to help spread the word to small businesses about their rights to regulatory fairness, send comments to the National Ombudsman, and obtain high-level, independent agency responses to their Federal regulatory enforcement or compliance concerns.

With the SBA's leadership, the Office of the National Ombudsman and RegFair Board Members look forward to many more small businesses learning about and utilizing the RegFair Program to comment on enforcement and compliance activities by Federal agencies. With the support of the SBA programs, a real grass-roots movement is underway. By helping to educate small businesses on their regulatory fairness rights, SBA program and field offices are significantly enhancing the impact of SBREFA and the RegFair Program.

With the Administrator's leadership, RegFair has established agreements with many of SBA's programs to begin marketing RegFair in conjunction with their own marketing programs and small business communications. Importantly, these informative efforts will be ongoing, which means that businesses will hear about RegFair on multiple occasions and new SBA small business customers will also learn about SBREFA.

The SBA reaches a great diversity of small businesses. SBA has small business customers in all 50 states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. It has programs that target economically distressed rural and urban areas. The agency reaches out across traditional racial and cultural barriers to aggressively serve minority entrepreneurs.

The range and manner of marketing efforts will also help ensure that the Regulatory Fairness Program will increasingly become a household name among small businesses. The 8(a) and the Small Disadvantaged Business programs assist minority and women-owned small businesses with government contracting. The HUBZone program, which helps foster small businesses operating in economically depressed urban and rural areas, will provide all of their small business customers with information on RegFair and their right to comment on any Federal agency's enforcement or compliance activity. The SBA District Offices that operate throughout the country will provide their local business contacts with RegFair cards in ongoing mailings and outreach efforts. SBA borrowers and banking partners across America will receive program information. Companies that work with SBA by investing in new and growing small businesses will help market RegFair to small businesses that are looking for equity investments. The Federal government's One-Stop World Wide Web resource site will provide web-surfing small businesses with information on and links to the RegFair Program.

The Office of the National Ombudsman is working with other SBA programs to reach even more small businesses. Reaching out and informing businesses about their rights to regulatory fairness increases the positive impact the program has on the small business regulatory enforcement environment. In the coming year RegFair looks forward to working with other Federal agencies to develop outreach and marketing plans that will reach each agency's small business customers.

Working with the Postal Service

At a hearing in 1998 of the Subcommittee on Regulatory Reform and Paperwork Reduction of the House Small Business Committee, Congresswoman Sue Kelly, who chairs the Subcommittee, suggested that RegFair examine ways to distribute RegFair materials and information through the U.S. Postal Service. In following up on her suggestion, RegFair has been working with the Postal Service on implementing the idea.

Recent discussions have centered on testing the distribution of the RegFair Cards to determine the most efficient and effective distribution of the cards to small businesses nationwide. The Postal Service has conducted a demographic database study to ascertain which of the Nation's 33,000 Post Offices should distribute the cards, i.e. those with the most direct access to many small businesses. We expect to begin distributing RegFair Cards through 12,000 Post Offices in the spring of 2000.

Discussion also included the possibility of a reciprocal agreement between the Postal Service and the Small Business Administration. The proposed agreement would allow RegFair and other SBA materials to be distributed by the Postal Service, and would allow Postal materials specific to small businesses to be distributed through SBA avenues such as Small Business Development Centers (SBDCs).

Outreach

Over the past 3 years, RegFair has expended much effort on the challenge of informing the national small business community of the new rights granted under SBREFA. Specifically, the Office of the National Ombudsman has made it a priority to advise small businesses of their right to comment on Federal regulatory enforcement activity through the Regulatory Fairness Program and the RegFair Boards.

RegFair is meeting this challenge in three ways: first, by reaching out to all sectors of the small business community through speeches, presentations and media interviews throughout the country. Second, the Office of the National Ombudsman and RegFair Board Members work very closely with major trade associations, Members of Congress and other prominent actors in the small business community to notify small businesses of their new regulatory rights. Third, to reach all sectors of the small business community, RegFair developed and initiated a number of outreach avenues such as the Business Leader Roundtable, the Association of the Month program, the RegFair Report, and the RegFair Information Card. These avenues are described below.

RegFair Program Activities

. The Office of the National Ombudsman and RegFair Board Members have promoted RegFair through speeches, presentations, media interviews, contact with the small business community through trade associations and other groups, and through direct contact with small business owners. These efforts are beginning to produce greater awareness of RegFair.

While all of the board members are committed to informing their colleagues throughout the country of their right to comment through RegFair, the following is a small sample of RegFair Board Member activities during the past year.

RegFair Board Activities

- Sandra Lee, current Board Member and previous chair in Region II, spoke about the Office of the National Ombudsman and the Regulatory Fairness Boards to two morning anchorwomen with WABC and WCBS.

- Bobby Clark, former Chair and current Vice Chair of the Region IV Board, spoke to the Small Business Advisory Council of Kentucky. The Council was one of 50 state panels created under amendments to the Clean Air Act.

- Rita Mitchell, Region IV Board Chair, spoke to business owners at the Tennessee Economic Development Committee's Small and Minority Business Day in early May. The program was designed to enhance awareness of the importance of small businesses in Tennessee, and to encourage the creation of new opportunities for small and minority-owned businesses.

- Kathy Napoli, Chair of the Region IX Board, spoke about the Regulatory Fairness Program to approximately 250 women business owners at the National Association of Women Business Owners' (NAWBO) Public Policy Days.

- Warren Toltz, former Board Member from Region VIII and owner of a dry cleaning chain, has taken the lead in a working group with the Office of the National Ombudsman and regional EPA staff to develop ways to simplify and clarify regulations in the dry cleaning industry.

- In July 1998, Hawaii became the first state to enact legislation modeled on SBREFA. RegFair Board Member Tim Moore was instrumental in helping to pass this legislation. Mr. Moore was honored for these efforts last year with a joint award from the RegFair Program and SBA's Office of Advocacy. He also wrote an article on RegFair and the newly passed Hawaiian legislation that was published in the state Chamber of Commerce monthly magazine.

- With help from Bobby Clark, former Chair and current Vice Chair of the Region IV RegFair Board, the state of Kentucky has set up a state commission to study legislation modeled on SBREFA. Mr. Clark was also instrumental in the development of a RegFair article for a newsletter distributed to manufacturers throughout Kentucky.

RegFair Awards

RegFair annually presents its RegFair Innovation Award to the small business owner, trade association or Federal agency that best exemplifies the spirit of SBREFA. The award encourages small businesses and agencies to identify regulatory fairness issues and solutions that help small businesses comply with the regulations more quickly, easily and inexpensively.

2000 RegFair Innovation Award

The Office of the National Ombudsman will present the 2000 award to the Rocky Mountain FabricCare Association and the Region 8 Environmental Protection Agency (EPA) for their efforts to address the regulatory concerns of the Denver area dry cleaners, while increasing their compliance with EPA guidelines. The workgroup has developed a guidebook summarizing EPA regulations in an effort to increase compliance without resorting to fines or penalties.

1999 RegFair Innovation Award

The 1999 RegFair Innovation Award was presented to two Denver-based organizations: The Home Builders Association of Metropolitan Denver (HBA) and the Region VIII office of the Occupational Safety and Health Administration (OSHA). These groups received the RegFair Innovation Award for their pilot program, called Homesafe, which helps small home building companies in Denver more easily comply with Federal regulations, while minimizing their chances of being fined or penalized.

A major component of the Homesafe pilot is a pocket guide that simplifies thousands of pages of OSHA regulations in 70 pages of clear, understandable pictures. In return for the builders' good faith efforts to follow the principles described in the pocket guide, OSHA promised not to cite participating home builders for non-serious violations, provided the violation is corrected within a reasonable time. The cooperative pilot program is expected to expand to the rest of the country.

This kind of innovative approach is exactly what small businesses have been looking for, as articulated during the 1995 White House Conference on Small Business, from which the idea for RegFair Program grew. It is an excellent way to help small businesses comply with the law, while reducing the burden Federal regulations can sometimes have on their day-to-day operations.

Office of the National Ombudsman Activities

The Office of the National Ombudsman has also been making great efforts to achieve better communication with the small business community. The following is a small sample of the Office of the National Ombudsman activities during the past year. *(Also see Business Leader Roundtables, below.)*

February	National Coalition of the Investment Banker's Association
February	National Federation of Independent Business (NFIB) Small Business Regulatory Forum
February	National Board of the Regional Investment Bankers Association (RIBA)
March	Coalition of Federal Ombudsman
April	National Association of Manufacturers
April	Federal agency briefing for the Illinois Congressional delegation
April	EPA's Small Business Ombudsman / Small Business Assistance Programs
May	National Restaurant Association's annual convention
May	National Association of Manufacturers (NAM) field meeting in Chicago
May	Senator Peter Fitzgerald (R-IL) District Staff briefing
June	*Small Business* a broadcast segment of the local "Stock Market Observer" of Channel 24, a local business channel in metropolitan Chicago.
June	Chemical Manufacturer's Association
October	Air Conditioning Contractors of America

RegFair Outreach Innovations

Business Leader Roundtables

The Office of the National Ombudsman and the RegFair Boards held Business Leader Roundtable Discussion Groups across the country to build stronger relationships with small business trade associations at the state and local levels.

These Roundtable Discussion Groups are intended to help the Office of the National Ombudsman and RegFair Boards gauge the effectiveness of past marketing efforts, gain insight on how to improve the program, and enlist local support in informing small businesses of their rights to regulatory fairness through the RegFair Program.

- A Business Leaders Roundtable was held in Cheyenne, Wyoming, on January 5, 1999. Convened by Linda Nielsen of Nashua, Montana, who is Chair of the Region VIII RegFair Board, the meeting produced numerous suggestions and ideas on new ways to communicate with the small business community, especially in less-populated areas.

- On February 12, 1999 a Business Leaders Roundtable was held in Providence, Rhode Island. Larry Morse, RegFair Board Member from East Providence, initiated the meeting which was held in conjunction with the Rhode Island SBA Advisory Council, one of the most active in the country. Congressman Weygand (D-2nd District) attended the Roundtable and discussed the possibility of holding a Congressional hearing on small business concerns in the coming year.

- A Business Leaders Roundtable was held in Topeka, Kansas on March 11, 1999. Due to a strong effort by Alonzo Harrison, RegFair Board Member from Topeka, the meeting brought together leaders in the state small business community. The Kansas Road Builders Association and the U.S. Chamber of Commerce were the major trade associations at the meeting. The home health care agencies discussed HCFA's regulations on the payment system and surety bonds. Staff from U.S. Senator Pat Roberts' office attended and the Capital Journal and Indian Voices provided media coverage.

- A Business Leaders Roundtable was held in Denver, Colorado on April 29, 1999. The SBA District Office and Region VIII Board Members Albert Gonzales and Elaine Demery hosted the meeting, both from Denver. Attendees discussed topics ranging from the number and nature of small business comments received from the area, to increasing outreach efforts in the region. The Roundtable also generated a comprehensive article on the front page of the Business Section of the *Denver Rocky Mountain News*.

- On June 8, 1999, a Business Leaders Roundtable was held in Harrisburg, Pennsylvania, hosted by RegFair Board Members Victor Tucci of New Kensington and Shawn Marcell from King of Prussia. The event generated ideas for outreach to association members, and ideas on how to increase RegFair's exposure in the small business community. The Roundtable also generated interest for the RegFair Hearing held in August in Pittsburgh.

Association of the Month

Another RegFair activity is the Association of the Month program that began in June 1998. The purpose of the Association of the Month program was to bring RegFair into closer contact with the major small business trade organizations and their members to development an outreach partnership. RegFair provides a new service to the members of these national groups, and the associations provide RegFair with the means to inform their small business members of the program.

To be an Association of the Month, national trade and professional associations are requested to make a concentrated effort to send RegFair information and materials to their state and local affiliates asking that they distribute the information to their small business members. Associations of the Month are also requested to invite RegFair Board Members to speak at their next group meeting or event.

RegFair Board Members are, in return, encouraged to contact the local affiliate of the trade association in their area, so that the local leaders will become familiar with RegFair through that Board Member.

With the help of past Associations of the Month, notably the U.S. Chamber of Commerce with its more than 3 million members, RegFair has reached more than 10 percent of the 25 million small businesses in the United States. RegFair Board Members are already starting to line up their favorite associations to do the honors for the Millennium. A brief synopsis of this year's Association of the Month activities appears in Appendix B.

RegFair Report Newsletter

The *RegFair Report* is a monthly newsletter that presents program and board achievements, success stories, and outreach by RegFair Board Members during the past month. Each *RegFair Report* features the current Association of the Month and briefly describes the featured association's industry and concerns. The *RegFair Report* also includes the program's goals and initiatives for the coming month.

The *RegFair Report* is distributed to all of RegFair's partners, including current and past RegFair Board Members, the Small Business Committees of the House and the Senate, 170 national small business trade associations, previous Associations of the Month, SBA National Advisory Council Members and SBA program areas. Currently, the *RegFair Report* has a distribution of over 4,000.

RegFair Information Card

The RegFair Information Card describes, in plain language, the RegFair Program and the process by which agencies are asked to respond to small business comments, through RegFair. The card was developed to fit into a regular business size envelope for mailings to small businesses and the public. RegFair and its resource partners distribute the card at public hearings, Roundtables, and other small business events.

To date, the card has been sent to all Members of Congress for distribution to their small business constituents. It has also been sent to over 170 national trade associations, and SBA program areas including the Small Business Development Centers, SCORE chapters, and the National Advisory Council. The Office of the National Ombudsman has received excellent feedback on the RegFair Card, and have filled numerous requests for additional cards including requests from the following Members of Congress:

Sen. Peter G. Fitzgerald (IL)
Sen. Byron L. Dorgan (ND)
Sen. Fred Thompson (TN)

Cong. Lucille Roybal-Allard (CA)
Cong. Janice D. Schakowsky (IL)
Cong. Donald Manzullo (IL)
Cong. Earl Pomeroy (ND-at large)
Cong. Robert Menendez (NJ)
Cong. Tom Udall (NM)
Cong. George R. Nethercutt, Jr. (WA)

Program Operations / Activities

RegFair Hot Line: 1-888-REG-FAIR (734-3247)
Calls to the RegFair Hotline at 1-888-REG-FAIR have shown significant increases. From an average of only 54 a month in 1997, the average monthly number of calls to the RegFair Hotline over the three years of program operation has grown to 102 per month. Over 3,680 calls have been received by the Hotline in total.

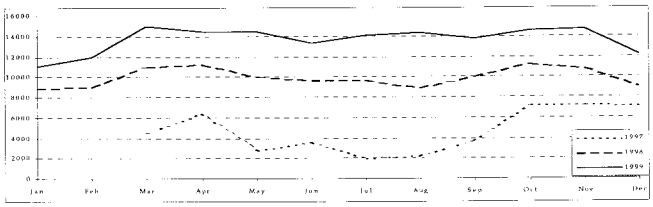
RegFair Internet Web Site: www.sba.gov/regfair
The RegFair Internet website has been a huge success. With almost 300,000 "hits" or visitors to date, the RegFair web site is averaging its highest monthly levels since it was constructed in March 1997.

Web site hits for the 10 months of 1997 that the site was in operation totaled just over 47,000. In 1998, that number almost doubled, increasing by 73,000 to just under 120,000. Totals for 1999 show another increase to over 163,000 and a grand total for the program of over 330,000.

	Total RegFair Web Site Hits	*Monthly Average Hits*	*Total Program Hits to Date*
1997	47,032	4,703	47,032
1998	119,614	9,968	166,646
1999	163,487	13,624	330,133

The increase in the average monthly number of RegFair web site hits indicates a significant increase in the number of RegFair web site visitors. In 1997, after operation of only 10 months, the web site garnered a total of 47,000 hits, averaging 4,700 per month. Last year saw a huge increase with nearly 120,000 hits registered, and an average of 10,000 hits per month. In 1999, web site hits grew dramatically to average 14,000 per month.

The web site is currently averaging its highest monthly levels since it was constructed in March 1997. The growth in web site hits is illustrated in the following graph:



RegFair Hearings

RegFair has posted the transcripts of all ten RegFair hearings held in 1999, on the Internet web site. Proceedings of the hearings are available to the small business community, Members of Congress, Federal agencies and the public at large. Small businesses, after reviewing the transcripts, see that businesses in other parts of the country have similar concerns, and this stimulates many business owners to come forward and offer testimony.

Additionally, posting the transcripts allows Federal agencies to review the actual testimony of small businesses and incorporate ways to address their concerns into their internal regulatory enforcement structures. The transcripts also serve as another communication tool for Congress, to see what their constituents are experiencing in the Federal regulatory arena, as well as what recurring enforcement and compliance issues are emerging from the small business community. In the future, RegFair will also post written testimony submitted by agencies and small businesses in conjunction with the public hearings.

Working to Pass Regulatory Fairness Legislation at the State Level

To small business owners, regulations are regulations, whether Federal, state, or local. The layers of regulations and ordinances small businesses must follow make compliance difficult and regulatory fairness all the more important. Through all levels of government, small businesses need fair treatment, compliance assistance, rules that don't conflict, government coordination and government / business cooperation.

As regional RegFair Board Members have interacted with state business leaders and association directors around the country, they have found widespread support for developing legislation at the state level that is similar to SBREFA. As a result, RegFair Board Members have followed up with the state policy leaders who have indicated an interest in establishing state SBREFA-like legislation. The result of these efforts has been the proliferation of efforts to craft and pass state-level legislation.

In 1998, the very first state to enact this type of legislation was Hawaii. Tim Moore, the RegFair Board Member there was asked by the Governor to lead the commission that drafted the new state law. According to Mr. Moore, the regulatory review board has been appointed and has begun the process of creating a mechanism to review proposed regulations as well as to reach out to business owners. Hawaii State agencies have begun to comply with the legislation's cost/benefit analysis requirement.

In addition to cost/ benefit analyses for new regulations, the new law in Hawaii contains the following key elements:

- Covers state and local laws;
- Reviews existing rules as well as newly proposed rules; and
- Creates a small business defender that can represent small businesses in the administrative appeals process.

RegFair Board Member Tom Gutherie assisted in passing Nevada's landmark legislation in 1999. Mr. Gutherie has been working closely with several state lawmakers, the Governor's office and the Nevada SBDC State Director. He is working with the Governor to expand the new legislation by executive order, as legislative sessions occur every other year.

The most recent effort comes from New York State, where Board Member Peter Ruddy has discussed the RegFair Program with New York State Assemblyman Robin Schimminger. The Assemblyman plans to introduce legislation in New York that will "give small businesses a bigger voice in the state's regulatory enforcement process." According to Assemblyman Schimminger, "[m]y bill would establish a Small Business Regulatory Enforcement Fairness Board within the New York State Department of Economic Development's Small Business Division."

Mr. Bobby Clark, RegFair Board Member from Kentucky, led a strong effort in the Kentucky State Legislature. Largely due to Mr. Clark's efforts, the 1998 Kentucky General Assembly passed legislation creating the Subcommittee on Small Business Regulation to study the small business community in the Commonwealth and to define issues uniquely affecting Kentucky small business. From the testimony and proposed legislation presented by members of the Kentucky small business community, the Subcommittee formed nine recommendations that were forwarded to the Interim Joint Committee on Economic Development and Tourism. Recommendation One is *require all state agencies to make small business aware of their rights under the Federal Small Business Regulatory Enforcement Fairness Act of 1996.* Additional recommendations include the creation of a Small Business Ombudsman, a Small Business Advocate and a Small Business Advisory Committee.

At RegFair's Business Leader Roundtable held in Helena, as reported in the 1999 Report to Congress, there was discussion about working towards passing legislation in Montana. Discussion leaders in that roundtable included state trade association leaders and staff of U.S. Senator Burns. Since that time, Linda Nielsen, a RegFair Board Member from Montana has continued to work with state associations and business leaders across Montana, and she hopes for a proposed bill during the next legislative session, in 2001.

Two RegFair Board Members from Pennsylvania have also led state legislative efforts. RegFair Board Member Victor Tucci has met with Governor Ridge's staff in Pennsylvania, who is actively considering

sponsoring legislation. Meanwhile, Fairness Board Member Shawn Marcel has been working with state legislators on the issue.

Mr. Larry Mocha, RegFair Board Member in Region VI and Chairman of the Oklahoma Governor's Conference, has led another small business regulatory fairness effort. Using the Hawaii legislation as a model, Oklahoma Representative Jack Bonny and Senator Jim Maddox introduced the Oklahoma Small Business Regulatory Enforcement Fairness Act, or OSBREFA, in their respective chambers last year. Although OSBREFA made it through both chambers of the Oklahoma State legislature, it ultimately died in conference. Nevertheless, Mr. Mocha is optimistic about its chances for passage in this year's legislative session.

In Rhode Island, RegFair Board Member Larry Morse has led an effort to bring regulatory fairness to the state level. The Rhode Island Small Business Regulatory Flexibility Act (99-H 5688) has been forwarded to the House Corporations Committee. This bill is modeled after legislation enacted in Hawaii last year, and was cosponsored by Representative Brian Patrick Kennedy and Representative Eileen Naughton.

According to Ms. Stella Olsen and Mr. Scott George, RegFair Board Members from Missouri, great efforts are being made to bring a statewide SBREFA into action. Since SBREFA passed at the national level, Ms. Olsen and Mr. George have been invited to meetings with the Missouri Department of Natural Resources-Small Business Compliance Advisory Committee to discuss regulatory issues and how they impact small businesses. According to Mr. George, after Missouri held its first Small Business Congressional Summit in 1999, small business leaders met in a series of focus groups facilitated by State Senators, Representatives, and State Department Directors. In the Regulatory and Environmental focus groups, the two highest ranked recommendations were a state "Regulatory Fairness Act" and a state "Regulatory Fairness Board," and enabling legislation is currently being drafted.

According to John Hexter, Board Member in Cleveland, there has been discussion in Ohio of a state legislative effort. Mr. Hexter is sharing proposed and current legislation from other states with Ohio Representatives and Senators, and will also provide this information to the Government Affairs Council.

In Virginia, Board Member Ann Parker Maust says plans are underway to launch a state legislative initiative similar to SBREFA. The Governor's Small Business Advisory Council at its November 1999 meeting recommended an examination of how the state might implement such legislation and the role the Council might play in that undertaking.

According to Dan Morgan, RegFair Board Member in Nebraska, first round of discussions on state SBREFA legislation is occurring. Nebraska has a state ombudsman office, and small business regulation reform may be included under its auspices.

RegFair Board Members will continue to work at encouraging additional states to introduce legislation that brings regulatory fairness legislation to the state and local level.

Appendices:

A. Small Business Feedback in 1999

B. Summary of 1999 Associations of the Month

C. SBA Programs Marketing RegFair

D. Follow-up of 1997-98 Case Studies

E. RegFair Public Hearings
   1. Hearing Promotion
   2. Hearing Planning
   3. Attendance and Participation at Hearings
   4. Individuals Testifying at 1999 Regulatory Fairness Board Hearings
   5. Synopses of 1999 Regional Regulatory Fairness Board Hearings

F. RegFair Materials
   1. Brochure
   2. Appraisal Form
   3. RegFair Card
   4. Board list, map, Roles & Responsibilities and Code of Ethics

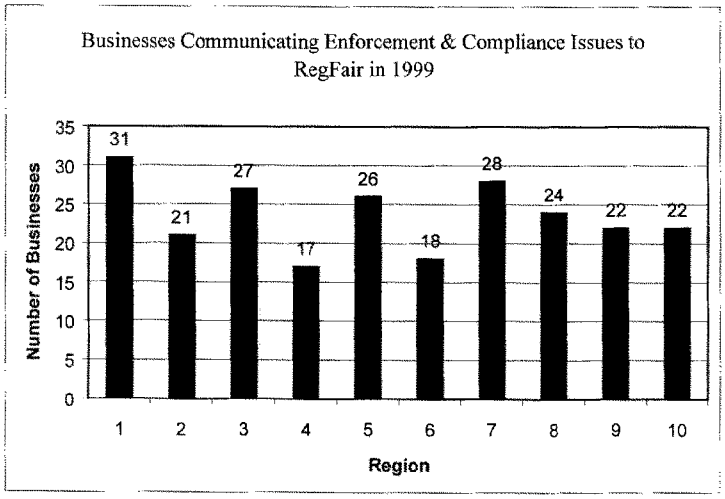
G. Agency comments on 2000 Report

H. National Ombudsman's Previous Annual Recommendations

Appendix A:

Small Business Feedback in 1999

The table below represents the 236 small businesses that provided the Office of the National Ombudsman and the RegFair Boards with their feedback on regulatory enforcement and compliance concerns. The data is broken down according to SBA's geographic regions.



Appendix B:

Summary of 1999 Associations of the Month

The American Society of Association Executives (ASAE) served as Association of the Month for February 1999. Washington-based ASAE represents more than 24,600 association professionals, who manage leading trade associations, membership societies, voluntary organizations, and their suppliers. The association also represents 68 allied state or regional societies of association executives. ASAE published an article on RegFair in *GR*, ASAE's newsletter on Government Relations. The National Ombudsman addressed the ASAE Alliance Forum breakfast series for DC-based heads of trade associations. ASAE also posted information on RegFair and a link to RegFair's web site from its site (www.asaenet.org).

The International Franchise Association (IFA) was RegFair's Association of the Month for January. The IFA represents over 32,000 franchise holders and franchisers. To promote RegFair among its members, the IFA issued a press release and published an article on how to use the RegFair comment process in the December issue of its newsletter, *It's Your Business*. The IFA also undertook a number of ongoing promotional activities, including publication of a feature-length article by the National Ombudsman in *Franchising World*, its bi-monthly magazine, and distribution of RegFair literature at its annual convention in Miami Beach. At its web site, now under revision, IFA posted information about the program and a link to RegFair's web site.

The American Road and Transportation Builders Association (ARTBA) was RegFair's Association of the Month for March 1999. Based in Washington DC, ARTBA has more than 4,000 members nationwide, and State Chapter Affiliates in over 25 states. ARTBA represents to Congress and the Administration, the legislative and regulatory interests of the transportation construction industry. The association promoted RegFair to its membership by publishing an article on RegFair in its monthly magazine, *Transportation Builder*. Additionally, the association invited Tom Gutherie, RegFair Board Member from Region IX, to address the ARTBA Council of State Executives at their annual convention in Las Vegas. ARTBA also posted information on RegFair on their web site (www.artba.org).

The Regional Investment Bankers Association (RIBA) was RegFair's Association of the Month for April 1999. RIBA is a national association of regional and independent broker-dealer and investment banking firms that provides information and education to its member practitioners, regulatory and legislative agencies, and the investing public. These firms employ in excess of 13,700 registered representatives in over 1,850 offices throughout the United States that serve a number of client/investors estimated to exceed two million.

The National Restaurant Association served as RegFair's Association of the Month for May 1999. With members representing over 175,000 restaurants nationwide, the National Restaurant Association's influence in the small business community ensures that news of RegFair will reach a majority of the Nation's small restaurants. By attaching RegFair's Agency Appraisal Form to its member newsletter, the National Restaurant Association has been an innovator in getting the word out. An added bonus to partnering with the Restaurant Association this year was its annual trade show held in Chicago in May at which the Office of the National Ombudsman distributed RegFair materials. The show attracted more than 100,000 restaurateurs, suppliers, and others interested in the food service industry.

The U.S. Chamber of Commerce was RegFair's Association of the Month for June 1999. As the world's largest business federation, representing nearly three million companies, 3,000 state and local chambers, and 775 business associations, the Chamber has played a significant role in helping to promote RegFair to the small business community through outreach tailored specifically to the Chamber's strengths in the small business community. As Association of the Month for June, the Chamber published RegFair

information in various newsletters and on its web site (www.uschamber.com), including a jump site to the RegFair home page. Chamber leadership is continually exploring ways to increase awareness of RegFair and the number of small business comments from Chamber members.

The North American Die Casting Association (NADCA) was RegFair's Association of the month for July 1999. NADCA is the exclusive trade and technical association of the die casting industry, with over 950 members companies in every region of the United States. Over 60 percent of their member companies are small businesses: most have fewer than 100 employees and many are family-owned. NADCA is headquartered in Chicago, and has a Washington office. NADCA published an article on RegFair in the July/August edition of the association's magazine, *Die Casting Engineer*. NADCA also posted information about RegFair on its Internet web site and established a link to RegFair's web site. Joanne Stockdale of the Region VII RegFair Board is an active member of the Northern Iowa Die Casting affiliate of NADCA.

The American Trucking Association (ATA) served as RegFair's Association of the month for August 1999. The American Trucking Association is a federation of over 4,000 state trucking associations, national truck conferences and individual motor carrier companies and suppliers.

The Telecommunications Industry Association (TIA) was RegFair's Association of the Month for September 1999. The Telecommunications Industry Association (TIA) is a full-service national trade organization. Since its origin in 1988, the TIA has grown to a membership of over 900 companies that provide communications and information technology products, distribution and professional services in the United States and around the world. The Association's member companies manufacture or supply virtually all of the products used in global communication networks.

The American Foundrymen's Society (AFS) was RegFair's Association of the month for October 1999. Headquartered in Chicago, the AFS assists over 14,000 individual and 600 corporate members in effectively and efficiently managing the production of castings. Today, there are an estimated 3,000 foundries across the Nation that employ more than 225,000 individuals. Most are small businesses--80 percent employ less than 100 people. To promote RegFair, the AFS published an article on RegFair in *Modern Casting*, the AFS's magazine in November 1999. On the AFS Internet web site, the association posted information on RegFair with a jump site to RegFair's web site.

The Air Conditioning Contractors of America (ACCA) was RegFair's Association of the Month for November 1999. Headquartered in Washington, DC, ACCA represents approximately 9,000 national, state and local members who will be receiving information about the RegFair Program. Regulations covering the venting and disposal of HFC and HCFC refrigerants during installation, maintenance, repair and disposal of residential and commercial air conditioning and refrigeration equipment govern ACCA members. They are also subject to OSHA regulations dealing with health and safety, and ergonomics issues, as well as Department of Labor regulations concerning employment laws, and IRS tax rules. ACCA members were informed about RegFair via information on ACCA's Internet web site (www.acca.org), and in its monthly member newsletter, *ACCA News*. In October 1999, Acting National Ombudsman Hatem El-Gabri spoke to ACCA state and local chapter executives in Washington, DC. The ACCA has also invited the Office of the National Ombudsman to design and present a workshop at their annual conference and trade show in February in Albuquerque.

The National Meat Association served as RegFair's Association of the Month for December. The National Meat Association (NMA) is a non-profit trade association for meat packers and processors, as well as equipment manufacturers and suppliers who provide services to the meat industry. Headquartered in Oakland, CA, the association has over 600 members throughout the United States, Canada, Australia and Mexico. The NMA holds an annual conference that features in-depth seminars and informal meetings in a network forum. NMA's 54th Annual Convention will be held in San Francisco, California, February 17-19,

2000 and RegFair plans to participate. In addition to its annual meeting, NMA holds specialty seminars and workshops throughout the year and across the country to provide information and advice to its members on industry issues and concerns. The Association also holds a summer conference and board meeting, and a biennial exposition for industry technology, equipment and services. RegFair Board Members will be informed about the Association and its members through the NMA's weekly newsletter called *Lean Trimmings/Herd on the Hill* and Internet web site.

Appendix C:

SBA Programs Marketing RegFair

Office of Small Business Development Centers

In 1997, the National Ombudsman spoke to SBDC Directors at the Field Management Meeting. This was followed-up in early 1999 with another presentation by the National Ombudsman to the SBDC's Regulatory Committee. The Committee members were very enthusiastic about RegFair and have since shown a strong interest and commitment to more active involvement in regulatory fairness and in educating their small business clients about RegFair.

Investment Division

Congress created the Small Business Investment Company (SBIC) Program to fill the gap between the availability of venture capital and the needs of small businesses in start-up and growth situations. SBICs, licensed and regulated by the SBA, are privately owned and managed investment firms that use their own capital, plus funds borrowed at favorable rates with an SBA guarantee, to make venture capital investments in small businesses.

Virtually all SBICs are profit-motivated businesses. They provide equity capital, long-term loans, debt-equity investments and management assistance to qualifying small businesses. Their incentive is the chance to share in the success of the small business as it grows and prospers.

The Investment Division is working to educate the SBICs about the Regulatory Fairness Program. This initiative by the Investment Division will have primary and secondary dividends. First, many SBICs are themselves small businesses, who are covered by SBREFA and eligible to comment on enforcement or compliance activities. Second, SBICs have a direct interest in regulatory enforcement fairness for the small businesses in which they invest. Several SBIC owners have already shown interest in the Regulatory Fairness Program, and their feedback is expected to increase. An unfair Federal regulatory environment has a negative impact on business growth and financial health. To succeed and maximize the return on SBIC investments, small businesses need a fair regulatory environment. SBICs can help small businesses recognize that they are stakeholders in the Regulatory Fairness Program and that their participation will greatly enhance the impact of the Program in improving regulatory enforcement and compliance for all small businesses.

8 (a) Program & Small Disadvantaged Businesses (SDB)

SBA's 8(a) and SDB Programs are intended to help small businesses be successful. Companies just starting or in a growth stage, can benefit from the wide-range services offered—support for government contractors, access to capital, management and technical assistance, and export assistance—just to name a few. They accomplish their goal by building community-based small businesses, which in turn revitalizes neighborhoods, creates jobs, and encourages economic growth. SBA uses a number of assistance intervention tools, ranging from contract support to low-interest loans for site acquisition, construction, and the purchase of new or upgraded equipment.

SDB started including the RegFair Program information in the marketing material it sends to small businesses. This direct contact with small businesses will help educate small businesses about their regulatory fairness rights and will increase the small business feedback that the National Ombudsman and RegFair Boards receive.

HUBZone

The HUBZone Empowerment Contracting program provides Federal contracting opportunities for qualified small businesses located in distressed areas. Fostering the growth of these Federal contractors as viable businesses, for the long term, helps to empower communities, create jobs, and attract private investment.

The HUBZone Program is including the RegFair Card in the marketing materials they send to small businesses.

Office of Field Operations

The Office of Field Operations is the representative for the SBA field offices at headquarters. The office provides: policy guidance and oversight to regional administrators and district directors in implementing agency goals and objectives, and in solving problems in specific operational areas; establishes and monitors performance goals for the districts; serves as liaison and expedites issues for the regions and districts in dealing with Headquarters, coordinating presentation of field views; and organizes reviews of field offices.

Field Operations recently met with the District Directors and Branch Managers and provided an updated briefing on the Regulatory Fairness Program, what it offers their small business customers and how they can help inform local small businesses about their rights to Regulatory Fairness.

Field Operations is working with each district and branch office to get them to include RegFair Cards in the mailings that the offices send out to small businesses. The card is light weight and designed to be stuffed in a standard business envelope. By enclosing the card in existing mailing the field offices will help spread the word about RegFair at negligible costs.

Office of Equal Employment Opportunity & Civil Rights Compliance (OEEO&CRC)

With regard to small businesses, the OEEO&CRC works to fairly and objectively ensure that agency practice and policy prohibit discrimination on the bases of race, color, sex, age, religion, disability, national origin and reprisal for recipients of SBA financial assistance. OEEO&CRC is distributing RegFair brochures to all of the area offices for distribution to small businesses by OEEO&CRC staff.

Office of Financial Assistance

The Office of Financial Assistance oversees many of SBA's small business loan programs. They work directly with private lenders and certain small business borrowers. Financial Assistance will provide their lenders with information on the Regulatory Fairness program. They will also provide the same information to small businesses borrowers, on SBA serviced loans.

By educating SBA lenders on the RegFair Program and encouraging them to distribute the cards at banks, we expect small business bank customers will quickly learn about their rights to regulatory fairness and will increase their utilization of RegFair.

The Business Adviser

The SBA sponsored Business Adviser initiative has done a tremendous job bringing together in one location the online resources of Federal and state governments that are relevant to small businesses. The Business Adviser has integrated the RegFair web page into its site so that millions of small business visitors each year

will be directed to RegFair web site if they have any Federal regulatory enforcement concerns. Small businesses may visit their web site at http://www.business.gov.

SBA Help Desk

The Help Desk is SBA's one stop shop for small business information. The Help Desk answers a wide range of questions, provides informational materials, and makes referrals to appropriate Government program. The Help Desk staff have all been briefed on RegFair and they are now fielding questions from small businesses with regulatory enforcement and compliance problems, providing RegFair literature, and referring small business owners to the Office of the National Ombudsman for further assistance.

Appendix D:

Follow-up of 1997-98 Case Studies

Derived from written small business comments, testimony at RegFair hearings, and the experiences of the RegFair Board Members, the National Ombudsman's first Report to Congress on Regulatory Fairness identified four common themes or perceptions in small business community. The report presented the individual experiences of specific small businesses as case studies to illustrate these common perceptions.

The four themes identified in the National Ombudsman's first annual Report to Congress were:

- Agencies change their rules in the middle of the game;
- Agencies disregard economic or other consequences of their actions on small businesses;
- Small businesses often get ensnared in conflicting regulatory requirements when Federal agencies' jurisdictions overlap; and
- Small businesses fear agency retaliation.

In the 1999 and 2000 Reports to Congress, these themes are revisited by reviewing the as yet unresolved case studies illustrating them. Presented below is the current status of these small business comments. Significantly, two years after these comments were first presented to Congress; three of the eight issues are not yet resolved.

Changing the Rules In the Middle of the Game

Original Case Study

Ms. Kathy Diaz, co-owner and founder of Monroe's Restaurants in Albuquerque, New Mexico, testified at the 1997 RegFair hearing in Region VIII, held in Albuquerque. In her testimony, Ms. Diaz told about Monroe's Restaurants experiences with the IRS after a change in personnel at that agency's district office.

Monroe's Restaurants employs approximately 80 workers, and has been established in its community for over 20 years. According to Ms. Diaz, her company had been working with the IRS to develop a payment plan, which the restaurant could adhere to, and which would work well for both the IRS and her company. However, the agent Ms. Diaz was working with retired and a new agent took over her case.

The new agent informed Ms. Diaz that he had decided the previously written agreement was null and void, that it was canceled, and that additional penalties and interest were due. According to Ms. Diaz, the cancellation of her previous agreement and the addition of penalties and interest were completely at the discretion of the new agent. This decision began a 5-year quest by Ms. Diaz's business for relief.

According to Ms. Diaz, the IRS agent stated on numerous occasions that he will "shut the business down" and has been verbally abusive to her, her employees and even some of her customers.

Recently, Ms. Diaz informed the National Ombudsman that the company has succeeded in having a new agent assigned to its case. However, she reports that the debts incurred over the past 5 years through this process have grown so large that her business may not survive.

1999 follow-up

In following up with Ms. Diaz for the 1999 report, she stated that, after the hearing, her case was assigned to a new office. However, when she and her attorney went to the new office to meet with the agent, she discovered that her case had been reassigned to the same agent who had been transferred to that office.

Ms. Diaz reports that at the meeting the agent was extremely upset and agitated about her testimony at the RegFair hearing. According to Ms. Diaz, the agent said he was sick and tired of them and just wanted to close them down, and when asked why he was so upset, had them physically removed from the building.

According to Ms. Diaz, another IRS agent saw this situation developing, and as a result, the agent was again removed from her case. The restaurant is in the process of filing a third compromise agreement request (this submission, according to Ms. Diaz, is exactly like the previous two that were submitted and rejected by the previous agent). This compromise agreement request includes the company's petition for a reduction in the amount of the penalties and interest originally given. The company is requesting these reductions under SBREFA, as Monroe's is a small business. Nevertheless, to protect the company, Monroe's Restaurants has filed Chapter 11 bankruptcy.

Throughout this situation, the company has continued making payments to the IRS and has almost paid off the principal debt. However, according to Ms. Diaz, the penalties and interest on the debt, and the $50,000 the company has spent in legal and other fees has created such a financial hardship for Monroe's that she doubts the Restaurants will ever recover.

If Monroe's Restaurants does go out of business because of this situation, 80 employees will be out of work. According to Ms. Diaz, the agent that had been removed from her case has since been promoted.

2000 follow-up

Monroe's Restaurants is still in business. Previously, the business had been paying $5,000 per month to pay off the IRS debt. However, the agent who had Ms. Diaz and her attorney physically removed from the building, also ended that repayment plan. When the restaurants filed for Chapter 11 bankruptcy, the previous debt was assigned to the Diaz's, personally.

For the business, agreement has been reached, and a letter and check for $64,000 has been paid to the IRS. Legally, Monroe's Restaurants will not owe the IRS further penalties.

The Diaz's submitted another offer of compromise to the IRS in March 1999. The company received a letter a few months later stating that the compromise could be processed, the case would be assigned to another agent, and the company would be contacted by the 3rd of July.

However, according to Ms. Diaz, the agent never contacted them, and Ms. Diaz and her attorney made contact only after repeated calls and letters. Ms. Diaz reports that during the week of November 7, 1999, when contact was finally made with the local IRS office, she was told by an office supervisor that because their compromise was complicated, it needed to be signed off on by a higher level official. According to Ms. Diaz, the office supervisor told her that there were only two officials available, and they were given the option of having their case transferred to another office.

Ms. Diaz was reluctant to transfer her case, as the new office could be anywhere, and she would have to travel there, incurring additional expense. She has since decided to transfer the case, simply to move it toward resolution.

The original amount owed to the IRS was approximately $195,000. Monroe's had paid over $90,000 in installments under the first compromise agreement, by the time that plan was abruptly ended by the first agent.

Since the debt was assigned to the Diaz's, they have been paying $500 per month, plus their tax refund of approximately $2,000 per year. Ms. Diaz estimates that they have spent approximately $75,000 in attorney's fees on this situation (she has taken on a second job to help pay the penalties and attorney's fees).

She estimates that a total of $150,000 of the original amount of $195,000 has been paid to the IRS, so far. However, according to Ms. Diaz, penalties and interest on the debt were accruing as they awaited contact from the IRS after submitting their fourth compromise agreement, and she believes they have increased the debt to $350,000.

Ms. Diaz is still concerned that the IRS will demand that she resubmit the latest compromise agreement because of the amount of time that has passed since its original submission. She also stated that had it not been for the Office of the National Ombudsman, her Congressman, and the RegFair hearing, she would probably not still be in business today.

Finally, the Department of the Treasury that the former IRS agent is under investigation has informed Ms. Diaz.

Because Ms. Diaz felt that the IRS agent who she feels began this entire situation retaliated against her business, a copy of the 1999 Report Case Study was sent to the Inspector General of the U. S. Department of the Treasury. We received an internal memo from the Department assigning the case to the Western Region Inspector General.

Agencies Disregard the Economic or Other Consequences of their Actions on Small Businesses

Original Case Study

The first annual Report to Congress on Regulatory Fairness presented the belief of some small businesses that agencies do not appreciate the sometimes severe effects of their regulations and actions on small businesses. This belief was illustrated by the comment from Mr. Nolan Woods, President of Red Woods Outfitters, in Pollock, Idaho. Mr. Woods chose to fully disclose his identity and that of his small business for the report.

Red Woods Outfitters is a jet boat outfitter company that has worked out of Riggings, Idaho on the Snake River in Hells Canyon for over 19 years. The company has no employees; Mr. Woods runs the business himself as his only means of supporting his family.

In July 1994, the U.S. Department of Agriculture (USDA) adopted final rules governing the Hells Canyon National Recreation Area Federal Lands. These new regulations, as adopted by the local Forest Supervisor, established Forest Plan Amendment #20, the Wild and Scenic Snake River Outfitter Environmental Assessment. The plan set guidelines for motorized and non-motorized rivercraft in that area.

Implementation of that environmental assessment changed the operation of Red Woods' special-use permit. The plan effectively reduced the number of days that Red Woods could operate its jet boats each summer from 70 to 9 and established destination limits—limits on the areas of the river they could access. These rulings were appealed by Mr. Woods and the two other power boat outfitters in the area.

The Deputy Regional Forester for the Pacific Northwest Region, who was the appeals officer, ruled that the environmental assessment did not support destination limits, and so struck down that decision, but upheld the decision to amend the special use permits. This decision will severely affect the financial stability of the company.

1999 Follow-up

Red Woods Outfitters is still in business, but is still contesting the Forest Service. According to Sandra Mitchell, Executive Director of the Hells Canyon Alliance, a group that represents many outfitters in Hells Canyon including Red Woods. Although the destination limits were struck down, the decision to amend the special use permits was upheld, effectively reducing the number of days that Red Woods Outfitters can operate.

Under the new decision, Red Woods' allocation amounts to only 21 percent of the season, or 15 days between May 1 and Labor Day. Although tours on the Scenic River from Mondays through Thursdays do not count against their allocation, Fridays through Sundays—the big days for tours on the river—do count against it. Additionally, the allocation order states that Red Woods may fish on the Wild River only on Monday, Tuesday, and Wednesday of every other week. This is a real problem according to Ms. Mitchell, because the Wild River is the biggest tourist attraction in Hells Canyon.

Red Woods estimates losses of $6,000 this year, and about $10,000 per year over the past two years in lawyer fees. Red Woods gross annual earnings are about $38,000. At present Red Woods is still working with the Forest Service, which regulates the allocations, and they have initiated a lawsuit against the Forest Service which is due to be heard in the March, 1999.

According to the USDA's response to the National Ombudsman's draft 1999 Report to Congress, Forest Service personnel continues to work with the outfitters. According to the agency, an informal review indicated to it that "the outfitters are doing about the same amount of business as before. Annual revenue of outfitters on the Snake River has remained level. In fact, some outfitters have been investing in bigger and faster jet boats to service their clientele." This response did not address Red Woods Outfitters, specifically.

2000 Follow-up

In following up with Sandra F. Mitchell, Executive Director of the Hells Canyon Alliance, for the 2000 Report to Congress, Red Woods has just finished its second year of restricted "motorized days" as imposed by the Forest Service. Their case against the Forest Service is still in litigation, with a final decision expected in January.

The Service has completed a usage survey of the number of users of that section of the river to determine whether usage has increased since the new rules were put into effect. The completed survey is expected to be available in February or March of 2000.

According to Ms. Mitchell, over the past two years there has been no increase in non-motorized craft use of the waterway as a result of the limitations on motorized craft under the new regulations. Ms. Mitchell hopes this result will lead the Forest Service to realize that there is no need for the regulations, and that they will either be changed by the Service, or struck down in court.

Small Businesses get ensnared in Conflicting Regulatory Requirements when Federal Agencies' Jurisdictions Overlap.

Original Case Study

A small business comment on behalf of Russian and East European Partnerships, Inc. by Kenneth Fortune, President, and testimony at the RegFair Board hearing in Charlotte, North Carolina from Danny Cooper, Vice President of Operations also illustrates this theme. Mr. Fortune chose to fully disclose his identity and that of his small business.

Russian and east European Partnerships, Inc. (REEP) is a New Hampshire-based small business that specializes in training and training support programs. The company has completed a number of U.S. Government contracts.

In September 1995, the Department of Defense (DOD) Contracting Office issued a solicitation for a contract at Fort Bragg, North Carolina. According to REEP representatives, the solicitation information received by the company included an outdated Wage Determination sheet.

A Wage Determination, or minimum wage, for each contract is required when a U.S. Government contracting agency issues a service contract which is governed by the requirements of the Service Contract Act. According to Mr. Fortune, this is where the problems between the Department of Defense and the Department of Labor (DOL) begin.

According to Mr. Fortune, the Department of Defense Contracting Office requires the process of establishing wage rates (called "conformance") to begin within 30 days of the origination of a contract. However, the Department of Labor—the agency that actually does the "conforming"—requires the process to begin before work on the contract has started, and places responsibility for this on the Department of Defense, not on the contractor.

According to Mr. Fortune, since REEP did not know it had an outdated Wage Determination sheet, the company completed it and sent in the package. The Department of Defense Contracting Office informed REEP that all positions in the contract had previously been conformed by the Department of Labor as Clerk I and Clerk. The company assumed everything was fine and officially began work on the project in February 1996.

According to the company, repeated inquiries over the next six months to the Department of Defense Contracting Office for a finalization of the DOL conformance went unanswered. In September 1996, a new DOL wage determination was issued for Fort Bragg, and wage rates increased. According to Mr. Cooper, the minimum wage for an instructor increased from $8.10 per hour to $16.50—a 104 percent increase.

When the Department of Labor issues a new wage determination in such cases, it also issues a conformance notice to the Department of Defense Contracting Office. This authorizes the Department of Defense to amend the contract with REEP, and allows REEP to submit a claim for additional payment to cover the wage increases. However, in this case, DOD never received a conformance notice from the Department of Labor, and refused REEP's claim for a contract increase to cover the wage increase. According to Mr. Cooper, DOD refused to pay the claim based on a lack of notification from DOL.

According to Mr. Cooper, in early August, 1997, the Department of Defense refused to meet with REEP and DOL to attempt to resolve the matter. In late August, DOL issued a form WH-56 that required REEP to pay over $229,000 in back wages to its employees, implying that REEP was trying to avoid paying its workers legal wages. But, according to the company, they contacted the Department of Labor more than forty times over a year and a half in an attempt to resolve this situation. A negotiated settlement for the contract period up to September 1997 fell apart when the Department of Defense refused to pay its obligation.

Finally, on November 4, 1997, the Department of Labor of the conformed wage rates informed REEP, but no explanation was given as to how they were derived. On November 12, 1997, REEP appealed the wage rates determined by the Department of Labor, based on their assessment of the prevailing wages.

According to both Mr. Cooper and Mr. Fortune, the Department of Labor and the Department of Defense were working against each other, rather than trying to develop a cooperative method of resolving the situation. To date, the issue has cost REEP more than $10,000 in expenses and legal fees.

This comment is under review by the Department of Defense and the Department of Labor.

1999 Follow-up

For the 1999 report to Congress on Regulatory Fairness, REEP was contacted once again. According to Mr. Kenneth Fortune, President of REEP, after he testified at the RegFair hearing in Charlotte, his Congressman became interested in his experience and was able to bring DOL and DOD together for a discuss of the matter.

On February 17, 1998, the two agencies met with REEP representatives and the Congressman. At the meeting, the issue of payment of the back wages was discussed and a working solution was reached whereby REEP would complete and re-file the forms for each of the employees that had been working with the contractor, essentially re-billing for hours that the employees had worked but for which they had not been paid.

REEP had 30 days to fill out the forms and return them to DOD. DOD also had 30 days to sign off on the back wages, and submit the forms to DOL, which they did, on time, in April 1998. The forms submitted to DOL confirmed that DOD was prepared to pay $198,000 in back wages to REEP employees, upon notification by DOL to do so.

In late October, six months after DOL received the information; REEP received call from its Congressman informing the company that DOL had finally made its decision.

The next day, the company discovered that DOL had denied the new conformance request and would not release the funds for the back wages. According to DOL, it was because REEP had not submitted required materials and had not followed the guidelines for the materials that were submitted.

This means that REEP will be required by the Department to pay the back wages of over $198,000, plus an additional amount that was accruing over the six months DOL took to issue a response in this case.

According to REEP, their paperwork was in order when submitted to DOD, but DOD apparently failed to submit all of the paperwork to DOL. Now, despite the fact that it took 6 months for DOL to respond on this matter, REEP states it has only 20 days to appeal this "final" ruling.

A more serious allegation is that, according to Mr. Fortune, REEP's attorney was told by a DOL representative that there had been the possibility of a negotiated settlement, but because of the pressure put on by REEP's Congressional representatives and the RegFair Program, DOL was no longer willing to negotiate a settlement in this case.

In addition to spending approximately $44,000 to resolve this matter, REEP has experienced other detrimental economic effects as a result of DOL's wage determination. Nevertheless, Mr. Fortune is thankful that DOL did not assess further fines on his company and he thinks this is largely due to his comment through RegFair and the Congressman's active role in the resolution.

The sequence of events presented here by REEP corresponds with those described in the Department of Labor's interim response to RegFair on this comment, which was received by the National Ombudsman in early December 1998, including the fact that although REEP requested a meeting with the Department in December 1997, the meeting did not take place until February 17, 1998.

However, according to the Department, REEP did not follow the guidance of DOL either in the February meeting or in the conformance guideline booklet they were sent to submit proposed conformed wage rates. Instead of comparing the classifications to be conformed to wage rates for comparable classifications that were already conformed, REEP simply proposed an 18 percent increase for all of the proposed conformed classifications.

As a result, DOL's denial of the second conformance of wages submitted by REEP through the DOD was based on three things: 1) the absence of information to support or justify the lower wage rates used; 2) the resulting incompatibility of classifications for comparison to arrive at wage determinations; and 3) the inability to use indexing which requires conformed classifications.

According to the Department, this left it "no choice but to use the materials submitted for conformance in December 17, 1997. This also left REEP in the preexisting situation of owing back wages." This comment is pending review by an Administrative Law Judge within the Department.

2000 Follow-up

For the 2000 Report to Congress on Regulatory Fairness, REEP was contacted once again, and according to Mr. Alan Prince of REEP, nothing has happened in the last 12 months with their appeal, despite the fact that the contract in question was completed over a year ago.

The appeal is still with the DOL Administrative Review Board and REEP's legal counsel is still trying to work with both DOD and DOL. According to Mr. Prince, the DOD has been very helpful and supportive of REEP, and the company has been awarded several new contracts with the DOD that have been smoothly implemented. In all, Mr. Prince estimated that REEP's legal fees to date on this issue are approximately at $100,000.

Appendix E:

RegFair Public Hearings

1. Hearings Promotion

Over the past three years, the hearings planning process has been improved by emphasizing grassroots publicity of these events. Once a hearing site is selected, hearing flyers, press releases and media alerts are sent to each regional RegFair Board Member, with the request that they use the materials to aggressively publicize the hearing. Board Members are also requested to contact local associations and ask the leadership and their members to participate. The working relationships that have been developed with the Associations of the Month (AOM) are also utilized to build awareness of the hearing process and increase attendance.

The RegFair hearing flyer is an effective promotional tool. It is distributed throughout the small business community to Chambers of Commerce, trade associations and other small business organizations, and is posted in public areas where small business owners can view them. The flyer is also published in local newspapers, included in associations' newsletters. RegFair Board Members are encouraged to contact all local media, to further enhance general awareness of the hearing and the RegFair Program.

The SBA Communications Director of each hearing region, and the SBA District's Public Information Officer, are also informed of the hearing and the need for promotion. They are encouraged to use their media contacts and resource partners' network. Local SBA staff also work with board members to set up media interviews and encourage feature articles.

Approximately 175 national small business trade associations are also notified via facsimile about each public hearing. They are asked to urge their members in the region to participate, as RegFair Hearings are a major opportunity to comment directly on the regulatory enforcement activities of the Federal agencies that regulate them. Most associations are very receptive to the RegFair Hearings, supplying the names of members who wish to offer testimony in each area. RegFair staff initiates contact with each interested member to provide information and details.

SBA Small Business Development Centers (SBDCs) are also informed of each RegFair Hearing, and are asked to invite their small business clients. SBDCs are a key partner of the Small Business Administration, and are a major distributor of Federal enforcement and compliance guidance information to the small business community.

National Advisory Council (NAC) members and delegates to the 1995 White House Conference on Small Business are also notified about upcoming RegFair Hearings in their areas. Both groups are invited to attend and participate in the hearings, and offered the opportunity to address the group, and invite colleagues to attend to testify about their regulatory enforcement experiences.

Finally, Federal agencies covered by Section 222 of SBREFA are notified about every hearing. Some agencies, such as the Environmental Protection Agency, Internal Revenue Service, Occupational Safety and Health Administration, Departments of Labor and Transportation send representatives to many of the hearings regardless of whether they are participating at the hearing. It is encouraging that agencies are willing to attend to hear the comments and concerns of small business, although they are not the featured agency.

Given the information flow among these groups, their counterparts, and local small business organizations, approximately 600 key players in the small business community are notified about each hearing.

Media coverage of the hearings is also growing, in large part due to the efforts of the RegFair Board Members and SBA regional and district staff. While radio or television coverage was evident at eight of the hearings this year, all ten hearings received press coverage in at least one major newspaper or business publication.

2. Planning RegFair Hearings

RegFair hearings are held annually in each of SBA's ten regions of the country. RegFair hearings are designed to give small businesses a voice to address matters that concern them and to express their views on the enforcement and compliance activities of the Federal agencies that regulate them. They also provide a means through which agencies may address specific issues identified in small business comments or general matters of concern to small businesses. The hearings also provide the Office of the National Ombudsman and the RegFair Boards the opportunity to ascertain which agencies are genuinely embracing the principles of SBREFA and RegFair, and those that are not. These hearings promote an important dialogue among the agencies, small business owners, RegFair Board Members and the Office of the National Ombudsman.

The hearings are also one of the major vehicles by which the National Ombudsman and RegFair Boards obtain feedback from the small business community on the regulatory enforcement environment. They are well publicized and attended.

The RegFair hearings are held throughout the country; in large cities and small towns, in urban and rural areas. Hearing locations are rotated among geographic regions and economic sectors within each region, so that small businesses in every area of a region have an opportunity to participate. The effect of rotating this year's hearings resulted in an increase of participation from agricultural, livestock and rural service industries, as well as from associations that represent those interests.

Federal agencies covered by Section 222 of SBREFA are asked to participate in the hearings. At each hearing, representatives from two agencies give the status of implementation of the recommendations from previous National Ombudsman's Reports to Congress, and answer specific small business questions or concerns raised at the hearing. Agencies also address specific regulatory enforcement issues affecting small businesses in the region. The RegFair Board Members and the Office of the National Ombudsman may question agency representatives, and small business owners share their perspectives and perceptions.

The RegFair Boards and the Office of the National Ombudsman carefully choose agencies invited to RegFair hearings by reviewing the concerns and priorities of small businesses in the area. The Office of the National Ombudsman also obtains input from members of Congress as well as from small business trade associations.

Transcripts of each hearing are available on the Internet, usually four to six weeks after the event. By posting the transcripts on the Internet, Congress, the media, Federal agencies and the public have access to the unfiltered opinions and experiences of small businesses across the country.

At the hearings, agencies inform RegFair Board Members and the Office of the National Ombudsman about what they are doing for small businesses, generally. RegFair Board Members and the Office of the National Ombudsman often take this unique opportunity to delve beneath the surface of an issue and request that agency representatives address the specific perceptions of small businesses.

For the 1999 hearings, the Office of the National Ombudsman also requested advance copies of the featured agencies' testimony so that RegFair Board Members and the National Ombudsman have an opportunity to

In only one instance did the two differ: in Region I, the General Services Administration was invited to testify but declined. The Health Care Financing Administration was then requested, and did offer testimony on short notice.

Although a number of agencies sent representatives to hearings throughout the country, the tables below show the agencies that were invited to testify at each hearing held in 1997, 1998 and in 1999, and the agencies that attended and offered testimony.

1997 RegFair Hearings
Federal Agency Participation

Date	*Region*	*City*	*Invited Agencies*	*Presenting Agencies*	*Notes*
5/28/97	8	Denver	OSHA, EPA	OSHA, EPA	
6/20/97	9	San Francisco	IRS, USDA	IRS, USDA	
8/5/97	6	Albuquerque	INS, FCC	FCC, OSHA	1
8/21/97	10	Seattle	EPA, FDA	EPA, FDA	
9/25/97	2	New York	INS, SEC	INS, SEC	
10/27/97	1	Boston	IRS, FDA	IRS, FDA	
11/3/97	7	Kansas City	USDA, DOL	USDA, DOL	
11/17/97	4	Charlotte	FERC, FCC	FERC, SBA	2
12/1/97	3	Philadelphia	DOL, DOT	DOL, DOT	
12/4/97	5	Chicago	INS, SEC	OSHA	3

1998 RegFair Hearings
Federal Agency Participation

Date	*Region*	*City*	*Invited Agencies*	*Presenting Agencies*	*Notes*
4/6/98	9	San Jose	FCC, EPA	FCC, EPA	
4/20/98	8	Salt Lake	DOL, OSHA	DOL, OSHA	
5/1/98	6	Tulsa	IRS, INS	IRS, INS	
6/8/98	7	St. Louis	USDA, HCFA	SBA	4
6/22/98	1	Augusta	IRS, OSHA	IRS, OSHA	
6/25/98	10	Boise	HCFA, DOI	HCFA, DOI	
8/10/98	5	Cleveland	DOT, EEOC	DOT	5
8/21/98	4	Nashville	DOC, HUD	NONE	6
9/15/98	3	Richmond	HCFA, HUD	HCFA, HUD	
9/18/98	2	Long Island	IRS	IRS	

4. Individuals Testifying at 1999 Regulatory Fairness Board Hearings

Region I, New England States, Hartford, Connecticut, June 24, 1999 (15)

Small Business Representatives Offering Testimony:

Elaine Thomas Williams	Connecticut Minority Supplier Development Council
Kathy Roby	Executive Director of Home & Community Health Services
Susan Wilson	Clinical Operations for Visiting Nurse Association of Central Connecticut (VNACC)
Lee Penn	Connecticut Chapter of the American Institute of Architects (AIA)
Joe Ready	Advanced Custom Cabinets
Virginia Humphrey	Executive Director of the Connecticut Association for Home Care
Walter Christensen	Owner, Big Wally's Subs
Ronald Dunson	Chairman Black Chamber of Commerce; president of the Main Street Business Resource Center
Mark Roscio,	Vice President and General Manager of Numet Machining Techniques
Annie Pennant	President, 3-P Graphics
Lisa Kolodziej	Director of Government and Economic Affairs, Greater Waterbury Chamber of Commerce
Yvonne R. Davis	Minority Business Enterprise Input Committee (MBEIC), Connecticut Minority Supplier Development Council
Fred Pierre-Louis	Computer Resources Systems
Theotis Fenn	Theo's Transportation

Written testimony not presented at the hearing:

James Cossingham	Jayco Enterprises

Region II, Mid-Atlantic States, Buffalo, New York, September 13, 1999 (13)

Small Business Representatives Offering Testimony:

Hon. Robin Schimminger	Assemblyman, State of New York
Andrew J. Rudnick	President/CEO Buffalo-Niagara Partnership, New York
Clinton E. Brown	Clinton Brown Architects, PC
Gretchen Stringer	President, NAWBO
David S. Hammling	Managing Director, NY Construction Materials Association
Kathryn A. O'Donnell	President/CEO Botanicus Interior Landscaping, New York
Joseph W. McIvor	EVP, Niagara Frontier Builders Association
J. Nassoff	Erie County Industrial Development Agency
Lawrence J. Zielinski	Visiting Nurses Association of Western New York
Alan DeLisle	Buffalo Economic Development Corporation
Archie Amos	Executive Director, MWBE Program, BERC
John Militello	Diversified Construction of Western New York
Lumon Ross	Black Chamber of Commerce

Region III, South Atlantic States, Pittsburgh, Pennsylvania, August 19, 1999 (16)

Small Business Representatives Offering Testimony:

Todd McCracken	National Small Business United
Robert W. Goehring	Goehring & Associates
David McCorkle	Pennsylvania Food Merchants Association
Jim Young	The Rock
Jack Robinson	NuTech Laundry
Mark McNulty	Berner International
Allen Goldberg	Uniserve, Inc.
Susan Endersbee	R.E. Uptergraff Co.
Mark Lewis	R. L. Miller Co.
JoAnn R. Forrester	NAWBO/ SI Business Associates
James Converse	Pennsylvania Society of Surveyors
E. Jeanne Tyson	Royalty Home Health Care
Bill Walden	Tyler Medical
Elmer Fike	Fike Chemicals, Inc.
David Zimmerman	David W. Zimmerman Kennels
Paul Brown	Professional Limousine Services

Region IV, Southeastern States, Louisville, Kentucky, June 11, 1999 (10)

Small Business Representatives Offering Testimony:

Tommy Thompson	Thompson Homes, Inc. of Owensboro ,KY
Karen Hinkle	Alacare Home Health in Birmingham, AL
Mardi Jones	National Association of Home Care's Regulatory Committee
Honorable Ruth Ann Palumbo	Chair, Kentucky Economic Development, Tourism and Energy Committee
Lalit Sarin	Shelby Industries, Shelbyville, KY
Keith Price	VP of Finance, Shelby Industries
Behrooz Jalayer	Bottomline Management, Inc., Louisville, KY
Jim McCord	McCord Technologies, Inc., Louisville, KY
Ali Rashid	Rashid's Enterprises, Miami, FL
Doug Haley	Wooven Heirlooms, Berea, KY

Region V, Midwest States, Madison, Wisconsin, September 9, 1999 (12)

Small Business Representatives Offering Testimony:

John Giegle	NAC, WBDFC
Steve Bowers	Moultrie Independent Telephone, Lovington, IL
Kathy Stupak-Thrall	Foxes Den Resort, Watersmeet, MI
William Baker	Wisconsin HomeCare Organizations, Madison, WI
James Gray	Holle Mackerel, Madison WI
Evonne Crawford-Gray	President of Holle Mackerel, Madison, WI
Deb Sirian	Allied HomeCare, Plattville, WI
Patty Richgels	Allied HomeCare, Dodgeville, WI
Jeanne Langlois	WAMES- HomeCare Medical, Milwaukee, WI
Sandy McQuinn	Citizen's Advocacy Panel (IRS)
Vince Ruffolo	NAC, Superior Mfg.
Richard Morris	Tax Payer Advocate for Wisconsin

Region VI, Southern States, Little Rock, Arkansas, March 4, 1999 (12)

Small Business Representatives Offering Testimony:

Jack Meadows	NAC
Al Miller	NAC, Miller Engineering of Newport, Arkansas
Mary Jane Rebick	CopySystem (NFIB)
Charles King	Arkansas Minority Purchasing Council
Charles Stoner	Welch State Bank
Bill Ferren	B-B-F Oil Company Inc., Pine Bluff, Ark
David Shapiro	SCORE National
Bob Hershfield	Hershfield Life & Health Care
Tyrone Davis	Davis Petroleum
Phylis Holyfield	President-elect of NAWBO
Bruce McFadden	Improved Construction Methods, Jacksonville, Ark.,
Goldman Jackson	Genesis Printing Company

Region VII, Heartland States, Omaha, Nebraska, May 11, 1999 (18)

Small Business Representatives Offering Testimony:

Rosemary Mucklow	Executive Director of the National Meat Association
Bill Dreffs	Carlson Meats, Blair, Nebraska,
Greg Ruehle	Nebraska Cattlemen's Association
John K. Hansen	Nebraska Farmers Union
Don Bartling	Board of Directors of the Nebraska Farm Bureau
Donald J. Mihovk	Nebraska Chamber of Commerce and Industry
Sister Janet Horstman	Guadeloupe Center
Lourdes Chavez-Madera	Lourdes Income Tax
Robert J. Wise	Missouri Apartment Association, Kansas City, Missouri
Sol Herscovici	Power Engineering & Mfg., Ltd. Waterloo, Iowa
James B. Meeham	James B. Meeham, PE, PC
Bob McCallie	McCallie and Associates
Steve Cady	Executive Director of the Nebraska Pork Producers
Michael E. Echols	Double E Computer Systems
Sandy Watchous	Home Health in Hays, Kansas
Phil Stier	ProCoat Painting
Mark D. Morehouse	M.B. Morehouse Painting

Submitted written testimony only:

Andy Winstrum	Pennfield Animal Testing

Region VIII, Rocky Mountain States, Casper, Wyoming, August 4, 1999 (16)

Small Business Representatives Offering Testimony:

Larry Bourret	Executive Vice President of the Wyoming Farm Bureau Federation
Rod Taylor	Wyoming Lodging & Restaurant Association
Rob Monroe	Wyoming Retail Merchants & Society of American Florist
John Boreczky	Byan Systems
Joy Earls	Montana Association of Home Health
Brenda Moser	Healthcare of Wyoming and Colorado
Ellen Williams	LHS Home Sharing
Ron Bailey	1st National Bank-Gillette
Rick Bolander	Inter-Mountain Pipe
Charles Gilmore	McGarvin Moberly Construction Company
Dave Crnich	McMurray Construction
Roy Cohee	C&Y Transportation
Steve Lofton	71 Construction
Bob Tanner	Realtor
Nancy Stichert	Barnard Insurance
Carol Plumer	Horseplay Furnishings

Region IX, Western States, Las Vegas, Nevada, March 12, 1999 (8)

Small Business Representatives Offering Testimony:

Garry Barnes	NAC, Community First National Bank
Ruth Lopez Williams	Americade Home Health
Paul Davis	Blue Chip Enterprises
Jack Greco	NV Gas Retailers
Dan Weston	League of American Investors
Sam Males	SBDC
Renee T. Alberti	ETS, Inc.
Terry Holtz	Beveled Edge

Region X, Northwestern States, Portland, Oregon, July 7, 1999 (14)

Small Business Representatives Offering Testimony:

David Kroger	Oregon Association of Mortgage Brokers
Jim Montgomery	Sun Village Realty
Sam Brooks	Brooks and Associates, Incorporated
Mike Zaggone	Z-PRO International
Nick DeNicola	Rocco's Pizza
Janie Millican	Geo and Jem
Sal Kadri	Value Kad
Candi Phillips	Bio-Med Environmental Incorporated
Michelle La Vine	La Vine Cattle Company
Roger Giles	Business Ventures Incorporated
Roy Brower	WESCO Parts Cleaners
John Oxford	Fuel Processors Incorporated

Written testimony not presented at the hearing:

Dahinda Meda	Royal Blue Organics
Jake Rockwood	Early School Materials

5. Synopses of 1999 Regional Regulatory Fairness Board Hearings

Region I, New England States, Hartford, Connecticut, June 24, 1999

The Region I RegFair hearing was held in Hartford, Connecticut. It was an excellent hearing, with approximately 70 people attending and 15 small businesses testifying. Much of this success was due to the efforts of SBA Regional Administrator Pat McGowan and SBA District Director Marie Record. As was the case at last year's Region I hearing, one of the issues at the forefront of the hearing was HCFA's regulations for home health care providers who participate in Medicare and Medicaid. Additionally, both OSHA and the SBA were mentioned in multiple testimony. Representatives of seven of the eight Members of Congress from Connecticut attended. Ron Williams, the former Region I RegFair Board Chair and a respected business owner from Hartford, was instrumental in publicizing the hearing. Agency presenters were the HCFA and the EEOC.

Region II, Mid-Atlantic States, Buffalo, New York, September 13, 1999

The Region II RegFair hearing was held in Buffalo, at the Headquarters of the Buffalo-Niagara Partnership. Congressmen John LaFalce and Jack Quinn attended and addressed the group. Congressman Reynolds office was also represented. The final RegFair hearing for 1999 was an immense success with over 70 attendees and testimony from 13 small business representatives. Representatives from HCFA and HUD testified on the implementation of the 10 recommendations included in the National Ombudsman's 1998 report to Congress. Peter Ruddy, chair of the Region II RegFair Board and a prominent business figure in the Buffalo area, was responsible for excellent publicity for the hearing. SBA Regional Administrator Tom Bettridge and SBA District Director Frank Sciortino and Deputy District Director Robert Novak provided support. Post-hearing press coverage was significant with the local print media *Business First* and the *Buffalo News* running multiple stories.

Region III, South Atlantic States, Pittsburgh, Pennsylvania, August 19, 1999

The Region III RegFair hearing was held at the Duquesne Club in Pittsburgh, Pennsylvania on August 19th. Dr. Victor Tucci, Region III Chair, did a commendable job in obtaining local community support for the hearing. The hearing was an unqualified success with over 65 attendees and testimony from 16 small business representatives. Testimony covered a wide range of issues and agencies, including the IRS, OSHA, SBA and EPA. Major trade associations attending included the National Small Business United (NSBU), NAWBO, and the Pennsylvania Food Merchants Association among others. Attendees also included representatives from Congressmen Coyne, Doyle and English's offices. The DVA and OSHA testified on the 10 recommendations included in the National Ombudsman's 1998 report to Congress. SBA Regional Administrator Kerry Kirkland and SBA District Director Al Jones did an excellent job publicizing the event to the small business community in the region. Jere Glover, SBA's Chief Counsel for Advocacy, provided insightful remarks on the historical significance of SBREFA.

Region IV, Southeastern States, Louisville, Kentucky, June 11, 1999

The Region IV RegFair hearing was held in Louisville, Kentucky. The hearing was successful with 55 attendees and 10 small business representatives that testified on various issues. Representatives from three of the members of Congress from Kentucky attended. Bill Federhofer, SBA District Director, and Bruce Trautman, SBA Deputy District Director, did a very good job publicizing the event to the small business community in the region. State Representative Ruth Ann Palumbo, chair of the Economic Development, Tourism and Energy Committee discussed two primary goals of Kentucky state government: strengthen the rights of small business and to be supportive of SBREFA. She discussed Kentucky's attempts to nurture and cultivate an entrepreneurial society through the introduction of a state SBREFA bill. Bobby Clark,

vice-chair of the Region IV RegFair Board, obtained outstanding media coverage, scheduling interviews with the RegFair Board Members in the local press, the *Courier Journal*, before and after the hearing. Agency testifiers were the DOL and EPA.

Region V, Midwest States, Madison, Wisconsin, September 9, 1999

The Region V RegFair hearing was held in Madison, Wisconsin. Twelve small businesses testified on varied issues that included action by FCC, SBA, and HCFA. Most of the testimony focused on the apparen over-regulation by Federal representatives. Representatives from the health care industry offered some recommendations, including a suggestion that a commission be formed to assess HCFA's implementation o the Balanced Budget Act of '97. Thelma Ablan, the chair of the regional RegFair Board, and Reid Ribble, a member of the RegFair Board from Wisconsin, contacted a large number of print and other media outlets to garner pre-hearing publicity. Two National Advisory Council members addressed the audience and provided a perspective to SBREFA. Agency testifiers were the FDA and the FCC.

Region VI, Southern States, Little Rock, Arkansas, March 4, 1999

The RegFair public hearing for Region VI, the Southern States, was held at the University of Arkansas at Little Rock School of Law. Due to the efforts of Wallace Caradine, the RegFair Board Member from Arkansas, the hearing was successful with 12 small business owners testifying. Representatives from Senator Lincoln's office were in attendance. Ruben Guerrero, SBA Regional Administrator, was instrumental in encouraging the audience to fully participate and to take advantage of this opportunity to make known their concerns. NAWBO representatives testified on an ongoing issue with the DOL that this organization has raised at hearings over the last two years. NAWBO's concern involved the tax implications of the independent contractor versus employee determination. Attendance was average, at approximately 45 people, due to a scheduling conflict with the convening of the biannual legislative sessio Agency testifiers were Customs and Commerce.

Region VII, Heartland States, Omaha, Nebraska, May 11, 1999

The RegFair hearing for Region VII, the Heartland States, was held in Omaha, Nebraska. The hearing was an unqualified success and well attended due to the efforts of Dan Morgan, the chair of the RegFair Board. Representatives of three of the Members of Congress from Nebraska attended. Most of the 18 testifiers raised issues related to the featured agencies. This was the first hearing at which many of the agricultural interest and representatives from the livestock industry voiced their concerns. Bruce Kent, SBA Regional Administrator, provided support and garnered positive publicity for the hearing. Most of the testimony wa focused on the local offices of Federal agencies and criticism of agency customer service. A number of businesses testified about their frustration at simply trying to get answers to questions, the poor physical condition of the offices that precluded access to the Agencies, and overall discourteous or intimidating treatment. The pre-hearing publicity, which was carried in many of the associations' newsletters, contributed to the quality of the hearing. Agency testifiers were the USDA and INS.

Region VIII, Rocky Mountain States, Casper, Wyoming, August 4, 1999

The RegFair public hearing for Region VIII was held in Casper, Wyoming. It was an excellent hearing, with approximately 55 attendees and 16 small business owners offering testimony, which was heard by representatives the three Congressional offices in Wyoming. Substantive issues brought forward from som of the representatives of active trade associations included land ownership and use, paperwork reduction an the environment. Kathleen Piper, SBA Regional Administrator, promoted the hearing throughout the Rock Mountain region. SBA Regional Advocate Joan Coplan represented Ms. Piper at the hearing. Chris Chave

SBA Director of Communications for the Region, was instrumental in securing excellent media coverage, including interviews for the RegFair Board Members with the local affiliates of NBC and CBS television, as well as the *Star Tribune*. Agency testifiers were the USDA Forest Service and the SBA.

Region IX, Western States, Las Vegas, Nevada, March 12, 1999

The Region IX public hearing was held in Las Vegas, Nevada. There were approximately 50 attendees A representative from Senator Harry Reid's office attended. It is clear that the efforts of the SBA Regional and District offices are crucial in producing effective turnout for the hearings, as well as assisting in identifying and avoiding conflicting events. Of the 15 small businesses pre-scheduled to testify at the hearing, only eight testified. It was concluded that the large number of "no-shows", as well as the moderate turnout, could be attributed to the legislature being in session. Many of the key trade groups and small business owners were in Reno, attempting to get funding for local issues. John Scott, SBA District Director, and Thomas Guthrie, the Nevada RegFair Board Member, actively publicized this event to the small business community. Some substantive issues were brought forward, such as concerns with the EPA and air quality emissions in Nevada, as well as a number of SBA related issues, including size standards and certifications. Agency testifiers were OSHA and the IRS.

Region X, Northwestern States, Portland, Oregon, July 7, 1999

The Region X RegFair hearing was held in Portland, Oregon. It was an excellent hearing, with approximately 73 people attending and 14 small businesses offering testimony, which was heard by representatives of two congressional offices in Oregon and one from Washington. The hearing was a great success due, in part, to the efforts of former Regional Administrator Gretchen Sorenson, Phil Gentry, District Director and Don Matsuda, Deputy District Director in the Oregon SBA office. Clyde Stryker, chair of the Region X board, helped garner publicity for the event. Small business owners and trade group representatives presented testimony on a wide variety of Federal agencies. A common theme was the lack of consistent interpretation by regulators and how it leads to legal problems for small businesses. A small business owner, who was forced into bankruptcy by the IRS, provided stirring testimony. He described his experiences with that agency. After successfully re-organizing, he is now working to re-engineer the IRS through the Citizen's Advisory Panel. Agency testifiers were the International Trade Administration of the Department of Commerce and the IRS.

Appendix F:

RegFair Materials

1. *Brochure*
2. *Appraisal Form*
3. *RegFair Card*
4. *Board List, Map, Roles & Responsibilities, and Code of Ethics*

Appendix G:

Agency Comments on 2000 Report to Congress

Appendix H.

National Ombudsman's Previous Annual Recommendations

The Office of the National Ombudsman and RegFair Boards include recommendations in each annual Report to Congress. Each year, agencies are evaluated and rated on the prior year's recommendations. The recommendations are ongoing. The National Ombudsman, with advice from the RegFair Boards, will evaluate and rate agency regulatory enforcement and compliance activities against all recommendations made by the National Ombudsman. Small businesses will be given the recommendations in order to learn of the progress that has been made on regulatory fairness and to better frame their concerns.

The Office of the National Ombudsman and RegFair Boards feel strongly that the recommendations should not be treated as a one-time concession to small businesses, but as part of an ongoing process by which agencies and small businesses establish a small business friendly regulatory environment.

The following recommendations are from the National Ombudsman's first and second Annual Reports to Congress.

National Ombudsman's 1998 Recommendations

Recommendation 1
Agencies should be more aggressive in informing small businesses when they change or amend the rules, processes, or regulations that specifically affect small businesses.

Recommendation 2
Agencies should develop an expedited review process in circumstances where agency actions may have a severely negative impact or threaten small businesses' survival. Additionally, time limits should be instituted to restrict the length of time agencies may take to review the circumstances of a case and issue response.

Recommendation 3
Agencies should build on the Administration's policy that employees are rated based on their efforts to ensure small businesses' compliance with Federal regulations rather than on the number of fines they collect. Also, evaluations should include factors that could lead to a negative rating for employees who take action without careful and objective review of the actual circumstances of each case.

Recommendation 4
Agencies must adopt and follow policies and procedures that make it clear to small businesses that they will not face retaliation for raising concerns about compliance and enforcement. While the National Ombudsman can assure small businesses that his office will not use their names when dealing with Federal agencies, small businesses seeking resolution directly from an agency should be equally assured that no retaliation will be taken for asserting their rights.

Recommendation 5
All agencies should place an executive summary on the cover of every major notice sent to small businesses to make them immediately aware of whether action is required or whether the notice is informational, the purpose of the publication, and to which businesses or industries it applies.

Recommendation 6
Agencies should use the mechanisms of the Office of Information and Regulatory Affairs at the Office of Management and Budget to resolve regulatory and jurisdictional disputes as quickly as possible. Agencies

need to resolve interagency conflicts quickly and respond to small businesses' need for clear and consistent guidance.

Recommendation 7
Agencies should provide more systematic and consistent education about SBREFA to all personnel to ensure they are familiar with the law and sensitive to small business needs—especially those that work with small businesses regularly.

Recommendation 8
The IRS should develop a program that provides a reasonable opportunity to get absolute and final interpretation of tax issues and allows small businesses a reasonable opportunity to pursue compliance without fear of penalty.

Recommendation 9
Small Business Development Centers, Senior Corp of Retired Executives, and other SBA resource partners should help aggressively disseminate information about SBREFA and RegFair.

Recommendation 10
Federal agencies should publicize information about their enforcement activities with regard to small businesses as compared with those taken with regard to larger businesses, individuals, non-profit organizations, and other entities, where appropriate.

National Ombudsman's 1999 Recommendations

Recommendation 1
Develop a regulatory fairness protocol for Federal agency staff who undertake enforcement or compliance activities involving a small business. This protocol may include a form containing information such as a check list for the following:

- Consideration of the size of the business when determining the enforcement or compliance action;
- Consideration of the economic impact of the enforcement or compliance action on this small business and on small businesses generally;
- Consideration of any mitigating circumstances the small business was dealing with;
- Consideration of a lesser action; and
- Whether the small business had sufficient notice and appropriate opportunity to correct the cause of the violation.

Recommendation 2
Agencies should establish avenues through which small businesses can expeditiously raise the concern that the enforcement or compliance action threatens the economic viability of the business. The reviewing entity should have the authority to provide for alternative payment arrangements, enforcement or compliance actions, or other arrangements on a timely basis (such as within 30 days). The availability of this avenue should be made clear to small businesses.

Recommendation 3
Federal agencies should publicize data on agency enforcement and compliance activities, annually. Information gathered should improve agency self-assessment of its fairness to small businesses at all stages of enforcement and compliance activities as well as small business understanding of those activities. Agency heads could select data they believe most relevant to their agency's statutory authority, requirements or mission. Examples of appropriate data include the following:

- Number and type of enforcement and compliance activities, with regional and program office breakdowns;

- Inspections, on-site visits, audits, or similar field activities;
- Activities involving licensed versus unlicensed facilities;
- Small business feedback, compliments and complaints with agency responses;
- Number of fines, penalties, restrictions, license suspensions, or other debarments and similar actions;
- Administrative, final agency, and judicial appeals and the cost of such activities; and
- Use and success of informal and formal appeal channels for small versus large businesses.

Recommendation 4
Agencies heads should certify to the National Ombudsman that their designated RegFair Program representatives are independent of enforcement or compliance activities.

Recommendation 5
Federal agencies should provide formal training on a periodic basis for all enforcement and compliance staff on the regulatory fairness rights of small businesses, including the Regulatory Fairness Program. The training should sensitize employees to the unique needs of small business.

Recommendation 6
Federal agencies should be encouraged to give awards annually to personnel that improved the regulatory enforcement and compliance environment for small business. Federal agencies are also encouraged to nominate the top individual or team within each agency that did the most to improve the small business regulatory enforcement and compliance environment for an award to be given by the National Ombudsman.

Recommendation 7
In an effort to promote improved customer service concerning regulatory enforcement issues, agencies are encouraged to develop a formal customer referral system, within and among agencies, to help ensure that customers are directed to the appropriate office or agency. This will dovetail with the Administration's National Performance Review efforts to ensure greater customer service and satisfaction.

Recommendation 8
Federal agencies should make a greater effort to monitor the tone and clarity of letters and notices sent to small businesses. The National Ombudsman has learned of instances in which small businesses have received what appear to be threatening letters and notices in situations that do not warrant such an approach.

Recommendation 9
The Public Affairs Coordinator or other appropriate personnel within each regional office of the U.S. Small Business Administration should be designated as a contact person for the Regulatory Fairness Program.

Recommendation 10
In order to reduce small business confusion about the role of the National Ombudsman, the name should be changed by Congress to clarify the role of the office. Customers often confuse the role of this office with that of the traditional ombudsman for individual agencies, especially that of the SBA. Currently, the Ombudsman's official title, by statute is the Small Business and Agriculture Regulatory Enforcement Ombudsman.

NFIB® SMALL BUSINESS NEWS

National Federation of Independent Business • 1201 F Street, N.W., Suite 200 • Washington, DC 20004 • 202-554-9000 • Fax 202-554-0496

FOR IMMEDIATE RELEASE
June 15, 2000

Contact: Mary Mead Crawford
or Ed Frank (202)554-9000

On Eve of "Cost of Government Day," NFIB Member Testifies in Support of Improved Regulatory Fairness For Small Business

NFIB member Dr. Ann Parker Maust, president of Research Dimensions, Inc., in Richmond, Va., today testified that the Small Business Administration (SBA) needs to get back on the path toward better communications with small-business owners about their experiences with federal regulators.

Maust testified at a hearing of the U.S. House Small Business Committee's Subcommittee on Regulatory Reform and Paperwork Reduction. Maust serves as vice chair of the SBA's Small Business Regulatory Enforcement Fairness Board for the South Atlantic States. The Board was set up following the 1996 enactment of the Small Business Regulatory Enforcement Fairness Act (SBREFA) to gather views and comments from small-business owners around the country about how federal regulations are enforced.

In her testimony, Maust noted that significant progress was being made until approximately one year ago, when then- National Small-Business Ombudsman Peter Barca left his post to accept another position, leaving a prolonged vacancy in his office. At that time, a series of Business Leader Roundtable Discussion Groups came to an abrupt halt, and was never resumed.

"We were on a momentum path, our efforts were gathering steam, and more and more small-business owners were becoming aware of how to register their regulatory concerns under SBREFA," Maust said. "We have yet to regain the momentum that was lost approximately one year ago. I believe this momentum could have been regained had a shorter period of time elapsed between Mr. Barca's departure and the announcement of a successor, or certainly if the work had been allowed to continue under the able hands of the staff still in place to execute the program."

Maust's testimony comes as Americans prepare to mark "Cost of Government Day," the day of the year when the average citizen has finally earned enough money to pay his or her share of all federal, state and local taxes and regulatory costs. According to the Americans for Tax Reform, this year Cost of Government Day arrives on June 16.

"Ann Maust's testimony provides a guide for how Washington might help Cost of Government Day arrive a little earlier in the future," said NFIB Senior Vice President Dan Danner. "The more Washington listens to how regulations affect small business on a day-to-day basis, the more likely it is that unnecessary regulations will be scrapped. In turn, small-business owners and their employees will be able to spend more time working for themselves instead of the government."

The National Federation of Independent Business (NFIB) is the nation's largest small-business advocacy group. A nonprofit, nonpartisan organization founded in 1943, NFIB represents the consensus views of its 600,000 members in Washington and all 50 state capitals. More information is available on-line at www.nfib.com.

-30-

© 1998 PATIENTNotes.com
98.10.15 SOC 2W

[1& 2] START OF CARE ASSESSMENT

CLINICAL RECORD ITEMS

* Has the pt had home care in the last 12 months: [ ] NO [ ] YES Name of Agency: _____

1. (485-3) Certification "From" Date: (month/day/year) ___/___/___
2. (485-3) Certification "To" Date: (month/day/year) ___/___/___
3. (M0010) Agency Medicare Provider Number: _____
4. (M0012) Agency Medicaid Provider Number: _____
5. Branch Identification (Optional, for Agency Use)
   (M0014) Branch State: _____
   (M0016) Branch ID Number: (Agency-assigned) _____
6. (M0020) Patient ID Number: _____
7. (M0030)(485-2) Start of Care Date: (month/day/year) ___/___/___
8. (M0032) Resumption of Care Date: (month/day/year) ___/___/___
   [ ] NA - Not Applicable
9. (M0040) (485-6) Patient Name: (First) _____
10. (M0040) (485-6) Patient Name: (MI) _____
11. (M0040) (485-6) Patient Name: (Last) _____
    (Suffix) _____
12. (485-6) Address: _____
13. (485-6) City: _____
    County: _____
14. (M0050) (485-6) Patient State of Residence: _____
15. (M0060) (485-6) Patient Zip Code: _____
16. (485-6) Patient Phone Number: (___)___-___
17. Pharmacy Name: _____
18. Pharmacy Telephone Number: (___)___-___
19. DME/Oxygen Company Name: _____
20. DME/Oxygen Company Phone Number: (___)___-___
21. (M0063) (485-1) Medicare Number: (including suffix) ___-___-___-___
    [ ] NA - No Medicare
22. (M0064) Social Security Number: ___-___-___
    [ ] - Unknown or Not Available
23. (M0065) Medicaid Number: _____
    [ ] NA - No Medicaid
24. (M0066)(485-8) Birth Date: (month/day/year) ___/___/___
25. (M0069) (485-9) Gender: [ ] 1 - Male [ ] 2 - Female
26. Marital Status: [ ] Married [ ] Single [ ] Widowed [ ] Divorced [ ] Separated [ ] Unknown
27. Relative or Person to Contact: _____
28. Contact Person's Phone Number: (___)___-___
29. (M0072) (485-26) Primary Referring Physician ID: _____
    [ ] UK - Unknown or Not Available
29a. (485-26) Primary Physician's Name: _____
29b. (485-26) Primary Physician's Phone #: (___)___-___
    Address: _____
30. (485-26) Secondary Physician: _____
30a. (485-26) Secondary Physician Phone #: (___)___-___
31. Other Physicians: _____
32. Date Agency Last Contacted Physician: (month/day/year) ___/___/___
33. Date Primary Physician Last Saw Patient: (month/day/year) ___/___/___
34. (M0080) Discipline of Person Completing Assessment: [ ] 1-RN [ ] 2-PT [ ] 3-SLP/ST [ ] 4-OT
35. (M0090) Date Assessment Completed: (month/day/year) ___/___/___
36. (M0100) This Assessment is Currently Being Completed for the Following Reason:
    [ ] 1 - Start of care--further visits planned
    [ ] 2 - Start of care--no further visits planned

DEMOGRAPHICS AND PATIENT HISTORY

37. (M0140) Race/Ethnicity (As identified by patient): (Mark all that apply.)
    [ ] 1 - American Indian or Alaska Native [ ] 2 - Asian [ ] 3 - Black or African-American [ ] 4 - Hispanic or Latino
    [ ] 5 - Native Hawaiian or Pacific Islander [ ] 6 - White [ ] UK - Unknown

NURSE SIGNATURE: _____ DATE: _____

PATIENT NAME: _____ #1204

© 1998 PATHNotes, Inc.
98.10.15.SOC2.w

38. Referral Source: _____ **Date:** ___/___/___

39. Assigned Agent #1: _____ **Date Assigned:** (month/day/year) ___/___/___
Assigned Agent #2: _____ **Date Assigned:** (month/day/year) ___/___/___
Assigned Agent #3: _____ **Date Assigned:** (month/day/year) ___/___/___
Assigned Agent #4: _____ **Date Assigned:** (month/day/year) ___/___/___
Assigned Agent #5: _____ **Date Assigned:** (month/day/year) ___/___/___
Assigned Agent #6: _____ **Date Assigned:** (month/day/year) ___/___/___

40. (M0150) Current Payment Sources for Home Care: (Mark all that apply.)
[ ] 0 - None; no charge for current services
[ ] 1 - Medicare (traditional fee-for-service)
[ ] 2 - Medicare (HMO/managed care)
[ ] 3 - Medicaid (traditional fee-for-service)
[ ] 4 - Medicaid (HMO/managed care)
[ ] 5 - Workers' compensation
[ ] 6 - Title programs (e.g., Title III, V, or XX)
[ ] 7 - Other government (e.g., CHAMPUS, VA, etc.)
[ ] 8 - Private insurance
[ ] 9 - Private HMO/managed care
[ ] 10- Self-pay
[ ] 11- Other (specify) _____
[ ] UK- Unknown

41a. Primary Payor Information: [ ] Medicare - Part A Effective Date: ___/___/___ [ ] Medicare - Part B Effective Date: ___/___/___
[ ] Medicaid - Valid through Date: ___/___/___ Type Program: _____ TPR: _____
Private Insurance - Expiration Date: ___/___/___ Group#: _____ Phone#: (___)___-____ Effective Date: ___/___/___
Name: _____ Address: _____
Other Primary Payor Information: _____
[ ] Black Lung Program - Name & Address: _____

41b. Secondary Payor Information: [ ] Medicare - Part A Effective Date: ___/___/___ [ ] Medicare - Part B Effective Date: ___/___/___
[ ] Medicaid - Valid through Date: ___/___/___ Type Program: _____ TPR: _____
Private Insurance - Expiration Date: ___/___/___ Group#: _____ Phone#: (___)___-____ Effective Date: ___/___/___
Name: _____ Address: _____
Other Secondary Payor Information: _____
[ ] Black Lung Program - Name & Address: _____

42. (M0160) Financial Factors limiting the ability of the patient/family to meet basic health needs: **(Mark all that apply.)**
[ ] 0 - None
[ ] 1 - Unable to afford medicine or medical supplies
[ ] 2 - Unable to afford medical expenses that are not covered by insurance/Medicare (e.g., copayments)
[ ] 3 - Unable to afford rent/utility bills
[ ] 4 - Unable to afford food
[ ] 5 - Other (specify) _____

43. (M0170) From which of the following **Inpatient Facilities** was the patient discharged during the past 14 days? **(Mark all that apply.)**
[ ] 1 - Hospital [ ] 2 - Rehabilitation facility [ ] 3 - Nursing home [ ] 4 - Other (specify) _____
[ ] NA - Patient was not discharged from an inpatient facility **[If NA, go to M0200]**

43a. Name of Facility: (most recent) _____
[ ] UK - Unknown

44. Inpatient Admit Date: (most recent)
(month/day/year) ___/___/_____ [ ] UK - Unknown

45. (M0180) Inpatient Discharge Date: (most recent):
(month/day/year) ___/___/_____ [ ] UK - Unknown

46. (M0190) Inpatient Diagnoses and ICD code categories (three digits required; five digits optional) for only those conditions treated during an inpatient facility stay within the last 14 days (no surgical or V-codes):

Inpatient Facility Diagnosis	ICD
a. _____	(___.___)
b. _____	(___.___)

47. (M0200) Medical or Treatment Regimen Change Within Past 14 Days: Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

[ ] 0 - No **[If NO, go to M0220]**

[ ] 1 - Yes

48. (M0210) List the patient's **Medical Diagnoses** and ICD code categories (three digits required; five digits optional) for those conditions requiring changed medical or treatment regimen (no surgical or V-codes):

Changed Medical Regimen Diagnosis	ICD
a. _____	(___.___)
b. _____	(___.___)
c. _____	(___.___)
d. _____	(___.___)

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATCHNotes, Inc.

49. (M0220) Conditions Prior to Medical or Treatment Regimen Change or Inpatient Stay Within Past 14 Days: If this patient experienced an inpatient facility discharge or change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the inpatient stay or change in medical or treatment regimen. **(Mark all that apply.)**

[ ] 1 - Urinary incontinence
[ ] 2 - Indwelling/suprapubic catheter
[ ] 3 - Intractable pain
[ ] 4 - Impaired decision-making
[ ] 5 - Disruptive or socially inappropriate behavior
[ ] 6 - Memory loss to the extent that supervision required
[ ] 7 - None of the above
[ ] NA - No inpatient facility discharge and no change in medical or treatment regimen in past 14 days
[ ] UK - Unknown

50. (M0230/M0240) (485-11) Diagnoses and Severity Index: List each medical diagnosis or problem for which the patient is receiving home care and ICD code category (three digits required; five digits optional - no surgical or V-codes) and rate them using the following severity index. (Choose one value that represents the most severe rating appropriate for each diagnosis.)

0 - Asymptomatic, no treatment needed at this time
1 - Symptoms well controlled with current therapy
2 - Symptoms controlled with difficulty, affecting daily functioning; patient needs ongoing monitoring
3 - Symptoms poorly controlled, patient needs frequent adjustment in treatment and dose monitoring
4 - Symptoms poorly controlled, history of rehospitalizations

50a. Exacerbation/Onset and Date of each Diagnosis listed in Question 50. Indicate the Date of Exacerbation or Date of Onset of each of the Diagnoses listed in Question 50.

(M0230) Primary Diagnosis	ICD	Severity Rating	Exacerbation / Onset	Date
a. _____	(____.____)	[ ]0 [ ]1 [ ]2 [ ]3 [ ]4	[ ] [ ]	_____

(M0240)(485-13) Other Diagnoses	ICD	Severity Rating	Exacerbation / Onset	Date
b. _____	(____.____)	[ ]0 [ ]1 [ ]2 [ ]3 [ ]4	[ ] [ ]	_____
c. _____	(____.____)	[ ]0 [ ]1 [ ]2 [ ]3 [ ]4	[ ] [ ]	_____
d. _____	(____.____)	[ ]0 [ ]1 [ ]2 [ ]3 [ ]4	[ ] [ ]	_____
e. _____	(____.____)	[ ]0 [ ]1 [ ]2 [ ]3 [ ]4	[ ] [ ]	_____
f. _____	(____.____)	[ ]0 [ ]1 [ ]2 [ ]3 [ ]4	[ ] [ ]	_____

50b. (485-13) Other Diagnoses:	ICD	Exacerbation / Onset	Date
g. _____	(____.____)	[ ] [ ]	_____
h. _____	(____.____)	[ ] [ ]	_____
i. _____	(____.____)	[ ] [ ]	_____
j. _____	(____.____)	[ ] [ ]	_____

50c. (485-12) Surgical Procedure:	ICD	Date
a. _____	(____.____)	_____
b. _____	(____.____)	_____

51. (M0250) Therapies the patient receives at home: **(Mark all that apply.)**

[ ] 1 - Intravenous or infusion therapy (excludes TPN)
[ ] 2 - Parenteral nutrition (TPN or lipids)
[ ] 3 - Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
[ ] 4 - None of the above

52. (485-21) Disciplines: Indicate ordered disciplines and the frequency and duration of each discipline. (Use the orders checklist to indicate appropriate orders for each discipline.) **(Include PRN)**

Discipline	Frequency & Duration
[ ] Skilled Nursing	_____
[ ] Home Care Aide	_____
[ ] Physical Therapy	_____
[ ] Speech Therapy	_____
[ ] Occupational Therapy	_____
[ ] Medical Social Services	_____
[ ] Other:	_____

53. (M0260) Overall Prognosis: BEST description of patient's overall prognosis for recovery from this episode of illness.

[ ] 0 - Poor: little or no recovery is expected and/or further decline is imminent
[ ] 1 - Good/Fair: partial to full recovery is expected
[ ] UK - Unknown

54. (M0270) Rehabilitative Prognosis: BEST description of patient's prognosis for functional status.

[ ] 0 - Guarded: minimal improvement in functional status is expected; decline is possible
[ ] 1 - Good: marked improvement in functional status is expected
[ ] UK - Unknown

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15 SOC.cw

54a. (485-20) Prognosis:
[ ] Poor [ ] Guarded [ ] Fair
[ ] Good [ ] Excellent

55. (M0290) Life Expectancy: (Physician documentation is not required.)
[ ] 0 - Life expectancy is greater than 6 months
[ ] 1 - Life expectancy is 6 months or fewer

56. (M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**
[ ] 1 - Heavy smoking [ ] 2 - Obesity [ ] 3 - Alcohol dependency [ ] 4 - Drug dependency [ ] 5 - None of the above [ ] UK - Unknown

57. Medical/Surgical History Risk Factors:
[ ] Heart Disease
[ ] Lung Disease
[ ] Diabetes
[ ] Cancer
[ ] Blood Transfusion
[ ] Gravida/Para _____
[ ] Other: _____
[ ] Pneumonia
[ ] Emphysema
[ ] Gallbladder disease/surgery
[ ] Prostate Disorder
[ ] Vaginal Discharge
[ ] Date Last Pap Test _____
[ ] Bronchitis
[ ] Pleurisy
[ ] Tuberculosis
[ ] Cataracts
[ ] Hysterectomy
[ ] Arthritis
[ ] Gout
[ ] Asthma
[ ] Glaucoma
[ ] Hernia
[ ] Hypothyroidism
[ ] Hyperthyroidism
[ ] Mental health problems

58. (485-17) Allergies: (Food/Drug/Other) _____

LIVING ARRANGEMENTS

59. (M0300) Current Residence:
[ ] 1 - Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
[ ] 2 - Family member's residence
[ ] 3 - Boarding home or rented room
[ ] 4 - Board and care or assisted living facility
[ ] 5 - Other (specify) _____

60. (M0310) Structural Barriers in the patient's environment limiting independent mobility: **(Mark all that apply.)**
[ ] 0 - None
[ ] 1 - Stairs inside home which must be used by the patient (e.g., to get to toileting, sleeping, eating areas)
[ ] 2 - Stairs inside home which are used optionally (e.g., to get to laundry facilities)
[ ] 3 - Stairs leading from inside house to outside
[ ] 4 - Narrow or obstructed doorways

61. (M0320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply.)**
[ ] 0 - None
[ ] 1 - Inadequate floor, roof, or windows
[ ] 2 - Inadequate lighting
[ ] 3 - Unsafe gas/electric appliances
[ ] 4 - Inadequate heating
[ ] 5 - Inadequate cooling
[ ] 6 - Lack of fire safety devices
[ ] 7 - Unsafe floor coverings
[ ] 8 - Inadequate stair railings
[ ] 9 - Improperly stored hazardous materials
[ ] 10- Lead-based paint
[ ] 11- Other (specify) _____

62. (M0330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply.)**
[ ] 0 - None
[ ] 1 - No running water
[ ] 2 - Contaminated water
[ ] 3 - No toileting facilities
[ ] 4 - Outdoor toileting facilities only
[ ] 5 - Inadequate sewage disposal
[ ] 6 - Inadequate/improper food storage
[ ] 7 - No food refrigeration
[ ] 8 - No cooking facilities
[ ] 9 - Insects/rodents present
[ ] 10- No scheduled trash pickup
[ ] 11- Cluttered/soiled living area
[ ] 12- Other (specify) _____

63. (485-15) Safety Measures required in the patient's current place of residence: **(Mark all that apply.)**
[ ] Ambulation
[ ] High Risk Meds
[ ] Oxygen Therapy
[ ] Body positioning
[ ] Rotate injections sites
[ ] HOB elevated
[ ] Seizure precautions
[ ] Proper labeling of meds
[ ] Walkways clear and safe
[ ] Other: _____
[ ] Transfer
[ ] Side Rails
[ ] Skin Care
[ ] Infection control
[ ] Pulse with Lanoxin therapy
[ ] Bleeding precautions w/ Coumadin Tx
[ ] Suction Equipment
[ ] Properly stored hazardous materials
[ ] Articles of necessity within reach

64. (M0340) Patient Lives With: (Mark all that apply.)
[ ] 1 - Lives alone
[ ] 2 - With spouse or significant other
[ ] 3 - With other family member
[ ] 4 - With a friend
[ ] 5 - With paid help (other than home care agency staff)
[ ] 6 - With other than above

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15 SOCldw

65. Requirements that will Allow Pt Independence:

[ ] Time for wounds/incisions to heal.
[ ] Independence unlikely due to deteriorating condition.
[ ] Increased ROM and strength with prescribed Physical Therapy.
[ ] Pt will have continued need for assistance with ADLs.
[ ] Other: _____

SUPPORTIVE ASSISTANCE

66. (M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply.)

[ ] 1 - Relatives, friends, or neighbors living outside the home
[ ] 2 - Person residing in the home (EXCLUDING paid help)
[ ] 3 - Paid help
[ ] 4 - None of the above **[If None of the above, go to "Vital Signs"]**
[ ] UK - Unknown **[If Unknown, go to "Vital Signs"]**

67. (M0360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):

[ ] 0 - No one person **[If No one person, go to "Vital Signs"]**
[ ] 1 - Spouse or significant other
[ ] 2 - Daughter or son
[ ] 3 - Other family member
[ ] 4 - Friend or neighbor or community or church member
[ ] 5 - Paid help
[ ] UK - Unknown **[If Unknown, go to "Vital Signs"]**

68. (M0370) How Often does the patient receive assistance from the primary caregiver?

[ ] 1 - Several times during day and night
[ ] 2 - Several times during day
[ ] 3 - Once daily
[ ] 4 - Three or more times per week
[ ] 5 - One to two times per week
[ ] 6 - Less often than weekly
[ ] UK - Unknown

69. (M0380) Type of Primary Caregiver Assistance: (Mark all that apply.)

[ ] 1 - ADL assistance (e.g., bathing, dressing, toileting, bowel/bladder, eating/feeding)
[ ] 2 - IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
[ ] 3 - Environmental support (housing, home maintenance)
[ ] 4 - Psychosocial support (socialization, companionship, recreation)
[ ] 5 - Advocates or facilitates patient's participation in appropriate medical care
[ ] 6 - Financial agent, power of attorney, or conservator of finance
[ ] 7 - Health care agent, conservator of person, or medical power of attorney
[ ] UK - Unknown

SKILLED ASSESSMENT

VITAL SIGNS: BP - L _____ **B** _____ **Pulse: AP** _____ **RP** _____ **Resp:** _____ **Temp: O / R / A / T** _____ **Wt:** _____ **Ht:** _____

SENSORY STATUS

70. (M0390) Vision with corrective lenses if the patient usually wears them:

[ ] 0 - Normal vision: sees adequately in most situations; can see medication labels, newsprint.
[ ] 1 - Partially impaired: cannot see medication labels or newsprint, but can see obstacles in path, and the surrounding layout; can count fingers at arm's length.
[ ] 2 - Severely impaired: cannot locate objects without hearing or touching them or patient nonresponsive.

71. (M0400) Hearing and Ability to Understand Spoken Language in patient's own language (with hearing aids if the patient usually uses them):

[ ] 0 - No observable impairment. Able to hear and understand complex or detailed instruction and extended or abstract conversation.
[ ] 1 - With minimal difficulty, able to hear and understand most multi-step instructions and ordinary conversation. May need occasional repetition, extra time, or louder voice.
[ ] 2 - Has moderate difficulty hearing and understanding simple, one-step instructions and brief conversation; needs frequent prompting or assistance.
[ ] 3 - Has severe difficulty hearing and understanding simple greetings and short comments. Requires multiple repetitions, restatements, demonstrations, additional time.
[ ] 4 - Unable to hear and understand familiar words or common expressions consistently, or patient nonresponsive.

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15-SOCdw

72. (M0410) Speech and Oral (Verbal) Expression of Language (in patient's own language):

[ ] 0 - Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.

[ ] 1 - Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar or speech intelligibility; needs minimal prompting or assistance).

[ ] 2 - Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.

[ ] 3 - Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.

[ ] 4 - Unable to express basic needs even with maximal prompting or assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).

[ ] 5 - Patient nonresponsive or unable to speak.

73. (M0420) Frequency of Pain interfering with patient's activity or movement:

[ ] 0 - Patient has no pain or pain does not interfere with activity or movement

[ ] 1 - Less often than daily

[ ] 2 - Daily, but not constantly

[ ] 3 - All of the time

74. Intensity of Pain: Indicate pt's pain according to the pain scale of 0-10. (0 = no pain; 10 = excruciating pain)

Worst pain (from this ailment): _____

Today's pain: _____

75. (M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

[ ] 0 - No

[ ] 1 - Yes

HEAD & NECK ASSESSMENT

76. Which of the following choices below are present during this assessment of the head and neck? **(Mark all that apply.)**

[ ] None [ ] Earache [ ] Dizziness [ ] Head cold [ ] Headaches

[ ] Glasses [ ] Cataracts [ ] Sore throat [ ] Intermittent nose bleeds [ ] Bleeding Gums

[ ] Tooth problems [ ] Intermittent sinus problems [ ] Sore mouth/tongue [ ] Wears dentures

[ ] Other head and neck assessment findings: _____

INTEGUMENTARY ASSESSMENT

77. Which of the following choices below are present during this assessment of the skin? **(Mark all that apply.)**

[ ] pink [ ] natural [ ] dusky [ ] pale

[ ] cyanotic [ ] mottled [ ] jaundiced [ ] warm

[ ] cool [ ] dry [ ] moist [ ] scaly

[ ] diaphoretic [ ] intact [ ] petechiae [ ] rash

[ ] bleeds easily [ ] bruises easily [ ] recent hair growth / loss

[ ] elastic turgor [ ] non-elastic turgor / tenting > 2 sec [ ] pruritis

[ ] other: _____

78. (M0440) Does this patient have a **Skin Lesion** or an **Open Wound**? This excludes "OSTOMIES."

[ ] 0 - No **(If No, go to M0490)**

[ ] 1 - Yes

79. Drainage/Size of Wound/Lesion:

Amount: 0- none
1- scant - wound tissues moist; no measurable exudate.
2- small - wound tissues wet; < 25% of dressing.
3- moderate - wound tissues saturated; > 25% to < 75% of dsg.
4- large - wound tissues bathed in fluid; > 75% of dressing.

Color:
A- serosanguinous - thin, watery, pale red to pink
B- serous - thin, watery, clear
C- bloody - thin, bright red
D- purulent - thin or thick, opaque tan to yellow
E- foul purulent - thick, opaque yellow to green with offensive odor
F- Other (describe)

LOCATION	Length	Width	Depth	DrngAmt	Color	Surrounding Tissues
1.						
2.						
3.						
4.						
5.						

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15-SOCidw

80. (M0445) Does this patient have a **Pressure Ulcer?** [ ] 0 - No **[If No, go to M0468]** [ ] 1 - Yes

80a. (M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

	Pressure Ulcer Stages	Number of Pressure Ulcers				
a)	Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators.	0	1	2	3	4 or more
b)	Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4 or more
c)	Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4 or more
d)	Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4 or more

e) In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts?
[ ] 0 - No [ ] 1 - Yes

80b. (M0460) Stage of Most Problematic (Observable) Pressure Ulcer:
[ ] 1 - Stage 1 [ ] 2 - Stage 2 [ ] 3 - Stage 3 [ ] 4 - Stage 4 [ ] NA - No observable pressure ulcer

80c. (M0464) Status of Most Problematic (Observable) Pressure Ulcer:
[ ] 1 - Fully granulating [ ] 2 - Early/partial granulation [ ] 3 - Not healing [ ] NA - No observable pressure ulcer

81. (M0468) Does this patient have a **Stasis Ulcer?** [ ] 0 - No **[If No, go to M0482]** [ ] 1 - Yes

81a. (M0470) Current Number of Observable Stasis Ulcer(s):
[ ] 0 - Zero [ ] 1 - One [ ] 2 - Two [ ] 3 - Three [ ] 4 - Four or more

81b. (M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?
[ ] 0 - No [ ] 1 - Yes

81c. (M0476) Status of Most Problematic (Observable) Stasis Ulcer:
[ ] 1 - Fully granulating [ ] 2 - Early/partial granulation [ ] 3 - Not healing [ ] NA - No observable stasis ulcer

82. (M0482) Does this patient have a **Surgical Wound?**
[ ] 0 - No **[If No, go to M0490]** [ ] 1 - Yes

82a. (M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)
[ ] 0 - Zero [ ] 1 - One [ ] 2 - Two [ ] 3 - Three [ ] 4 - Four or more

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15.SOC.rev

82b. (M0486) Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?
[ ] 0 - No [ ] 1 - Yes

82c. (M0488) Status of Most Problematic (Observable) Surgical Wound:
[ ] 1 - Fully granulating [ ] 2 - Early/partial granulation [ ] 3 - Not healing [ ] NA - No observable surgical wound

RESPIRATORY STATUS

83. (M0490) When is the patient dyspneic or noticeably **Short of Breath?**
[ ] 0 - Never, patient is not short of breath
[ ] 1 - When walking more than 20 feet, climbing stairs
[ ] 2 - With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
[ ] 3 - With minimal exertion (e.g., while eating, talking, or performing other ADLs) or with agitation
[ ] 4 - At rest (during day or night)

84. Type of Respirations exhibited during respiratory assessment?
[ ] Deep
[ ] Shallow
[ ] Labored
[ ] Unlabored
[ ] Symmetrical Chest Wall Expansion
[ ] Asymmetrical Chest Wall Expansion
[ ] Other Respiration descriptions: _____

85. (M0500) Respiratory Treatments utilized at home: **(Mark all that apply.)**
[ ] 1 - Oxygen (intermittent or continuous)
[ ] 2 - Ventilator (continually or at night)
[ ] 3 - Continuous positive airway pressure
[ ] 4 - None of the above

85a. Oxygen Therapy:
[ ] Intermittent
[ ] Continuous
[ ] PRN
[ ] CPAP settings _____
[ ] Ventilator settings _____
Liters/Minute: _____ Method of Delivery: _____
[ ] Other: _____

86. Lung Sounds: (Mark all that apply)
[ ] Bilateral Breath Sounds Clear
[ ] Bilateral Breath Sounds Equal
[ ] Diminished Breath Sounds - RUL LUL RLL LLL RML
[ ] Absent Breath Sounds - RUL LUL RLL LLL RML
[ ] Rales/Crackles - RUL LUL RLL LLL RML
[ ] Rhonchi/Wheezing - RUL LUL RLL LLL RML
[ ] Orthopnea
[ ] Apnea
[ ] Productive cough: (describe) _____
[ ] Nonproductive cough
[ ] Other Lung Sounds: _____

CARDIOVASCULAR ASSESSMENT

87. Which of the following choices below best describes the patient's cardiovascular status? **(Mark all that apply.)**
[ ] Regular HR [ ] Irregular HR [ ] S1S2 [ ] Abnormal heart sounds [ ] Pulses equal bilaterally [ ] Frequent Palpitations
[ ] Hx of HTN [ ] Frequent angina [ ] Nailbeds pink [ ] Nailbeds cyanotic [ ] Capillary refill < 3-4 sec [ ] Cap refill > 3-4sec
[ ] Edema - Pitting / Non-pitting [ ] Temperature changes in extremities [ ] Intermittent claudication [ ] Varicosities
[ ] Pacemaker [ ] Other Cardiovascular Assessment Findings: _____

ELIMINATION STATUS/GASTROINTESTINAL/NUTRITIONAL ASSESSMENT

88. Urine Description:
[ ] Clear
[ ] Cloudy
[ ] Concentrated
[ ] Odorous
[ ] Other urine description: _____

89. Complaints related to the urinary system:
[ ] N/A [ ] Dysuria
[ ] Hematuria [ ] Hesitancy
[ ] Frequency [ ] Urgency
[ ] Nocturia [ ] Other Complaints: _____

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHnotes, Inc.
98.10.15.SOCdv

90. (M0510) Has this patient been treated for a Urinary Tract Infection in the past 14 days?
[ ] 0 - No
[ ] 1 - Yes
[ ] NA - Patient on prophylactic treatment
[ ] UK - Unknown

91. (M0520) Urinary Incontinence or Urinary Catheter Presence:
[ ] 0 - No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No, go to M0540]**
[ ] 1 - Patient is incontinant
[ ] 2 - Patient requires a urinary catheter (i.e., external, indwelling, intermittent, suprapubic) **[Go to M0540]**

92. (M0530) When does Urinary Incontinence occur?
[ ] 0 - Timed-voiding defers incontinence
[ ] 1 - During the night only
[ ] 2 - During the day and night

93. (M0540) Bowel Incontinence Frequency:
[ ] 0 - Very rarely or never has bowel incontinence
[ ] 1 - Less than once weekly
[ ] 2 - One to three times weekly
[ ] 3 - Four to six times weekly
[ ] 4 - On a daily basis
[ ] 5 - More often than once daily
[ ] NA - Patient has ostomy for bowel elimination
[ ] UK - Unknown

94. (485-14)Elimination Management:
Indicate Size and Type of Catheter (if applicable): _____
Indicate whether chux/diapers are required: [ ] Chux [ ] Diapers
Reason chux/diapers required: [ ] Bladder Incontinence [ ] Bowel Incontinence

95. (M0550) Ostomy for Bowel Elimination: Does this patient have an ostomy for bowel elimination that (within the last 14 days): a) was related to an inpatient facility stay or b) necessitated a change in medical or treatment regimen?
[ ] 0 - Patient does not have an ostomy for bowel elimination.
[ ] 1 - Patient's ostomy was not related to an inpatient stay and did not necessitate change in medical or treatment regimen.
[ ] 2 - The ostomy was related to an inpatient stay or did necessitate change in medical or treatment regimen.

95a. Ostomy Description: (if applicable) [ ] N/A
_____
_____
_____

96. Abdominal Status:
[ ] Firm [ ] Soft [ ] Flat [ ] Rounded
[ ] Distended [ ] Tender [ ] Non-tender
[ ] Other: _____

97. Bowel Sounds:
[ ] Active [ ] Hyperactive
[ ] Hypoactive [ ] Absent
[ ] Other bowel sound description: _____

98. GI Complaints:
[ ] Nausea [ ] Frequent belching
[ ] Vomiting [ ] Hemorrhoids
[ ] Diarrhea [ ] Rectal bleeding
[ ] Constipation [ ] Requires laxatives
[ ] Difficulty swallowing [ ] Heartburn
[ ] Indigestion [ ] Pain
[ ] Other GI complaints: _____

99. Date of Last BM:
(month/day/year) ___ ___ / ___ ___ / ___ ___
Describe BM: _____

100. (485-16) Nutritional Requirements: (diet & fluid requirements/restrictions)
[ ] Regular [ ] ADA ____ cal/day [ ] Low sodium
[ ] High K+ [ ] Low cholesterol [ ] Low fiber
[ ] High fiber [ ] Low sugar [ ] High protein
[ ] High iron [ ] High calorie [ ] Low fat
[ ] Restricted protein [ ] Restricted spices [ ] Full liquid
[ ] Mechanical soft [ ] Puree [ ] TPN
[ ] Fluid Restriction _____ cc/day
[ ] Fluid Requirement: _____
[ ] Other: _____

101. Nutritional/Hydrational Assessment: (Reported or Observed)
[ ] Poor appetite [ ] Fair appetite [ ] Good appetite
[ ] Requires nutritional supplements [ ] Recent change in appetite
[ ] 0-1 meal/day [ ] 1-2 meals/day [ ] 3 or greater meals/day
Size of portions: _____
[ ] Recent Wt. Loss 24 hour Fluid Intake: [ ] good (1500-2000cc)
[ ] Recent Wt. Gain [ ] fair (1000-1499cc)
[ ] Other: _____ [ ] poor (< 1000)

NEURO/EMOTIONAL/BEHAVIORAL STATUS

102. (485-19) Mental Status: [ ] Oriented [ ] Comatose [ ] Forgetful [ ] Depressed [ ] Disoriented [ ] Lethargic [ ] Agitated [ ] Other

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PAHHNotes, Inc.
98.10.15.SOC.dw

103. (M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)

[ ] 0 - Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
[ ] 1 - Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
[ ] 2 - Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
[ ] 3 - Requires considerable assistance in routine situations. Is not alert and oriented or is unable to shift attention and recall directions more than half the time.
[ ] 4 - Totally dependent due to disturbances such as constant disorientation coma, persistent vegetative state, or delirium.

104. Neuro Assessment:

[ ] PERRLA [ ] Pupils not reactive to light and accommodation
[ ] Hand grips equal bilaterally [ ] Hand grips unequal bilaterally
[ ] Reflexes equal bilaterally [ ] Reflexes unequal bilaterally
[ ] Syncope [ ] Seizure Activity
[ ] Numbness Location: _____
[ ] Other: _____

105. (M0570) When Confused (Reported or Observed):

[ ] 0 - Never
[ ] 1 - In new or complex situations only
[ ] 2 - On awakening or at night only
[ ] 3 - During the day and evening, but not constantly
[ ] 4 - Constantly
[ ] NA - Patient nonresponsive

106. (M0580) When Anxious (Reported or Observed):

[ ] 0 - None of the time
[ ] 1 - Less often than daily
[ ] 2 - Daily, but not constantly
[ ] 3 - All of the time
[ ] NA - Patient nonresponsive

107. (M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply.)

[ ] 1 - Depressed mood (e.g., feeling sad, tearful)
[ ] 2 - Sense of failure or self reproach
[ ] 3 - Hopelessness
[ ] 4 - Recurrent thoughts of death
[ ] 5 - Thoughts of suicide
[ ] 6 - None of the above feelings observed or reported

108. (M0600) Patient Behaviors (Reported or Observed): (Mark all that apply.)

[ ] 1 - Indecisiveness, lack of concentration
[ ] 2 - Diminished interest in most activities
[ ] 3 - Sleep disturbances
[ ] 4 - Recent change in appetite or weight
[ ] 5 - Agitation
[ ] 6 - A suicide attempt
[ ] 7 - None of the above behaviors observed or reported

109. (M0610) Behaviors Demonstrated <u>at Least Once a Week</u> (Reported or Observed): (Mark all that apply.)

[ ] 1 - Memory deficit: failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required
[ ] 2 - Impaired decision-making: failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions
[ ] 3 - Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
[ ] 4 - Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects)
[ ] 5 - Disruptive, infantile, or socially inappropriate behavior (excludes verbal actions)
[ ] 6 - Delusional, hallucinatory, or paranoid behavior
[ ] 7 - None of the above behaviors demonstrated

110. (M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.):

[ ] 0 - Never
[ ] 1 - Less than once a month
[ ] 2 - Once a month
[ ] 3 - Several times each month
[ ] 4 - Several times a week
[ ] 5 - At least daily

111. (M0630): Is this patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?

[ ] 0 - No
[ ] 1 - Yes

NURSE SIGNATURE: DATE:

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15 SCC.5w

MUSCULOSKELETAL STATUS

112. Functional Ability:
[ ] Amputation of extremity : upper or lower
[ ] Paralysis of extremities: upper or lower
[ ] Limited range of motion
[ ] Other functional ability description: _____
[ ] Weakness
[ ] Contractures
[ ] Fracture

113. Gait:
[ ] Shuffling
[ ] Poor balance
[ ] Other gait description: _____
[ ] Unsteady
[ ] Poor coordination

114. Complaints regarding the musculoskeletal system.
[ ] Joint swelling
[ ] Joint stiffness
[ ] Tremors
[ ] Poor endurance
[ ] Twitching
[ ] Burning
[ ] Tingling in extremities
[ ] Other musculoskeletal complaints: _____
[ ] Joint pain
[ ] Tenderness
[ ] Deformities
[ ] Muscle weakness
[ ] Deterioration
[ ] Numbness

115. Assistive Devices:
[ ] Walker
[ ] Cane
[ ] Wheelchair
[ ] Crutches
[ ] Trapeze
[ ] Hospital Bed
[ ] Hand rails
[ ] Prosthesis: _____
[ ] Bedside Commode
[ ] Side rails
[ ] Shower chair
[ ] Other Assistive devices: _____

116. DME needed, but is not present in the home: _____
Comments: _____

117. (485-18A) Functional Limitations:
[ ] 1-Amputation
[ ] 2-Bowel/Bladder
[ ] 3-Contracture
[ ] 4-Hearing
[ ] 5-Paralysis
[ ] 6-Endurance
[ ] 7-Ambulation
[ ] 8-Speech
[ ] 9-Legally Blind
[ ] A-Dyspnea W/ Min Exert
[ ] B-Other (Specify) _____

118. (485-18B) Activities Permitted in home:
[ ] 1-Complete Bedrest
[ ] 2-Bedrest BRP
[ ] 3-Up as Tolerated
[ ] 4-Transfer Bed/Chair
[ ] 5 - Exercises Prescribed
[ ] 6-Part Wt Bearing
[ ] 7-Ind. At Home
[ ] 8-Crutches
[ ] 9-Cane
[ ] A-Wheelchair
[ ] B-Walker
[ ] C-No Restrict
[ ] D-Other _____

ADL/IADLs

For M0640-M0800, complete the "Current" column for all patients. For these same items, complete the "Prior" column only at start of care and at resumption of care: mark the level that corresponds to the patient's condition 14 days prior to start of care date (M0030) or resumptions of care date (M0032). In all cases, record what the patient is *able* to do.

119. (M0640) Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make up, teeth or denture care, fingernail care).

Prior Current
[ ] [ ] 0 - Able to groom self unaided, with or without the use of assistive devices or adapted methods.
[ ] [ ] 1 - Grooming utensils must be placed within reach before able to complete grooming activities.
[ ] [ ] 2 - Someone must assist the patient to groom self.
[ ] [ ] 3 - Patient depends entirely upon someone else for grooming needs.
[ ] UK - Unknown

120. (M0650) Ability to Dress Upper Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons, and snaps:

Prior Current
[ ] [ ] 0 - Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
[ ] [ ] 1 - Able to dress upper body without assistance if clothing is laid out or handed to the patient.
[ ] [ ] 2 - Someone must help the patient put on upper body clothing.
[ ] [ ] 3 - Patient depends entirely upon another person to dress the upper body.
[ ] UK - Unknown

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15.SOCdw

121. (M0660) Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks or nylons, shoes:

Prior Current

[ ] [ ] 0 - Able to obtain, put on, and remove clothing and shoes without assistance.
[ ] [ ] 1 - Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
[ ] [ ] 2 - Someone must help the patient put on undergarments, slacks, socks or nylons, and shoes.
[ ] [ ] 3 - Patient depends entirely upon another person to dress lower body.
[ ] UK - Unknown

122. (M0670) Bathing: Ability to wash entire body. **Excludes grooming (washing face and hands only).**

Prior Current

[ ] [ ] 0 - Able to bathe self in shower or tub independently.
[ ] [ ] 1 - With the use of devices, is able to bathe self in shower or tub independently.
[ ] [ ] 2 - Able to bathe in shower or tub with the assistance of another person: (a) for intermittent supervision or encouragement or reminders, OR (b) to get in and out of the shower or tub, OR (c) for washing difficult to reach areas.
[ ] [ ] 3 - Participates in bathing self in shower or tub, but requires presence of another person throughout the bath for assistance or supervision.
[ ] [ ] 4 - Unable to use the shower or tub and is bathed in bed or bedside chair.
[ ] [ ] 5 - Unable to effectively participate in bathing and is totally bathed by another person.
[ ] UK - Unknown

123. (M0680) Toileting: Ability to get to and from the toilet or bedside commode.

Prior Current

[ ] [ ] 0 - Able to get to and from the toilet independently with or without a device.
[ ] [ ] 1 - When reminded, assisted, or supervised by another person, able to get to and from the toilet.
[ ] [ ] 2 - Unable to get to and from the toilet but is able to use a bedside commode (with or without assistance).
[ ] [ ] 3 - Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
[ ] [ ] 4 - Is totally dependent in toileting.
[ ] UK - Unknown

124. (M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

Prior Current

[ ] [ ] 0 - Able to independently transfer.
[ ] [ ] 1 - Transfers with minimal human assistance or with use of an assistive device.
[ ] [ ] 2 - Unable to transfer self but is able to bear weight and pivot during the transfer process.
[ ] [ ] 3 - Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
[ ] [ ] 4 - Bedfast, unable to transfer but is able to turn and position self in bed.
[ ] [ ] 5 - Bedfast, unable to transfer and is unable to turn and position self.
[ ] UK - Unknown

125. (M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in a standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

Prior Current

[ ] [ ] 0 - Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
[ ] [ ] 1 - Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
[ ] [ ] 2 - Able to walk only with the supervision or assistance of another person at all times.
[ ] [ ] 3 - Chairfast, unable to ambulate but is able to wheel self independently.
[ ] [ ] 4 - Chairfast, unable to ambulate and is unable to wheel self.
[ ] [ ] 5 - Bedfast, unable to ambulate or be up in a chair.
[ ] UK - Unknown

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15-SOC/dw

126. (M0710) Feeding or Eating: Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing, not preparing the food to be eaten.**

Prior Current

[ ] [ ] 0 - Able to independently feed self.
[ ] [ ] 1 - Able to feed self independently but requires: (a) meal set-up; OR (b) intermittent assistance or supervision from another person; OR (c) a liquid, pureed or ground meat diet.
[ ] [ ] 2 - Unable to feed self and must be assisted or supervised throughout the meal/snack.
[ ] [ ] 3 - Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
[ ] [ ] 4 - Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
[ ] [ ] 5 - Unable to take in nutrients orally or by tube feeding.
[ ] UK - Unknown

127. (M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals.

Prior Current

[ ] [ ] 0 - (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR (b) is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
[ ] [ ] 1 - Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
[ ] [ ] 2 - Unable to prepare any light meals or reheat any delivered meals.
[ ] UK - Unknown

128. (M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

Prior Current

[ ] [ ] 0 - Able to independently drive a regular or adapted car; OR uses a regular or handicap-accessible public bus.
[ ] [ ] 1 - Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
[ ] [ ] 2 - Unable to ride in a car, taxi, bus, or van, and requires transportation by ambulance.
[ ] UK - Unknown

129. (M0740) Laundry: Ability to do own laundry -- to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

Prior Current

[ ] [ ] 0 - (a) Able to independently take care of all laundry tasks; OR (b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
[ ] [ ] 1 - Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
[ ] [ ] 2 - Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.
[ ] UK - Unknown

130. (M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

Prior Current

[ ] [ ] 0 - (a) Able to independently perform all housekeeping tasks; OR (b) Physically, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
[ ] [ ] 1 - Able to perform only light housekeeping (e.g., dusting, wiping kitchen counters) tasks independently.
[ ] [ ] 2 - Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
[ ] [ ] 3 - Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
[ ] [ ] 4 - Unable to effectively participate in any housekeeping tasks.
[ ] UK - Unknown

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15 SOCdw

131. (M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

Prior Current

[ ] [ ] 0 - (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR (b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e., prior to this home care admission).

[ ] [ ] 1 - Able to go shopping, but needs some assistance: (a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR (b) Unable to go shopping alone, but can go with someone to assist.

[ ] [ ] 2 - Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.

[ ] [ ] 3 - Needs someone to do all shopping and errands.

[ ] UK - Unknown

132. (M0770) Ability to Use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

Prior Current

[ ] [ ] 0 - Able to dial numbers and answer calls appropriately and as desired.

[ ] [ ] 1 - Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.

[ ] [ ] 2 - Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.

[ ] [ ] 3 - Able to answer the telephone only some of the time or is able to carry on only a limited conversation.

[ ] [ ] 4 - Unable to answer the telephone at all but can listen if assisted with equipment.

[ ] [ ] 5 - Totally unable to use the telephone.

[ ] [ ] NA - Patient does not have a telephone.

[ ] UK - Unknown

MEDICATIONS

133. (M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (NOTE: This refers to ability, not compliance or willingness.)**

Prior Current

[ ] [ ] 0 - Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.

[ ] [ ] 1 - Able to take medication(s) at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR (c) someone develops a drug diary or chart.

[ ] [ ] 2 - Unable to take medication unless administered by someone else.

[ ] [ ] NA - No oral medications prescribed.

[ ] UK - Unknown

134. (M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

Prior Current

[ ] [ ] 0 - Able to independently take the correct medication and proper dosage at the correct times.

[ ] [ ] 1 - Able to take medication at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders.

[ ] [ ] 2 - Unable to take medication unless administered by someone else.

[ ] [ ] NA - No inhalant/mist medications prescribed.

[ ] UK - Unknown

135. (M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate times/intervals. **Excludes IV medications.**

Prior Current

[ ] [ ] 0 - Able to independently take the correct medication and proper dosage at the correct times.

[ ] [ ] 1 - Able to take injectable medication at the correct times if: (a) individual syringes are prepared in advance by another person; OR (b) given daily reminders.

[ ] [ ] 2 - Unable to take injectable medications unless administered by someone else.

[ ] [ ] NA - No injectable medications prescribed.

[ ] UK - Unknown

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15.SOCdw

136. (485-14) DME and Supplies Ordered: [ ] None [ ] Enema [ ] Diabetic supplies [ ] Venipuncture: [ ] Incontinence
[ ] Sterile Wound Care [ ] Diapers: [ ] Chux (blue pads) [ ] Glucometer [ ] Foley supplies: [ ] Urinalysis
[ ] Injection supplies [ ] IV supplies [ ] Gastrostomy tube [ ] Nasogastric tube: [ ] Skin care
[ ] Ostomy supplies [ ] Central line supplies: [ ] Sterile gloves: [ ] Other (specify): _____

EQUIPMENT MANAGEMENT

137. (M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment or supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

[ ] 0 - Patient manages all tasks related to equipment completely independently.
[ ] 1 - If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
[ ] 2 - Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
[ ] 3 - Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call someone else to manage the equipment.
[ ] 4 - Patient is completely dependent on someone else to manage all equipment.
[ ] NA - No equipment of this type used in care **(If NA, skip M0820)**

138. (M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Caregiver's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

[ ] 0 - Caregiver manages all tasks related to equipment completely independently.
[ ] 1 - If someone else sets up equipment caregiver is able to manage all other aspects of equipment.
[ ] 2 - Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of the task.
[ ] 3 - Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
[ ] 4 - Caregiver is completely dependent on someone else to manage all equipment.
[ ] NA - No caregiver
[ ] UK - Unknown

REGULATORY REQUIREMENTS

139. Discussed with patient and/or significant other; understanding verbalized; copies left in folder in the home if applicable:

[ ] Federal/Patient Rights [ ] Rights of the Elderly [ ] Patient Confidentiality
[ ] Information regarding Advance Directives/DNR. [ ] Pt has made an Advance Directive. [ ] Agency has copy of DNR order: _____
[ ] Patient Liability for Payment [ ] Emergency Instructions Given [ ] Hotline #, Hours, Purpose
[ ] Grievance [ ] Abuse/Neglect/Exploitation [ ] Client Responsibilities
[ ] POC, Expected Outcomes, Barriers to Treatment
[ ] Disaster Plan: [ ] Class I - require daily or BID services and would suffer adverse effects if care were interrupted;
[ ] Class II - require home care services < daily, but > twice wkly, who would possibly have adverse consequences if services were delayed;
[ ] Class III - require home care services < twice a week who would likely not suffer adverse effects if services were delayed.

Pertinent Disaster Plan Information: (location of oxygen, insulin, etc.) _____

[ ] Patient unable to understand / sign consent form due to _____
and Significant Other legally able to sign for pt.

RISK SCREENING

140. IMMUNIZATIONS/ HEALTH SCREENING

IMMUNIZATIONS CURRENT: [ ] Unknown [ ] Current [ ] Out-of-date (Describe): _____

ROUTINE SCREENS PERFORMED: [ ] Cholesterol level [ ] Mammogram [ ] Colon Cancer Screen [ ] Prostate Cancer Screen
[ ] None [ ] Unknown [ ] Other: _____

ROUTINE SELF-EXAMINATIONS PERFORMED: (breast, testicular) [ ] Yes [ ] No [ ] Unknown

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15-SOCdw

141. HIGH RISK ASSESSMENT:

SKIN BREAKDOWN RISK: [ ] Yes [ ] No

Preventative Measures Initiated: [ ] Special Mattress [ ] Inst.on repositioning q2h [ ] Use of lifting device
[ ] Wheelchair precautions [ ] Encourage activity [ ] Inst. On adequate hydration
[ ] E.T. referral made [ ] Other: _____

FALL RISK: [ ] Yes [ ] No

Preventative Measures Initiated: [ ] Inst. safe transfer techniques [ ] Inst. on ambulatory devices
[ ] Inst. on maintenance of safe environment [ ] P.T. referral made [ ] Other: _____

NUTRITIONAL DEFICIT RISK: [ ] Yes [ ] No

Preventative Measures Initiated: [ ] Inst. On adequate fluids [ ] Inst. on therapeutic diet
[ ] Dietician referral made [ ] MSW referral made [ ] Other: _____

142. TUBERCULOSIS SCREENING:

TB SCREEN: (Symptoms Observed or Reported) [ ] Persistent cough > 3wks [ ] Hemoptysis [ ] Night sweats [ ] Weight loss
[ ] Anorexia [ ] Fever/chills [ ] None

(TB SCREEN) HIGH RISK GROUP: [ ] HX of Tuberculosis [ ] History of positive PPD Skin Test [ ] Immuno-compromised
[ ] Adolescent child < 15 [ ] Elderly patient > 65 [ ] Pneumonia
[ ] Health Care Worker [ ] Prison Employee [ ] Poverty/Homeless
[ ] Medically underserved, low income, high-risk ethnic minority (African-American, Hispanic, Native American)
[ ] Community Living [ ] Alcohol/drug abuse [ ] Recent exposure to "active" TB case
[ ] Recent immigration [ ] None

(TB SCREEN) CHRONIC ILLNESS: [ ] Diabetes Mellitus [ ] Chronic immuno-suppressive Tx [ ] Hematological disease
[ ] End-Stage Renal disease [ ] Intestinal Bypass [ ] Post-gastrectomy
[ ] Chronic Malabsorption Syndrome [ ] Cancer of mouth/GI tract
[ ] 10% below ideal body wt. [ ] None

If high risk group identified & exhibits 1 or more symptoms, patient is potentially a TB client.

Potential TB Client: [ ] Yes [ ] No

REQUIRED SKILLS

143. (486-15) Skilled Nursing required for: (describe assessment and instruction plans, other skills needed.)

144. (486-15) HCA required for assistance with personal care due to : (describe reasons pt/s.o. cannot perform these tasks alone.)

145. (486-15) PT/ST/OT required for evaluation and treatment due to: (describe pt's limitations in ADLs, ROM, ambulation, swallowing, etc.)

146. (486-15) MSW required to provide assistance with:

147. Barriers to Learning (pt and s.o.):

[ ] Illiteracy [ ] Speech/Language barrier (primary language): _____ [ ] Visual impairment [ ] Anxiety
[ ] Forgetful [ ] Impaired mental status [ ] HOH [ ] Pt /s.o. unwilling/unable to learn.
[ ] Cultural barriers [ ] Financial barriers [ ] Poor comprehension [ ] Religious barriers: _____
Education Level: _____ [ ] Other learning barriers: _____

148. Knowledge Deficit Identified:

[ ] Aseptic Technique [ ] Catheter Care [ ] Disease Process, Complications, Reportable Signs & Symptoms [ ] Diet/Nutritional Needs
[ ] Proper Disposal of Hazardous Waste [ ] Safety Precautions [ ] Maintenance of Skin Integrity [ ] Pain Management
[ ] Oxygen Therapy [ ] Ostomy Care [ ] Enteral Therapy [ ] Infection Control [ ] Medication Regimen
[ ] Mobility [ ] Wound Care [ ] Other: _____

NURSE SIGNATURE: **DATE:**

PATIENT NAME:

© 1998 PATHNotes, Inc.
98.10.15 SOCldw

[1& 2] START OF CARE ASSESSMENT

149. (486-16) Reasons Homebound:

[ ] Pt requires the aid of supportive devices to leave home.
[ ] It is extremely taxing for pt to leave home.
[ ] Pt is bedbound.
[ ] Pt has acute exacerbation making it medically contraindicated to leave home.
[ ] Pt requires maximum assist in all activities.
[ ] Pt is OOE.
[ ] It would require max assist of 1-2 adults for pt to leave home.
[ ] Pt is wheelchair bound and requires assist to leave home.
[ ] It would require ambulance transfer for pt to leave home.
[ ] Pt's activity severely restricted as a result of pain process.
[ ] Pt has cardiac/pulmonary condition of such severity that all stress and physical activity should be avoided.
[ ] Pt is SOB at rest.
[ ] Pt's mobility is severely restricted due to _____
[ ] Pt weak with poor endurance due to _____
[ ] Other: _____

150. (486-15) Other Pertinent Information: [ ] Universal (Standard) Precautions Observed During Visit [ ] Sharps disposed per agency policy

[ ] Biohazardous waste disposed per agency policy

[ ] Family/S.O. present at time of interview: _____

[ ] Persons/Organizations providing assistance to patient: _____

151. (486-15) Skilled Interventions Performed This Visit: (including teaching) [ ] A1 - Skilled Observation & Assessment

[ ] A2 - Foley Catheter Insertion/Change [ ] A6 - Venipuncture [ ] Glucometer [ ] A4/A5/A28/A29 - Wound Care

[ ] A32 - Teaching & Training: medical/emergency numbers oxygen safety high risk meds environmental risks [ ] Medication Administration

[ ] Pt/S.O. response to teaching/interventions: _____

152. Plans for Next Visit: _____

153. Supplies Provided This Visit: [ ] *See attached Supply Sheet* _____

154. Physician Contacted: _____

NURSE SIGNATURE: **DATE:**

PATIENT NAME: **TIME IN:** **TIME OUT:**

PHYSICAL THERAPY
SOC/ RESUMPTION OF CARE COMPREHENSIVE PATIENT ASSESSMENT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI _____

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: _____

(M0016) Branch ID Number: _____ (Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: _____/_____/_____ month day year
☐NA - Not Applicable

(M0040) Patient Name:
_____ _____ _____
First M! Last Suffix

(M0050) Patient's State of Residence: _____

Address: _____

(M0060) Patient Zip Code:

Patient Phone: (_____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - _____ - ____
☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: _____/_____/_____ month day year

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____
☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:
☐ 1-RN ☐ 2-PT ☐ 3-SLP/ST ☐ 4-OT

(M0090) Date Assessment Completed:
_____/_____/_____
month day year

(M0100) This Assessment is Currently Being Completed for the Following Reason:

Start / Resumption of Care
- ☐1. Start of care - further visits planned
- ☐2. Start of care - no further visits planned
- ☐3. Resumptions of care (after inpatient stay)

DEMOGRAPHICS AND PATIENT HISTORY

(M0140) Race/Ethnicity (as identified by patient): (Mark all that apply)

- ☐1. American Indian or Alaska Native
- ☐2. Asian
- ☐3. Black or African-American
- ☐4. Hispanic or Latino
- ☐5. Native Hawaiian or Pacific Islander
- ☐6. White
- ☐UK Unknown

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____
- ☐UK Unknown

(M0160) Financial factors limiting the ability of the patient/family to meet basic health needs: (Mark all that apply.)

- ☐0. None
- ☐1. Unable to afford medicine or medical supplies
- ☐2. Unable to afford medical expenses that are not covered by Insurance/Medicare (e.g., copayments)
- ☐3. Unable to afford rent/utility bills
- ☐4. Unable to afford food
- ☐5. Other (specify) _____
- ☐ MSS referral

(M0170) From which of the following Inpatient Facilities was the patient discharged during the past 14 days? (Mark all that apply.)

- ☐1. Hospital
- ☐2. Rehabilitation Facility
- ☐3. Nursing Home
- ☐4. Other (specify) _____
- ☐N/A Patient was not discharged from an inpatient facility (If N/A, go to MO200)

(M0180) Inpatient Discharge Date (most recent):

_____/_____/_____
month day year

☐UK Unknown

(M0190) Inpatient Diagnosis and ICD code categories (three digits required, five digits optional) for only those conditions treated during an inpatient facility stay within the last 14 days (no surgical or V-codes):

Inpatient Facility Diagnosis	ICD
a. _____	(__ __ __ __ __)
b. _____	(__ __ __ __ __)

(M0200)**Medical or Treatment Regimen Change within Past 14-days:** Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

- ☐0. No (If NO, go to M0220)
- ☐1. Yes

(M0210) List the patients **Medical Diagnosis** and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical regimen: (no surgical or V-codes)

Changed Medical Regimen Diagnosis:	ICD
a. _____	(_ _ _ _ _)
b. _____	(_ _ _ _ _)
c. _____	(_ _ _ _ _)
d. _____	(_ _ _ _ _)

(M0220)**Conditions Prior to Medical or Treatment Regimen Change or Inpatient Stay Within Past 14 days:** If this patient experienced an inpatient facility discharge or change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the inpatient stay or change in medical or treatment regimen. **(Mark all that apply).**

- ☐1. Urinary Incontinence
- ☐2. Indwelling/suprapubic catheter
- ☐3. Intractable pain
- ☐4. Impaired decision-making
- ☐5. Disruptive or socially inappropriate behavior
- ☐6. Memory loss to the extent supervision required
- ☐7. None of the above
- ☐NA No inpatient facility discharge and no change in medical or treatment regimen in past 14 days
- ☐UK Unknown

Last MD Visit: _____

CURRENT ILLNESS

(M0230/M0240) Diagnoses and Severity Index: List each medical diagnosis or problem for which the patient is receiving home care and ICD code category (three digits required; five digits optional - no surgical or V-codes) and rate them using the following severity index. (Choose one value that represents the most severe rating appropriate for each diagnosis.)

0 - Asymptomatic, no treatment needed at this time
1 - Symptoms well controlled with current therapy
2 - Symptoms controlled with difficulty, affecting daily functioning; patient needs ongoing monitoring
3 - Symptoms poorly controlled, patient needs frequent adjustment in treatment and dose monitoring
4 - Symptoms poorly controlled, history of rehospitalizations

(M0230) Primary Diagnosis	ICD	Severity Rating					Exacerbation Date
a. _____	(_ _ _ _ _)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
(M0240) Other Diagnoses	**ICD**	**Severity Rating**					
b. _____	(_ _ _ _ _)						_____
c. _____	(_ _ _ _ _)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
d. _____	(_ _ _ _ _)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
e. _____	(_ _ _ _ _)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
f. _____	(_ _ _ _ _)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
		☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____

(M0250)**Therapies** the patient receives at home: **(Mark all that apply.)**

- ☐1. Intravenous or Infusion therapy (excludes TPN)
- ☐2. Parenteral nutrition (TPN or lipids)
- ☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐4. None of the above

(M0260) Overall Prognosis: BEST description of patient's overall prognosis for recovery from this episode of illness.

- ☐0. Poor: little or no recovery is expected and/or further decline is imminent
- ☐1. Good/Fair: partial to full recovery is expected
- ☐UK Unknown

(M0270) Rehabilitative Prognosis: BEST description of patient's prognosis for functional status

- ☐0. Guarded: minimal improvement in functional status is expected; decline is possible
- ☐1. Good: marked improvement in functional status is expected
- ☐UK Unknown

PRIOR LEVEL OF FUNTIONS:

(M0280) Life Expectancy: (Physician documentation is not required.)

- ☐0. Life expectancy is greater than 6 months
- ☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**

- ☐1. Heavy smoking
- ☐2. Obesity
- ☐3. Alcohol Dependency
- ☐4. Drug Dependency
- ☐5. None of the above
- ☐UK Unknown

☐ **MSS Referral**

Significant Past Health History:

LIVING ARRANGEMENTS

(M0300) **Current Residence**:
- ☐1. Patient's owned or rented residence (house, apartment, or trailer owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(MO310) **Structural Barriers:** in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

ENVIRONMENTAL SAFETY

(MO320) **Safety Hazards** found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(MO330) **Sanitation Hazards** found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

COMMENTS/NOTES/REHAB ENVIRONMENT:

(M0340) **Patient Lives With: (Mark all that apply).**
- ☐1. Lives alone
- ☐2. With spouse/significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help (e.g.other than home care agency staff)
- ☐6. With other than above

SUPPORTIVE ASSISTANCE

(M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply).
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid help
- ☐4. None of the above **(If None of the above, go to M0390)**
- ☐UK Unknown **(If Unknown go to MO390)**

(MO360) **Primary Caregiver** taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):
- ☐0. No one person **(If No one person, go to MO390)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or neighbor or community or church member
- ☐5. Paid help
- ☐UK Unknown **(If Unknown go to M0390)**

(M0370) **How Often** does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly
- ☐UK Unknown

(M0380) Type of Primary Caregiver Assistance: (Mark all that apply).
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney
- ☐UK Unknown

Name/Relation of Caregiver (s)

_____

_____

_____

☐ **Yes** ☐ **No Able & willing to assist?**

☐ **MSS REFERRAL**

EVALUATION Strength (1-5) ROM (1-5)
ENDURANCE
BALANCE SITTING STANDING
PAIN/EDEMA (1-10)
GAIN/DEVIATIONS

(M0390) Vision with corrective lenses if the patient usually wears them:

- ☐0. Normal vision: sees adequately in most situations; can see medication labels, newsprint.
- ☐1. Partially impaired: cannot see medication labels or newsprint, but can see obstacles in path, and surrounding layout; can count fingers at arm's length.
- ☐2. Severely impaired: cannot locate objects without hearing or touching them or patient nonresponsive.

(M0400) Hearing and Ability to Understand Spoken Language in patient's own language (with hearing aides if the patient usually uses them).

- ☐0. No observable impairment. Able to hear understand complex or detailed instructions and extended or abstract conversation.
- ☐1. With minimal difficulty able to hear and understand most multi-step instructions and ordinary conversation. May need occasional repetition, extra time, or louder voice.
- ☐2. Has moderate difficulty hearing and understanding simple, one-step instructions and brief conversation; needs frequent prompting or assistance.
- ☐3. Has severe difficulty hearing and understanding simple greetings and short comments. Requires multiple repetitions, restatements, demonstrations, additional time.
- ☐4. Unable to hear and understand familiar words or common expressions consistently, or patient nonresponsive.

(M0410) Speech and Oral (Verbal) Expression of Language (In patients own language)

- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar of speech intelligibility; needs minimal prompting or assistance).
- ☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
- ☐4. Unable to express basic needs even with maximal prompting assistance but is not comatose or /unresponsive (e.g., speech is nonsensical or unintelligible).
- ☐5. Patient nonresponsive or unable to speak.

☐ **ST Referral**

(M0420) Frequency of Pain interfering with patient's activity or movement:

- ☐0. Patient has no pain or pain does not interfere with activity or movement.
- ☐1. Less often then daily
- ☐2. Daily, but not constantly
- ☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

- ☐0. No
- ☐1. Yes

COMMENT: DESCRIBE PAIN MANAGEMENT/SKIN ASSESSMENT

(M0440) Does this patient have a **Skin Lesion** or an **Open Wound**? This excludes "OSTOMIES."

- ☐0. No **(If No, go to MO490)**
- ☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

- ☐0. No **(If No, go to MO468)**
- ☐1. Yes

(M0450) **Current Number of Pressure Ulcers at Each Stage:** (Circle one response for each stage.)

Pressure Ulcer Stages	Number of Pressure Ulcers				
	0 Zero	1	2	3	4 or more
a) Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b) Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c) Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d) Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage of muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e) In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure Ulcer:

☐1. Stage 1
☐2. Stage 2
☐3. Stage 3
☐4. Stage 4
☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:

☐1. Fully granulating
☐2. Early/Partial granulation
☐3. Not healing
☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

☐0. No **[If No, go to M0482]**
☐1. Yes

(M0470) Current Number of Observable Stasis Ulcer(s):
☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?
☐0. No
☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer:

☐1. Fully granulating
☐2. Early/partial granulation
☐3. Not healing
☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**

☐0. No**[If No, go to M0490]**
☐1. Yes

(M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0488) Status of Most Problematic (Observable) Surgical Wound:

☐1. Fully granulating
☐2. Early/Partial Granulation
☐3. Not healing
☐NA No observable surgical wound

RESPIRATORY STATUS

(M0490) When is the patient dyspneic or noticeably **Short of Breath?**
☐0. Never, patient is not short of breath
☐1. When walking more than 20 feet, climbing stairs
☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
☐3. With minimal exertion (e.g., while eating, talking or performing ADLs) or with agitation
☐4. At rest (during day or night)

(M0500) Respiratory Treatments utilized at home: **(Mark all that Apply).**
☐1. Oxygen (intermittent or continuous)
☐2. Ventilator (continually or at night)
☐3. Continuous positive airway pressure
☐4. None of the above

ELIMINATION STATUS

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
- ☐0. No
- ☐1. Yes
- ☐NA Patient on prophylactic treatment
- ☐UK Unknown

(M0520) Urinary Incontinence or Urinary Catheter Presence:
- ☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
- ☐1. Patient is incontinent
- ☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) When does **Urinary Incontinence** occur?
- ☐0. Timed-voiding defers incontinence
- ☐1. During the night only
- ☐2. During the day and night

(M0540) Bowel Incontinence Frequency:
- ☐0. Very rarely or never has bowel incontinence
- ☐1. Less than once weekly
- ☐2. One to three times weekly
- ☐3. Four to six times weekly
- ☐4. On a daily basis
- ☐5. More often than once daily
- ☐NA Patient has ostomy for bowel elimination
- ☐UK Unknown

(M0550)Ostomy for Bowel Elimination: Does this patient have an ostomy for bowel elimination that (within the last 14 days): a) was related to an inpatient facility stay, or b) necessitated a change in medical or treatment regimen?
- ☐0. Patient does not have an ostomy for bowel elimination
- ☐1. Patient's ostomy was not related to an inpatient stay and did not necessitate change in medical or treatment regimen.
- ☐2. The ostomy was related to an inpatient stay or did necessitate change in medical or treatment regimen.

NEURO/EMOTIONAL/ BEHAVIORAL STATUS

(M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
- ☐0. Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
- ☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
- ☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
- ☐3. Requires considerable assistance in routine situations. Is not alert and oriented, or is unable to shift attention and recall directions more than half the time.
- ☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) When Confused (Reported or Observed):
- ☐0. Never
- ☐1. In new or complex situations only
- ☐2. On awakening or at night only
- ☐3. During the day and evening, but not constantly
- ☐4. Constantly
- ☐NA Patient nonresponsive

(M0580) When Anxious (Reported or Observed)
- ☐0. None of the time
- ☐1. Less often than daily
- ☐2. Daily, but not constantly
- ☐3. All of the time
- ☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply)
- ☐1. Depressed mood (e.g. feeling sad, tearful)
- ☐2. Sense of failure or self reproach
- ☐3. Hopelessness
- ☐4. Recurrent thoughts of death
- ☐5. Thoughts of suicide
- ☐6. None of the above feelings observed

(M0600) Patient Behaviors (Reported or Observed: (Mark all that apply.)
- ☐1. Indecisiveness, lack of concentration
- ☐2. Diminished interest in most activities
- ☐3. Sleep disturbances
- ☐4. Recent change in appetite or weight
- ☐5. Agitation
- ☐6. A suicide attempt
- ☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated at Least Once a Week (Reported or Observed): (Mark all that apply.)
- ☐1. Memory deficit; failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
- ☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
- ☐3. Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
- ☐4. Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects).
- ☐5. Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
- ☐6. Delusional, hallucinatory, or paranoid behavior .
- ☐7. None of the above behaviors demonstrated.

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.)
- ☐0. Never
- ☐1. Less than once a month
- ☐2. Once a month
- ☐3. Several times each month
- ☐4. Several times a week
- ☐5. At least daily

(M0630) Is the patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?
- ☐0. No
- ☐1. Yes

☐ **MSS REFERRAL**

ADL/IADL'S

For M0640-M0800, complete the "Current" column for all patients. For these same items, complete the "Prior" column only at start of care and at resumption of care; mark the level that corresponds to the patient's condition 14 days prior to start of care date (M0030) or resumption of care date (M0032). In all cases, record what the patient is *able* to do.

USE TO PREPARE HHA CARE PLAN

(M0640) Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

Prior	Current	
☐	☐0.	Able to groom self unaided, with or without the use of assistive devices or adapted methods.
☐	☐1.	Grooming utensils must be placed within reach before able to complete grooming activities.
☐	☐2.	Someone must assist the patient to groom self.
☐	☐3.	Patient depends entirely upon someone else for grooming needs.
☐	UK	Unknown

(M0650) Ability to Dress Upper Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

Prior	Current	
☐	☐0.	Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
☐	☐1.	Able to dress upper body without assistance if clothing is laid out or handed to the patient.
☐	☐2.	Some must help the patient put on upper body clothing
☐	☐3.	Patient depends entirely upon another person to dress the upper body.
	☐UK	Unknown

(M0660) Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

Prior	Current	
☐	☐0.	Able to obtain, put on, and remove clothing and shoes without assistance.
☐	☐1.	Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
☐	☐2.	Someone must help the patient put on undergarments, slacks, socks, or nylons, and shoes.
☐	☐3.	Patient depends entirely upon another person to dress lower body.
	☐UK	Unknown

(M0670) Bathing: Ability to wash entire body. **Excludes grooming (washing face and hands only).**

Prior	Current	
☐	☐0.	Able to bathe self in shower or tub independently.
☐	☐1.	With the use of devices, is able to bathe self in shower or tub independently.
☐	☐2.	Able to bathe in shower or tub with the assistance of another person: (a)for intermittent supervision or encouragement or reminders, OR (b) to get in and out of the shower or tub OR (c) for washing difficult to reach areas.
☐	☐3.	Participates in bathing self in shower or tub, but requires presences of another person throughout the bath for assistance or supervision.
☐	☐4.	Unable to use the shower or tub and is bathed in bed or bedside chair
☐	☐5.	Unable to effectively participate in bathing and is totally bathed by another person.
☐	UK	Unknown

(M0680) Toileting: Ability to get to and from the toilet or bedside commode.

Prior	Current	
☐	☐0.	Able to get to and from the toilet independently with or without a device.
☐	☐1.	When reminded, assisted, or supervised by another person, able to get to and from the toilet.
☐	☐2.	Unable to get to and from the toilet but is able to use a bedside commode(with or without assistance).
☐	☐3.	Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
☐	☐4.	Is totally dependent in toileting
☐	UK	Unknown
☐	HHA	REFERRAL

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

Prior	Current	
☐	☐0.	Able to independently transfer.
☐	☐1.	Transfers with minimal human assistance or with use of an assistive device.
☐	☐2.	Unable to transfer self but is able to bear weight and pivot during the transfer process.
☐	☐3.	Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
☐	☐4.	Bedfast, unable to transfer but is able to turn and position self in bed.
☐	☐5.	Bedfast, unable to transfer and is unable to turn and position self.
☐	UK	Unknown

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

Prior	Current	
☐	☐0.	Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
☐	☐1.	Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
☐	☐2.	Able to walk only with supervision or assistance of another person at all times.
☐	☐3.	Chairfast, unable to ambulate but is able to wheel self independently.
☐	☐4.	Chairfast, unable to ambulate and is unable to wheel self.
☐	☐5.	Bedfast, unable to ambulate or be up in a chair
	☐UK	Unknown

☐ **Patient is homebound due to functional limitations.**

(M0710)Feeding or Eating: Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

Prior Current
☐ ☐0. Able to independently feed self.
☐ ☐1. Able to feed self independently but requires:
(a) meal set-up; OR
(b) intermittent assistance or supervision from another person; OR
(c) a liquid, pureed or ground meat diet.
☐ ☐2. Unable to feed self and must be assisted or supervised throughout the meal/snack.
☐ ☐3. Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
☐ ☐4. Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
☐ ☐5. Unable to take in nutrients orally or by tube feeding.
☐UK Unknown
☐ **HHA REFERRAL**

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals.

Prior Current
☐ ☐0. (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
(b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
☐ ☐1. Unable to prepare light meals on a regular basis due to physical, cognitive, and mental limitations.
☐ ☐2. Unable to prepare any light meals or reheat any delivered meals.
☐ UK Unknown
☐ **HHA REFERRAL**

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

Prior Current
☐ ☐0. Able to independently drive a car or adapted car, OR uses a regular or handicap-accessible public bus.
☐ ☐1. Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
☐ ☐2 Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.
☐ UK Unknown
☐ **Patient is homebound due to above.**

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

Prior Current
☐ ☐0. (a) Able to independently take care of all laundry tasks; OR
(b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
☐ ☐1. Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
☐ ☐2. Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.
☐ UK Unknown

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

Prior Current
☐ ☐0. (a) Able to independently perform all housekeeping tasks; OR
(b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
☐ ☐1. Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
☐ ☐2. Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
☐ ☐3. Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
☐ ☐4. Unable to effectively participate in any housekeeping tasks.
☐ UK Unknown

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

Prior Current
☐ ☐0. (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR
(b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
☐ ☐1. Able to go shopping, but needs some assistance:
(a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR
(b) Unable to go shopping alone, but can go with someone to assist.
☐ ☐2. Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
☐ ☐3. Needs someone to do all shopping and errands.
☐UK Unknown

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

Prior Current
☐ ☐0. Able to dial numbers and answer calls appropriately and as desired.
☐ ☐1. Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
☐ ☐2. Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
☐ ☐3. Able to answer the telephone only some of the time or is able to carry only a limited conversation.
☐ ☐4. Unable to answer the telephone at all but can listen if assisted with equipment.
☐ ☐5. Totally unable to use the telephone.
☐ ☐NA Patient does not have a telephone.

☐ UK Unknown
☐ MSS REFERRAL
☐ OT REFERRAL

MEDICATIONS - COMPLETE MEDICATION PROFILE

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

Prior	Current	
☐	☐0.	Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
☐	☐1.	Able to take medication(s) at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR (c) someone develops a drug diary or chart
☐	☐2.	Unable to take medication unless administered by someone else.
☐	NA	No oral medications prescribed
☐	UK	Unknown

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

Prior	Current	
☐	☐0.	Able to independently take the correct medication and proper dosage at the correct times.
☐	☐1.	Able to take medication at the correct times if: (a) individual dosages are prepared in advance by another person, OR (b) given daily reminders.
☐	☐2.	Unable to take medication unless administered by someone else.
☐	☐NA	No inhalant/mist medication prescribed.
☐	UK	Unknown

(M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. **Excludes IV medications.**

Prior	Current	
☐	☐0.	Able to independently take the correct medication and proper dosage at the correct times.
☐	☐1.	Able to take injectable medication at correct times if: a) individual syringes are prepared in advance by another person, OR b) given daily reminders.
☐	☐2.	Unable to take injectable medications unless administered by someone else.
☐	☐NA	No injectable medications prescribed.
☐	☐UK	Unknown

FUNCTIONAL LIMITATIONS:
Specify level of assistance

Rolls_____
Assumes sitting over edge of bed_____
In and Out of Bed_____
Toilet Independence_____
Feeds Self_____
In and Out of Chair_____
Down and Up from Floor_____
In and Out of Shower/Tub_____
Bathes/Grooms Self_____
Dresses Self_____
Wheelchair Independence Indoors_____
Walks all Directions/Surfaces_____
Climbs Stairs_____
Car Transfers_____

APPLIANCE/AIDS/Special Equip. Used by Patient

Yes	No	
☐	☐	Ambulation Aide, Other
☐	☐	Prosthetic Device
☐	☐	Pacemaker
☐	☐	Hearing Aid
☐	☐	Tub Stool
☐	☐	Hospital Bed
☐	☐	Special Transferring Equipment
☐	☐	Special Toileting Equipment
☐	☐	Colostomy Bag
☐	☐	Cane
☐	☐	Dentures
☐	☐	Walker
☐	☐	Grab Bar
☐	☐	Commode
☐	☐	Catheter
☐	☐	Oxygen
☐	☐	Wheelchair
☐	☐	Leg Brace
☐	☐	Other_____

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment/supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness)**

☐0. Patient manages all tasks related to equipment completely independently.
☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
☐4. Patient is completely dependent on someone else to manage all equipment.
☐NA No equipment of this type used in care **[If NA, skip M0820]**

(M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion therapy equipment, enteral/parenteral nutrition, ventilator therapy equipment or supplies): Caregivers' ability to set up, monitor, and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment/supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

☐0. Caregiver manages all tasks related to equipment completely independently.
☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
☐3. Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
☐4. Caregiver is completely dependent on someone else to manage all equipment.
☐NA No caregiver
☐UK Unknown

Consents signed prior to TX: ☐Yes ☐No
Patient unable to sign due to:_____

Advance Directive: ☐Yes ☐No
Copy requested: ☐Yes ☐No I am ☐able ☐unable to furnish Agency with a copy of my Advance Directive.
Advance Directive document is a ☐ Durable Power of Attorney ☐ Living Will ☐ Out of Hospital DNR ☐ Other:_____
Treatment Choices Include: ☐ Do not Resuscitate ☐ Forego life-sustaining treatment ☐ Intubation ☐ Ventilator ☐ Tube Feeding ☐ IV hydration ☐ Other:_____

Prior to PT/CG signature, PT read/explained:
☐ Consent ☐ Rights/Responsibilities ☐ Advance Directive
☐ Confidentiality ☐ All admission documents
☐ Other:_____

Instructed PT/CG on: ☐ Safety Measures ☐ ER Procedures
☐ 24-Hr on-call numbers ☐ S/S to report ☐ other:_____
☐ PT/CG verbalizes understanding of instruction.
Left in Home: ☐ Admission Booklet ☐ Copies of all signed documents ☐Other:_____

MSS referral needed for problems identified in sections:
Patient history, living arrangements, environmental safety, supportive assistance, nuero/emotional/behavior status.
Referral made ☐Yes ☐No

OT ST referral needed for problems identified in sections:
ADL/IADL, muscular motor.
☐ OT ☐ ST Referral made ☐Yes ☐No

SKILLED INTERVENTION

PROBLEMS:	GOALS:
1.	1.
2.	2.
3.	3.
4.	4. Anticipated Completion Date:
REHAB POTENTIAL: GOOD_____ FAIR_____ POOR	**DISCHARGE PLAN/LONG TERM GOALS:**
PLAN OF CARE ESTABLISHED WITH: _____PATIENT _____FAMILY _____OTHER_____	

THERAPIST SIGNATURE:_____**DATE:**_____

PHYSICAL THERAPY
RECERTIFICATION EVALUATION/FOLLOW-UP VISIT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: ____

(M0016) Branch ID Number: _____ (Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: ____/____/____ month day year

☐NA - Not Applicable

(M0040) Patient Name:

_____ _____ _____
First MI Last Suffix

(M0050) Patient's State of Residence: _____

Address: _____

_____

(M0060) Patient Zip Code:

Patient Phone: (____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - ____ - ____

☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: ____/____/____ month day year

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____

☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:

☐ 1-RN ☒ 2-PT ☐ 3-SLP/ST ☐ 4-OT

(M0090) Date Assessment Completed:

____/____/____ month day year

(M0100) This assessment is currently being completed for the following reason:

- ☐1. **Recertification (follow-up) reassessment [go to M0150]**
- ☐2. **Other follow-up (go to M0150)**

☐ Increase in frequency ☐ Significant changes in s/s

DEMOGRAPHICS AND PATIENT HISTORY

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____

(M0200) Medical or Treatment Regimen Change within Past 14-days: Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

- ☐0. No (If NO, go to M0250)
- ☐1. Yes

(M0210) List the patients Medical Diagnosis and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical or treatment regimen: (no surgical or V-codes)

Changed medical Regimen Diagnosis:	ICD
a. _____	(_ _ _._ _)
b. _____	(_ _ _._ _)
c. _____	(_ _ _._ _)
d. _____	(_ _ _._ _)

(M0220) Conditions Prior to Medical or Treatment Regimen Change Within Past 14 days: If this patient experienced a change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the change in medical or treatment regimen. (Mark all that apply).

- ☐1. Urinary incontinence
- ☐2. Indwelling/suprapubic catheter
- ☐3. Intractable pain
- ☐4. Impaired decision making
- ☐5. Disruptive or socially inappropriate behavior
- ☐6. Memory loss to the extent supervision required
- ☐7. None of the above

Last MD Visit: _____

(M0250) Therapies the patient receive at home: (Mark all that apply.)

- ☐1. Intravenous or Infusion Therapy (excludes TPN)
- ☐2. Parenteral Nutrition (TPN or lipids)
- ☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐4. None of the above

(M0280) Life Expectancy: (Physician documentation is not required.)
- ☐0. Life expectancy is greater than 6 months
- ☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**
- ☐1. Heavy smoking
- ☐2. Obesity
- ☐3. Alcohol Dependency
- ☐4. Drug Dependency
- ☐5. None of the above
- ☐ **MSS Referral**

LIVING ARRANGEMENTS

(M0300) Current Residence:
- ☐1. Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(MO310) Structural Barriers in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

(MO320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(MO330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

COMMENTS/NOTES/REHAB ENVIRONMENT

(M0340) Patient Lives With: (Mark all that apply).
- ☐1. Lives alone
- ☐2. With spouse/significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help (other than home care agency staff)
- ☐6. With other than above

SUPPORTIVE ASSISTANCE

(M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply).
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid Help
- ☐4. None of the above **(If None of the above, go to M0410)**

(MO360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc.) (Other than home care agency staff):
- ☐0. No one person **(If No one person, go to M0410)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or Neighbor or community or church member
- ☐5. Paid help

(M0370) How Often does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly

(M0380) Type of Primary Caregiver Assistance: (Mark all that apply).
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney
- ☐ MSS REFERRAL

EVALUATION Strength (1-5) ROM (1-5)
ENDURANCE
BALANCE SITTING STANDING
PAIN/EDEMA (1-10)
GAIN/DEVIATIONS

SENSORY STATUS

(M0410) Speech and Oral (Verbal) Expression of Language (In patient's own language):

- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar of speech intelligibility; needs minimal prompting or assistance).
- ☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
- ☐4. Unable to express basic needs even with maximal prompting assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
- ☐5. Patient unresponsive, unable to speak.
- ☐ **ST REFERRAL**

PHYSICAL ASSESSMENT

(M0420) Frequency of Pain interfering with the patient's activity or movement:

- ☐0. Patient has no pain or pain does not interfere with activity or movement.
- ☐1. Less often then daily
- ☐2. Daily, but not constantly
- ☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

- ☐0. No
- ☐1. Yes

INTEGUMENTARY STATUS

(M0440) Does the patient have a **Skin Lesions** or an **Open Wound**? This excludes "OSTOMIES."

- ☐0. No **(If No, go to M0490)**
- ☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

- ☐0. No **(If No, go to MO468)**
- ☐1. Yes

(M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

	Pressure Ulcer Stages	Number of Pressure Ulcers 0 Zero	1	2	3	4 or more
a)	Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b)	Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The Ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c)	Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d)	Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage of muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e)	In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure **Ulcer:**
- ☐1. Stage 1
- ☐2. Stage 2
- ☐3. Stage 3
- ☐4. Stage 4
- ☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:

- ☐1. Fully granulating
- ☐2. Early/Partial granulation
- ☐3. Not healing
- ☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

- ☐0. No **[If No, go to M0482]**
- ☐1. Yes

(M0470) Current number of Observable Stasis Ulcer(s):
- ☐0. Zero
- ☐1. One
- ☐2. Two
- ☐3. Three
- ☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?
- ☐0. No
- ☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer:

- ☐1. Fully granulating
- ☐2. Early/partial granulation
- ☐3. Not healing
- ☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**

- ☐0. No **(If No go to M0490)**
- ☐1. Yes

(M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

- ☐0. Zero
- ☐1. One
- ☐2. Two
- ☐3. Three
- ☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be observed** due to the presence of a nonremovable dressing?
- ☐0. No
- ☐1. Yes

(M0488) Status of Most Problematic (Observable) Surgical **Wound:**

- ☐1. Fully granulating
- ☐2. Early/Partial Granulation
- ☐3. Not healing
- ☐NA No observable surgical wound

(M0490) When is the patient dyspneic or noticeably **Short of Breath**?
- ☐0. Never, patient is not short of breath
- ☐1. When walking more than 20 feet, climbing stairs
- ☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
- ☐3. With minimal exertion (e.g., while eating, talking or performing ADLs) or with agitation
- ☐4. At rest (during day and/or night)

(M0500) Respiratory Treatments utilized at home: **(Mark all that Apply).**
- ☐1. Oxygen (intermittent or continuous)
- ☐2. Ventilator (continually or at night)
- ☐3. Continuous positive airway pressure
- ☐4. None of the above

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
- ☐0. No
- ☐1. Yes
- ☐NA Patient on prophylactic treatment

(M0520) Urinary Incontinence or Urinary Catheter Presence:
- ☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
- ☐1. Patient is incontinent
- ☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) When does **Urinary Incontinence** occur?
- ☐0. Timed-voiding defers incontinence
- ☐1. During the night only
- ☐2. During the day and night

(M0540) Bowel Incontinence Frequency:
- ☐0. Very rarely or never has bowel incontinence
- ☐1. Less than once weekly
- ☐2. One to three times weekly
- ☐3. Four to six times weekly
- ☐4. On a daily basis
- ☐5. More often than once daily
- ☐NA Patient has ostomy for bowel elimination

(M0550) Ostomy for Bowel Elimination: Does this patient have an ostomy that (within the last 14 days) necessitated a change in medical or treatment regimen?
- ☐0. Patient does not have an ostomy for bowel elimination
- ☐1. Patient's ostomy did not necessitate change in medical or treatment regimen.
- ☐2. The ostomy did necessitate change in medical or treatment regimen.

(M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
- ☐0. Alert/oriented able to focus and shift attention, comprehends and recalls task directions independently.
- ☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
- ☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
- ☐3. Requires considerable assistance in routine situations. Is not alert and oriented or is unable to shift attention and recall directions more than half the time.
- ☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) When Confused (Reported or Observed):
- ☐0. Never
- ☐1. In new or complex situations only
- ☐2. On awakening or at night only
- ☐3. During the day and evening, but not constantly
- ☐4. Constantly
- ☐NA Patient nonresponsive

(M0580) When Anxious (Reported or Observed):
- ☐0. None of the time
- ☐1. Less often than daily
- ☐2. Daily, but not constantly
- ☐3. All of the time
- ☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply.)
- ☐1. Depressed mood (e.g. feeling sad, tearful)
- ☐2. Sense of failure or self reproach
- ☐3. Hopelessness
- ☐4. Recurrent thoughts of death
- ☐5. Thoughts of suicide
- ☐6. None of the above feelings observed or reported

(M0600) Patient Behaviors (Reported or Observed: (Mark all that apply.)
- ☐1. Indecisiveness, lack of concentration
- ☐2. Diminished interest in most activities
- ☐3. Sleep disturbances
- ☐4. Recent change in appetite or weight
- ☐5. Agitation
- ☐6. A suicide attempt
- ☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated at Least Once a Week (Reported or Observed): (Mark all that apply.)
- ☐1. Memory deficit; failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
- ☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
- ☐3. Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
- ☐4. Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects)
- ☐5. Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
- ☐6. Delusional, hallucinatory, or paranoid behavior
- ☐7. None of the above behaviors demonstrated

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., verbal disruption, physical aggression, wandering episodes, self abuse, etc.):
- ☐0. Never
- ☐1. Less than once a month
- ☐2. Once a month
- ☐3. Several times each month
- ☐4. Several times a week
- ☐5. At least daily

(M0630) Is this patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?
- ☐0. No
- ☐1. Yes

☐ **MSS REFERRAL**

MS ASSESSMENT

MUSCULOSKELETAL (circle if applicable)
GAIT: UNSTEADY / SHUFFLE
SLOW / LABORED
DME REQUIRED
BALANCE IMPAIRED
WEAKNESS GENERALLY
PAIN
CONTRACTURES
ENDURANCE LIMITED
MUSCLE SPASMS
STRENGTH DIMINISHED
TREMORS
JOINTS ENLARGED
DEFORM R/L U/L EXT.
FOOT DROP
PARALYSIS R/L U/L EXT.
ROM MIN R/L U/L
CO-ORDINATION MIN

ADL/IADLs

For M0640-M0800, record what the patient currently is *able* to do.

(M0640) **Grooming:** Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

- ☐0. Able to groom self unaided, with or without the use of assistive devices or adapted methods.
- ☐1. Grooming utensils must be placed within reach before able to complete grooming activities.
- ☐2. Someone must assist the patient to groom self.
- ☐3. Patient depends entirely upon someone else for grooming needs.

(M0650) **Ability to Dress Upper Body** (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

- ☐0. Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
- ☐1. Able to dress upper body without assistance if clothing is laid out or handed to the patient.
- ☐2. Someone must help the patient put on upper body clothing.
- ☐3. Patient depends entirely upon another person to dress the upper body.

(M0660) Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

☐0. Able to obtain, put on, and remove clothing/shoes without assistance.
☐1. Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
☐2. Someone must help the patient put on undergarments, slacks, socks, or nylons, and/or shoes.
☐3. Patient depends entirely upon another person to dress lower body.

(M0670) Bathing: Ability to wash entire body. **Excludes grooming (washing face and hands only).**

☐0. Able to bathe self in shower or tub independently.
☐1. With the use of devices, is able to bathe self in shower or tub independently.
☐2. Able to bathe in shower or tub with the assistance of another person:
(a)for intermittent supervision or encouragement or reminders, OR
(b) to get in and out of the shower or tub OR
(c) for washing difficult to reach areas.
☐3. Participates in bathing self in shower or tub, but requires presences of another person throughout the bath for assistance or supervision.
☐4. Unable to use the shower or tub and is bathed in bed or bedside chair.
☐5. Unable to effectively participate in bathing and is totally bathed by another person.

(M0680) Toileting: Ability to get to and from the toilet or bedside commode.

☐0. Able to get to and from the toilet independently with or without a device.
☐1. When reminded, assisted, or supervised by another person, able to get to and from the toilet.
☐2. Unable to get to and from the toilet but is able to use a bedside commode (with or without assistance.)
☐3. Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
☐4. Is totally dependent in toileting

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

☐0. Able to independently Transfer.
☐1. Transfers with minimal human assistance or with use of an assistive device.
☐2. Unable to transfer self but is able to bear weight and pivot during the transfer process.
☐3. Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
☐4. Bedfast, unable to transfer but is able to turn and position self in bed.
☐5. Bedfast, unable to transfer and is unable to turn and position self.

☐ **HHA Referral**

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

☐0. Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
☐1. Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
☐2. Able to walk only with supervision or assistance of another person at all times.
☐3. Chairfast, unable to ambulate but is able to wheel self independently.
☐4. Chairfast, unable to ambulate and is unable to wheel self.
☐5. Bedfast, unable to ambulate or be up in a chair

HAS PATIENT'S AMBULATION IMPROVED SINCE SOC?
☐ Yes
☐ No, if no include plan to improve ambulation in patient's POC
☐ N/A because:_____
☐ Patient remains homebound due to all above.

(M0710)Feeding/Eating: Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

☐0. Able to independently feed self.
☐1. Able to feed self independently but requires:
(a) meal set-up; OR
(b) intermittent assistance or supervision from another person; OR
(c) a liquid, pureed or ground meat diet.
☐2. Unable to feed self and must be assisted or supervised throughout the meal/snack.
☐3. Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
☐4. Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
☐5. Unable to take in nutrients orally or by tube feeding.

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals:

☐0. (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
(b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
☐1. Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
☐2. Unable to prepare any light meals or reheat any delivered meals.

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

☐0. Able to independently drive a car or adapted car, OR uses a regular or handicapped-accessible public bus.
☐1. Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.

☐2 Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.
☐ Patient remains homebound due to above

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

☐0. (a) Able to independently take care of all laundry tasks; OR
(b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely perform laundry tasks in the past (i.e., prior to this home care admission).
☐1. Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
☐2. Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

☐0. (a) Able to independently perform all housekeeping tasks; OR
(b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
☐1. Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
☐2. Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
☐3. Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
☐4. Unable to effectively participate in any housekeeping tasks.

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

☐0. (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; or
(b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
☐1. Able to go shopping, but needs some assistance:
(a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR
(b) Unable to go shopping alone, but can go with someone to assist.
☐2. Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
☐3. Needs someone to do all shopping and errands.

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

☐0. Able to dial numbers and answer calls appropriately and as desired.
☐1. Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
☐2. Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
☐3. Able to answer the telephone only some of the time or is able to carry only a limited conversation.
☐4. Unable to answer the telephone at all but can listen if assisted with equipment.
☐5. Totally unable to use the telephone.
☐NA Patient does not have a telephone.

HAS PATIENT IMPROVED IN ADL's ☐ Yes ☐ No

MEDICATIONS

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

☐0. Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
☐1. Able to take medication(s) at the correct times if:
(a) individual dosages are prepared in advance by another person; OR
(b) given daily reminders; OR
(c) someone develops a drug diary or chart
☐2. Unable to take medication unless administered by someone else.
☐NA No oral medications prescribed

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

☐0. Able to independently take the correct medication and proper dosage at the correct times.
☐1. Able to take medication at the correct times if:
(a) individual dosages are prepared in advance by another person; OR
(b) given daily reminders.
☐2. Unable to take medication unless administered by someone else.
☐NA No inhalant/mist medication prescribed.

(M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. **Excludes IV medications.**

☐0. Able to independently take the correct medication and proper dosage at the correct times.
☐1. Able to take injectable medication at correct times if:
a) individual syringes are prepared in advance by another person, OR
b) given daily reminders
☐2. Unable to take injectable medications unless administered by someone else.
☐NA No injectable medications prescribed.

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment/supplies using proper technique. **(Note: This refers to ability, not compliance or willingness.)**

- ☐0. Patient manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
- ☐4. Patient is completely dependent on someone else to manage all equipment.
- ☐N/A No equipment of this type used in care **[If NA, go to M0830]**

(M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion therapy equipment, enteral/parenteral nutrition, ventilator therapy equipment/supplies): Caregivers' ability to set up, monitor, and change fluids or medication, clean/store/dispose of equipment/supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness).**

- ☐0. Caregiver manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐3. Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment/supplies).
- ☐4. Caregiver is completely dependent on someone else to manage all equipment.

EMERGENT CARE

(M0830) Emergent Care: Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐0. No emergent care services **(If No, emergent care skip M0840)**
- ☐1. Hospital emergency room (includes 23-hours holding.)
- ☐2. Doctor's office emergency visit/house call.
- ☐3. Outpatient department/clinical emergency (includes urgicenter sites).
- ☐UK Unknown.**(If UK, skip M0840)**

(M0840) Emergent Care Reason: For what reason(s) did the patient/family seek emergent care **(Mark all that apply.)**

- ☐1. Improper medication administration, medication side effects, toxicity, anaphylaxis.
- ☐2. Nausea, dehydration, malnutrition, constipation, impaction.
- ☐3. Injury caused by fall or accident at home.
- ☐4. Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐5. Wound infection, deteriorating wound status, new lesion/ulcer.
- ☐6. Cardiac problems (e.g. fluid overload, exacerbation of CHF, chest pain).
- ☐7. Hypo/Hyperglycemia, diabetes out of control
- ☐8. GI Bleeding, obstruction
- ☐9. Other than above reasons
- ☐UK Reason Unknown

EVALUATION (Check or Circle)	
TRANSFER TRAINING	
BAL. & COORD. EX.	
RELAXATION / BREATHING EX.	
NEUROMUSCULAR FACILITATION	UE/LE
NEUROMUSCULAR INHIBITION	UE/LE
GAIT TRAINING	
STAIR AMBULATION	
HEAT DRY MOIST	
US	
E. STIM.	
MASSAGE	
JOINT MOBILITY	
WHIRLPOOL	
ICE PACKS	
CAREGIVER INSTRUCTIONS	
EST. MAINTENANCE PROGRAM	

THERAPEUTIC EXERCISES (P=Passive A/A=Active-Assisted A=Active MR=manually Resisted)									
LOWER EXTREMITY:	Reps	Sets	Assist Resist	▲	**UPPER EXTREMITY:**	Reps	Sets	Assist Resist	▲
LE Isometrics					Bicep Curls				
SAQ					Tricep Extension				
FAQ					**SHOULDER:**				
SLR (Flex, ext, ab, ad)					Abd/Add				
Bridging					Flex/Ext				
Ankle Circles					Int. Rot./Ext. Rot.				
Heel Slides					(Horiz) Abd/Add				
Knee Flexion					Codmans				
Marching					Press				
TRUNK:					**CERVICAL:**				
Williams Flex Ex.					ROM				
Extension					Shoulder Shrugs/Circle				
Rotation Ex.					Scap. Retraction				

SUBJECTIVE REPORT, ASSESSMENT:_____

PLAN/FOCUS FOR NEXT VISIT:_____

HOMEBOUND DUE TO:_____

AIDE/PTA SUPERVISORY VISIT: ☐ YES ☐ NO
AIDE/PTA PRESENT: ☐ YES ☐ NO
AIDE/PTA NAME:_____
CLIENT SATISFIED: ☐ YES ☐ NO
CARE PLAN FOLLOWED: ☐ YES ☐ NO
SERVICE CHANGE: ☐ YES ☐ NO
SKILLS OBSERVED:_____

( ) COMMUNICATION WITH MD
( ) ORDERS WRITTEN
( ) PT. INFORMED OF POC CHANGE
( ) 5 DAY NOTICE TO PT
( ) PROGRESS NOTE TO MD
( ) NEW ORDERS
( ) AGREES
( ) DISAGREES

COMMENTS:

THERAPIST SIGNATURE:_____ **DATE:**_____

PHYSICAL THERAPY
DISCHARGE PATIENT ASSESSMENT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI _____

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: _____

(M0016) Branch ID Number: _____ (Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: _____/_____/_____ month day year
☐NA - Not Applicable

(M0040) Patient Name:
_____ _____ _____
First MI Last Suffix

(M0050) Patient's State of Residence: _____

Address: _____

(M0060) Patient Zip Code: _____

Patient Phone: (_____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - ____ - ____
☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: _____/_____/_____ month day year

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____
☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:
☐ 1-RN ☒ 2-PT ☐ 3-SLP/ST ☐ 4-OT

(M0090) Date Assessment Completed:
_____/_____/_____ month day year

Discharge from Agency - Not to an Inpatient Facility

(M0100) This assessment is currently being completed for the following reason:

- ☐1. **Death at home [go to M0906]**
- ☐2. **Discharge from agency [go to M0150]**
- ☐3. **Discharge from agency - no visits completed after start/resumption of care assessment [go to M0906]**

DEMOGRAPHICS AND PATIENT HISTORY

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____

(M0200) Medical or Treatment Regimen Change within Past 14-days: Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

- ☐0. No (If NO, **go to M0250**)
- ☐1. Yes

(M0210) List the patients **Medical Diagnosis** and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical or treatment regimen: (no surgical or V-codes)

Changed Medical Regimen Diagnosis: ICD

a. _____ (_ _ _ . _ _)
b. _____ (_ _ _ . _ _)
c. _____ (_ _ _ . _ _)
d. _____ (_ _ _ . _ _)

(M0220) Conditions Prior to Medical or Treatment Regimen Change Within Past 14 days: If this patient experienced a change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the change in medical or treatment regimen. **(Mark all that apply).**

- ☐1. Urinary Incontinence
- ☐2. Indwelling/suprapubic catheter
- ☐3. Intractable pain
- ☐4. Impaired decision making
- ☐5. Disruptive or socially inappropriate behavior
- ☐6. Memory loss to the extent supervision required
- ☐7. None of the above

(M0250) Therapies the patient receives at home: **(Mark all that apply.)**

- ☐1. Intravenous or Infusion Therapy (excludes TPN)
- ☐2. Parenteral Nutrition (TPN or lipids)
- ☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐4. None of the above

(M0280) Life Expectancy: (Physician documentation is not required.)

- ☐0. Life expectancy is greater than 6 months
- ☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**

- ☐1. Heavy smoking
- ☐2. Obesity
- ☐3. Alcohol Dependency
- ☐4. Drug Dependency
- ☐5. None of the above

DISCHARGE INSTRUCTIONS:
☐ **Patient** ☐ **Caregiver understands home exercise program.**
☐ Instructions Left

LIVING ARRANGEMENTS

(M0300) Current Residence:
- ☐1. Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(MO310) Structural Barriers in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

(MO320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(MO330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

(M0340) Patient lives with: (Mark all that apply).
- ☐1. Lives alone
- ☐2. With spouse or significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help other than home care agency staff
- ☐6. With other than above

SUPPORTIVE ASSISTANCE
Names of Persons/Organizations Providing Assistance:
_____
_____
_____

M0350) Assisting Person(s) Other than Home Care Agency **Staff: (Mark all that apply).**
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid Help
- ☐4. None of the above (**If none of the above, go to M0410)**

(MO360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):
- ☐0. No one person **(If No one person, go to MO410)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or neighbor or community or church member
- ☐5. Paid help

(M0370) How Often does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly

(M0380) Type of Primary Caregiver Assistance: (Mark all that apply).
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney

SENSORY STATUS
(M0410) Speech and Oral (Verbal) Expression of Language (In patients own language):
- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar or speech intelligibility; needs minimal prompting or assistance).
- ☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
- ☐4. Unable to express basic needs even with maximal prompting or assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
- ☐5. Patient unresponsive, or unable to speak.

(M0420) **Frequency of Pain** interfering with patient's activity or movement:

- ☐0. Patient has no pain or pain does not interfere with activity or movement.
- ☐1. Less often then daily
- ☐2. Daily, but not constantly
- ☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

- ☐0. No
- ☐1. Yes

INTEGUMENTARY STATUS

(M0440) Does this patient have an **Skin Lesion** or **Open Wound**? This excludes "OSTOMIES."

- ☐0. No **(If No, go to M0490)**
- ☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

- ☐0. No **(If No, go to M0468)**
- ☐1. Yes

(M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

	Pressure Ulcer Stages	Number of Pressure Ulcers				
		0 Zero	1	2	3	4 or more
a)	Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b)	Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The Ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c)	Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d)	Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e)	In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure Ulcer:

- ☐1. Stage 1
- ☐2. Stage 2
- ☐3. Stage 3
- ☐4. Stage 4
- ☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:

- ☐1. Fully granulating
- ☐2. Early/Partial granulation
- ☐3. Not healing
- ☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

- ☐0. No **[If No, go to M0482]**
- ☐1. Yes

(M0470) Current Number of Observable Stasis Ulcer(s):

- ☐0. Zero
- ☐1. One
- ☐2. Two
- ☐3. Three
- ☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?
- ☐0. No
- ☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer:
- ☐1. Fully granulating
- ☐2. Early/partial granulation
- ☐3. Not healing
- ☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**
- ☐0. No **(If No, go to M0490)**
- ☐1. Yes

(M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)
- ☐0. Zero
- ☐1. One
- ☐2. Two
- ☐3. Three
- ☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?
- ☐0. No
- ☐1. Yes

(M0488) Status of Most Problematic (Observable) Surgical Wound:
- ☐1. Fully granulating
- ☐2. Early/partial Granulation
- ☐3. Not healing
- ☐NA No observable surgical wound

RESPIRATORY STATUS

(M0490) When is the patient dyspneic or noticeably **Short of Breath**?
- ☐0. Never, patient is not short of breath
- ☐1. When walking more than 20 feet, climbing stairs
- ☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
- ☐3. With minimal exertion (e.g., while eating, talking or performing other ADLs) or with agitation
- ☐4. At rest (during day or night)

(M0500) Respiratory Treatments utilized at home: **(Mark all that apply).**
- ☐1. Oxygen (intermittent or continuous)
- ☐2. Ventilator (continually or at night)
- ☐3. Continuous positive airway pressure
- ☐4. None of the above

ELIMINATION STATUS

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
- ☐0. No
- ☐1. Yes
- ☐NA Patient on prophylactic treatment

(M0520) Urinary Incontinence or Urinary Catheter Presence:
- ☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
- ☐1. Patient is incontinent
- ☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) When does Urinary Incontinence occur?
- ☐0. Timed-voiding defers incontinence
- ☐1. During the night only
- ☐2. During the day and night

(M0540) Bowel Incontinence Frequency:
- ☐0. Very rarely or never has bowel incontinence
- ☐1. Less than once weekly
- ☐2. One to three times weekly
- ☐3. Four to six times weekly
- ☐4. On a daily basis
- ☐5. More often than once daily
- ☐NA Patient has ostomy for bowel elimination

(M0550) Ostomy for Bowel Elimination: Does this patient have an ostomy for bowel elimination that (within the last 14 days) necessitated a change in medical or treatment regimen?
- ☐0. Patient does not have an ostomy for bowel elimination.
- ☐1. Patient's ostomy did not necessitate change in medical or treatment regimen.
- ☐2. The ostomy did necessitate change in medical or treatment regimen.

NEURO/EMOTIONAL BEHAVIORAL STATUS

(M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
- ☐0. Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
- ☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
- ☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
- ☐3. Requires considerable assistance in routine situations. Is not alert or oriented, or is unable to shift attention and recall directions more than half the time.
- ☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) When Confused (Reported or Observed):
- ☐0. Never
- ☐1. In new or complex situations only
- ☐2. On awakening or at night only
- ☐3. During the day and evening, but not constantly
- ☐4. Constantly
- ☐NA Patient nonresponsive

(M0580) When Anxious (Reported or Observed)
- ☐0. None of the time
- ☐1. Less often than daily
- ☐2. Daily, but not constantly
- ☐3. All of the time
- ☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply)
- ☐1. Depressed mood (e.g. feeling sad, tearful)
- ☐2. Sense of failure or self reproach
- ☐3. Hopelessness
- ☐4. Recurrent thoughts of death
- ☐5. Thoughts of suicide
- ☐6. None of the above feelings observed or reported

(M0600) Patient Behaviors (Reported or Observed): (Mark all that apply.)
- ☐1. Indecisiveness, lack of concentration
- ☐2. Diminished interest in most activities
- ☐3. Sleep disturbances
- ☐4. Recent change in appetite or weight
- ☐5. Agitation
- ☐6. A suicide attempt
- ☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated <u>at Least Once a Week</u> (Reported or Observed): (Mark all that apply.)
- ☐1. Memory deficit: failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
- ☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
- ☐3. Verbal disruption, yelling, threatening, excessive profanity, sexual references, etc.
- ☐4. Physical aggression, aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects).
- ☐5. Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
- ☐6. Delusional, hallucinations, or paranoid behavior.
- ☐7. None of the above behaviors demonstrated.

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.)
- ☐0. Never
- ☐1. Less than once a month
- ☐2. Once a month
- ☐3. Several times each month
- ☐4. Several times a week
- ☐5. At least daily

(M0630) Is the patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?
- ☐0. No
- ☐1. Yes

<u>ADL/IADL'S</u>

For M0640-M0800, record what the patient currently is *able* to do.

(M0640) Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

- ☐0. Able to groom self unaided, with or without the use of assistive devices or adapted methods.
- ☐1. Grooming utensils must be placed within reach before able to complete grooming activities.
- ☐2. Someone must assist the patient to groom self.
- ☐3. Patient depends entirely upon someone else for grooming needs.

(M0650) Ability to Dress <u>Upper</u> Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

- ☐0. Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
- ☐1. Able to dress upper body without assistance if clothing is laid out or handed to the patient.
- ☐2. Someone must help the patient put on upper body clothing.
- ☐3. Patient depends entirely upon another person to dress the upper body.

(M0660) Ability to Dress <u>Lower</u> Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

- ☐0. Able to obtain, put on, and remove clothing or shoes without assistance.
- ☐1. Able to dress lower body without assistance if clothing or shoes are laid out or handed to the patient.
- ☐2. Someone must help the patient put on undergarments, slacks, socks, or nylons, and shoes.
- ☐3. Patient depends entirely upon another person to dress lower body.

(M0670) Bathing: Ability to wash entire body. **<u>Excludes</u> grooming (washing face and hands only).**

- ☐0. Able to bathe self in <u>shower or tub</u> independently.
- ☐1. With the use of devices, is able to bathe self in shower or tub independently.
- ☐2. Able to bathe in shower or tub with the assistance of another person:
  (a)for intermittent supervision or encouragement or reminders, <u>OR</u>
  (b) to get in and out of the shower or tub <u>OR</u>
  (c) for washing difficult to reach areas.
- ☐3. Participates in bathing self in shower or tub, <u>but</u> requires presences of another person throughout the bath for assistance or supervision.
- ☐4. <u>Unable</u> to use the shower or tub and is bathed in <u>bed or bedside chair</u>.
- ☐5. Unable to effectively participate in bathing and is totally bathed by another person.

(M0680) Toileting Ability: Ability to get to and from the toilet or bedside commode.

- ☐0. Able to get to and from the toilet independently with or without a device.
- ☐1. When reminded, assisted, or supervised by another person, able to get to and from the toilet.
- ☐2. Unable to get to and from the toilet but is able to use a bedside commode(with or without assistance).
- ☐3. Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
- ☐4. Is totally dependent in toileting

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

- ☐0. Able to independently Transfer.
- ☐1. Transfers with minimal human assistance or with use of an assistive device.
- ☐2. Unable to transfer self but is able to bear weight and pivot during the transfer process.
- ☐3. Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
- ☐4. Bedfast, unable to transfer but is able to turn and position self in bed.
- ☐5. Bedfast, unable to transfer and is unable to turn and position self.

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

- ☐0. Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
- ☐1. Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
- ☐2. Able to walk only with supervision or assistance of another person at all times.
- ☐3. Chairfast, unable to ambulate but is able to wheel self independently.
- ☐4. Chairfast, unable to ambulate and is unable to wheel self.
- ☐5. Bedfast, unable to ambulate or be up in a chair

(M0710)Feeding or Eating: Ability to feed self meals and snacks. **Note: this refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

- ☐0. Able to independently feed self.
- ☐1. Able to feed self independently but requires:
  (a) meal set-up; OR
  (b) intermittent assistance or supervision from another person; OR
  (c) a liquid, pureed or ground meat diet.
- ☐2. Unable to feed self and must be assisted or supervised throughout the meal/snack.
- ☐3. Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
- ☐4. Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
- ☐5. Unable to take in nutrients orally or by tube feeding.

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals.

- ☐0. (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
  (b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
- ☐1. Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
- ☐2. Unable to prepare any light meals or reheat any delivered meals.

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

- ☐0. Able to independently drive a car or adapted car, OR uses a regular or handicapped-accessible public bus.
- ☐1. Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
- ☐2 Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

- ☐0. (a) Able to independently take care of all laundry tasks; OR
  (b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
- ☐1. Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
- ☐2. Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

- ☐0. (a) Able to independently perform all housekeeping tasks; OR
  (b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
- ☐1. Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
- ☐2. Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
- ☐3. Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
- ☐4. Unable to effectively participate in any housekeeping tasks.

Patient / Family Knowledge and Coping Level Regarding Present Illness:

Patient:	☐ Willing to learn ☐ Has ability to learn	Comments:
Family:	☐ Willing to learn ☐ Has ability to learn	Comments:

Significant Past Health History:

LIVING ARRANGEMENTS

(M0300) Current Residence:
- ☐1. Patient's owned or rented residence (house, apartment, or trailer owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(M0310) Structural Barriers: in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

ENVIRONMENTAL SAFETY

(M0320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(M0330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

INFECTION CONTROL

YES	NO		High risk for infection_____(✓)
☐	☐	Soap	Special needs:_____
☐	☐	Papertowels	
☐	☐	Other	

(M0340) Patient Lives With: (Mark all that apply).
- ☐1. Lives alone
- ☐2. With spouse/significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help (e.g.other than home care agency staff)
- ☐6. With other than above

SUPPORTIVE ASSISTANCE

(M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply).
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid help
- ☐4. None of the above (**If None of the above, go to M0390)**
- ☐UK Unknown **(If Unknown go to M0390)**

(M0360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):
- ☐0. No one person (**If No one person, go to M0390)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or neighbor or community or church member
- ☐5. Paid help
- ☐UK Unknown **(If Unknown go to M0390)**

(M0370) How Often does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly
- ☐UK Unknown

(M0380) Type of Primary Caregiver Assistance: (Mark all that apply).
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney
- ☐UK Unknown

Name/Relation of Caregiver (s)

_____

_____

☐ Yes ☐ No **Able & willing to assist?**

☐ **MSS REFERRAL**

(M0390) Vision with corrective lenses if the patient usually wears them:

- ☐0. Normal vision: sees adequately in most situations; can see medication labels, newsprint.
- ☐1. Partially impaired: cannot see medication labels or newsprint, but can see obstacles in path, and surrounding layout; can count fingers at arm's length.
- ☐2. Severely impaired: cannot locate objects without hearing or touching them or patient nonresponsive.

(M0400) Hearing and Ability to Understand Spoken Language in patient's own language (with hearing aides if the patient usually uses them).

- ☐0. No observable impairment. Able to hear understand complex or detailed instructions and extended or abstract conversation.
- ☐1. With minimal difficulty able to hear and understand most multi-step instructions and ordinary conversation. May need occasional repetition, extra time, or louder voice.
- ☐2. Has moderate difficulty hearing and understanding simple. one-step instructions and brief conversation; needs frequent prompting or assistance.
- ☐3. Has severe difficulty hearing and understanding simple greetings and short comments. Requires multiple repetitions, restatements, demonstrations, additional time.
- ☐4 Unable to hear and understand familiar words or common expressions consistently, or patient nonresponsive.

(M0410) Speech and Oral (Verbal) Expression of Language (in patients own language)

- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar of speech intelligibility; needs minimal prompting or assistance).
- ☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
- ☐4. Unable to express basic needs even with maximal prompting assistance but is not comatose or /unresponsive (e.g., speech is nonsensical or unintelligible).
- ☐5. Patient nonresponsive or unable to speak.

ORAL/MOTOR/VEGETATIVE FUNCTIONS:	Presence of feeding tube: _____Yes _____No Aspiration Risk: _____Yes _____No History of Weight Loss: _____Yes _____No Sensory/Motor/Functional Deficits

SPEECH CHARACTERISTICS:	C) Articulation:
A) Respiration	D) Prosody:
B) Phonation	E) Vocal Quality

1) Auditory Comprehension	2) Oral Expression/Cognition	3) Silent Reading Comprehension	4) Written Expression
a) Single words b) Body Parts (R) vs. (L) c) Yes/No Questions d) Sentences: Simple_____ Complex_____ e) Paragraphs: Simple_____ Complex_____ f) Directions: Simple_____ Complex_____ g) Response latency_____	a) Length of utterance_____ b) Grammatical structure_____ c) Word recall_____ d) Paraphasia_____ e) Yes/No response_____ f) Repetition: Words_____ Sentences_____ g) Automatic speech_____ h) Oral reading: Words_____ Sentences_____ i) Oral agility: Oral Apraxia_____ Verbal Apraxia_____ j) Response latency k) Confusion/Judgement/Problem Solving	a) Matching: Forms_____ Letters_____ Words_____ b) Single words_____ c) Sentences: Simple_____ Complex_____ d) Paragraphs: Simple_____ Complex_____ e) Reading rate_____	a) Letters b) Numbers c) Words d) Sentences e) Paragraphs

(M0420) Frequency of Pain interfering with patient's activity or movement

- ☐0. Patient has no pain or pain does not interfere with activity or movement.
- ☐1. Less often then daily
- ☐2. Daily, but not constantly
- ☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

- ☐0. No
- ☐1. Yes

COMMENT:

(M0440) Does this patient have a **Skin Lesion** or an **Open Wound**? This excludes "OSTOMIES."

☐0. No **(If No, go to M0490)**
☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

☐0. No **(If No, go to M0468)**
☐1. Yes

(M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

Pressure Ulcer Stages	Number of Pressure Ulcers				
	0 Zero	1	2	3	4 or more
a) Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b) Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c) Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d) Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage of muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e) In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure Ulcer:

☐1. Stage 1
☐2. Stage 2
☐3. Stage 3
☐4. Stage 4
☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:

☐1. Fully granulating
☐2. Early/Partial granulation
☐3. Not healing
☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

☐0. No **[If No, go to M0482]**
☐1. Yes

(M0470) Current Number of Observable Stasis Ulcer(s):

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer:

☐1. Fully granulating
☐2. Early/partial granulation
☐3. Not healing
☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**

☐0. No**[If No, go to M0490]**
☐1. Yes

(M0484) **Current Number of (Observable) Surgical Wounds:** (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0488) **Status of Most Problematic (Observable) Surgical Wound:**

☐1. Fully granulating
☐2. Early/Partial Granulation
☐3. Not healing
☐NA No observable surgical wound

(M0490) When is the patient dyspneic or noticeably **Short of Breath?**
☐0. Never, patient is not short of breath
☐1. When walking more than 20 feet, climbing stairs
☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
☐3. With minimal exertion (e.g., while eating, talking or performing ADLs) or with agitation
☐4. At rest (during day or night)

(M0500) **Respiratory Treatments** utilized at home: **(Mark all that Apply).**
☐1. Oxygen (intermittent or continuous)
☐2. Ventilator (continually or at night)
☐3. Continuous positive airway pressure
☐4. None of the above

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
☐0. No
☐1. Yes
☐NA Patient on prophylactic treatment
☐UK Unknown

(M0520) **Urinary Incontinence or Urinary Catheter Presence:**
☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
☐1. Patient is incontinent
☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) **When** does **Urinary Incontinence** occur?
☐0. Timed-voiding defers incontinence
☐1. During the night only
☐2. During the day and night

(M0540) **Bowel Incontinence Frequency:**
☐0. Very rarely or never has bowel incontinence
☐1. Less than once weekly
☐2. One to three times weekly
☐3. Four to six times weekly
☐4. On a daily basis
☐5. More often than once daily
☐NA Patient has ostomy for bowel elimination
☐UK Unknown

(M0550)**Ostomy for Bowel Elimination:** Does this patient have an ostomy for bowel elimination that (within the last 14 days): a) was related to an inpatient facility stay, or b) necessitated a change in medical or treatment regimen?
☐0. Patient does not have an ostomy for bowel elimination
☐1. Patient's ostomy was not related to an inpatient stay and did not necessitate change in medical or treatment regimen.
☐2. The ostomy was related to an inpatient stay or did necessitate change in medical or treatment regimen.

COMMENT:

(M0560) **Cognitive Functioning:** (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
☐0. Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
☐3. Requires considerable assistance in routine situations. Is not alert and oriented, or is unable to shift attention and recall directions more than half the time.
☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) **When Confused (Reported or Observed):**
☐0. Never
☐1. In new or complex situations only
☐2. On awakening or at night only
☐3. During the day and evening, but not constantly
☐4. Constantly
☐NA Patient nonresponsive

(M0580) **When Anxious (Reported or Observed)**
☐0. None of the time
☐1. Less often than daily
☐2. Daily, but not constantly
☐3. All of the time
☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply)

☐1. Depressed mood (e.g. feeling sad, tearful)
☐2. Sense of failure or self reproach
☐3. Hopelessness
☐4. Recurrent thoughts of death
☐5. Thoughts of suicide
☐6. None of the above feelings observed

(M0600) Patient Behaviors (Reported or Observed: (Mark all that apply.)

☐1. Indecisiveness, lack of concentration
☐2. Diminished interest in most activities
☐3. Sleep disturbances
☐4. Recent change in appetite or weight
☐5. Agitation
☐6. A suicide attempt
☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated <u>at Least Once a Week</u> (Reported or Observed): (Mark all that apply.)

☐1. Memory deficit: failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
☐3. Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
☐4. Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects).
☐5. Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
☐6. Delusional, hallucinatory, or paranoid behavior .
☐7. None of the above behaviors demonstrated.

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.)

☐0. Never
☐1. Less than once a month
☐2. Once a month
☐3. Several times each month
☐4. Several times a week
☐5. At least daily

(M0630) Is the patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?

☐0. No
☐1. Yes

☐ **MSS REFERRAL**

<u>ADL/IADL'S</u>

For M0640-M0800, complete the "Current" column for all patients. For these same items, complete the "Prior" column only at start of care and at resumption of care; mark the level that corresponds to the patient's condition 14 days prior to start of care date (M0030) or resumption of care date (M0032). In all cases, record what the patient is *able* to do.

USE TO PREPARE HHA CARE PLAN

(M0640) Grooming: Ability to tend to personal hygiene needs (i.e. washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

Prior	Current	
☐	☐0.	Able to groom self unaided, with or without the use of assistive devices or adapted methods.
☐	☐1.	Grooming utensils must be placed within reach before able to complete grooming activities.
☐	☐2.	Someone must assist the patient to groom self.
☐	☐3.	Patient depends entirely upon someone else for grooming needs.
☐	UK	Unknown

(M0650) Ability to Dress <u>Upper</u> Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

Prior	Current	
☐	☐0.	Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
☐	☐1.	Able to dress upper body without assistance if clothing is laid out or handed to the patient.
☐	☐2.	Some must help the patient put on upper body clothing
☐	☐3.	Patient depends entirely upon another person to dress the upper body.
	☐UK	Unknown

(M0660) Ability to Dress <u>Lower</u> Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

Prior	Current	
☐	☐0.	Able to obtain, put on, and remove clothing and shoes without assistance.
☐	☐1.	Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
☐	☐2.	Someone must help the patient put on undergarments, slacks, socks, or nylons, and shoes.
☐	☐3.	Patient depends entirely upon another person to dress lower body.
	☐UK	Unknown

(M0670) Bathing: Ability to wash entire body. **<u>Excludes</u> grooming (washing face and hands only).**

Prior	Current	
☐	☐0.	Able to bathe self in <u>shower or tub</u> independently.
☐	☐1.	With the use of devices, is able to bathe self in shower or tub independently.
☐	☐2.	Able to bathe in shower or tub with the assistance of another person: (a)for intermittent supervision or encouragement or reminders, <u>OR</u> (b) to get in and out of the shower or tub <u>OR</u> (c) for washing difficult to reach areas.
☐	☐3.	Participates in bathing self in shower or tub, <u>but</u> requires presences of another person throughout the bath for assistance or supervision.
☐	☐4.	<u>Unable</u> to use the shower or tub and is bathed in <u>bed or bedside chair</u>.
☐	☐5.	Unable to effectively participate in bathing and is totally bathed by another person.
☐	UK	Unknown

(M0680) **Toileting:** Ability to get to and from the toilet or bedside commode.

Prior	Current	
☐	☐0.	Able to get to and from the toilet independently with or without a device.
☐	☐1.	When reminded, assisted, or supervised by another person, able to get to and from the toilet.
☐	☐2.	Unable to get to and from the toilet but is able to use a bedside commode(with or without assistance).
☐	☐3.	Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
☐	☐4.	Is totally dependent in toileting
☐	UK	Unknown
☐	HHA	REFERRAL

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

Prior	Current	
☐	☐0.	Able to independently transfer.
☐	☐1.	Transfers with minimal human assistance or with use of an assistive device.
☐	☐2.	Unable to transfer self but is able to bear weight and pivot during the transfer process.
☐	☐3.	Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
☐	☐4.	Bedfast, unable to transfer but is able to turn and position self in bed.
☐	☐5.	Bedfast, unable to transfer and is unable to turn and position self.
☐	UK	Unknown

☐ **PT REFERRAL**

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

Prior	Current	
☐	☐0.	Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
☐	☐1.	Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
☐	☐2.	Able to walk only with supervision or assistance of another person at all times.
☐	☐3.	Chairfast, unable to ambulate but is able to wheel self independently.
☐	☐4.	Chairfast, unable to ambulate and is unable to wheel self.
☐	☐5.	Bedfast, unable to ambulate or be up in a chair
☐	UK	Unknown

☐ **Patient is homebound due to functional limitations.**
☐ **PT REFERRAL**

(M0710)Feeding or Eating: Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

Prior	Current	
☐	☐0.	Able to independently feed self.
☐	☐1.	Able to feed self independently but requires: (a) meal set-up; OR (b) intermittent assistance or supervision from another person; OR (c) a liquid, pureed or ground meat diet.
☐	☐2.	Unable to feed self and must be assisted or supervised throughout the meal/snack.
☐	☐3.	Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
☐	☐4.	Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
☐	☐5.	Unable to take in nutrients orally or by tube feeding.
	☐UK	Unknown

☐ **HHA REFERRAL**

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals.

Prior	Current	
☐	☐0.	(a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR (b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
☐	☐1.	Unable to prepare light meals on a regular basis due to physical, cognitive, and mental limitations.
☐	☐2.	Unable to prepare any light meals or reheat any delivered meals.
☐	UK	Unknown
☐		HHA REFERRAL

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

Prior	Current	
☐	☐0.	Able to independently drive a car or adapted car, OR uses a regular or handicap-accessible public bus.
☐	☐1.	Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
☐	☐2	Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.
☐	UK	Unknown
☐		**Patient is homebound due to above.**

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

Prior	Current	
☐	☐0.	(a) Able to independently take care of all laundry tasks; OR (b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
☐	☐1.	Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
☐	☐2.	Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.
☐	UK	Unknown

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

Prior	Current	
☐	☐0.	(a) Able to independently perform all housekeeping tasks; OR (b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
☐	☐1.	Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
☐	☐2.	Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
☐	☐3.	Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
☐	☐4.	Unable to effectively participate in any housekeeping tasks.
☐	UK	Unknown

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

Prior	Current	
☐	☐0.	(a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR (b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
☐	☐1.	Able to go shopping, but needs some assistance: (a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR (b) Unable to go shopping alone, but can go with someone to assist.
☐	☐2.	Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
☐	☐3.	Needs someone to do all shopping and errands.
☐	UK	Unknown

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

Prior	Current	
☐	☐0.	Able to dial numbers and answer calls appropriately and as desired.
☐	☐1.	Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
☐	☐2.	Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
☐	☐3.	Able to answer the telephone only some of the time or is able to carry only a limited conversation.
☐	☐4.	Unable to answer the telephone at all but can listen if assisted with equipment.
☐	☐5.	Totally unable to use the telephone.
☐	☐NA	Patient does not have a telephone.
☐	UK	Unknown

☐ MSS REFERRAL
☐ OT REFERRAL

MEDICATIONS

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

Prior	Current	
☐	☐0.	Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
☐	☐1.	Able to take medication(s) at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR (c) someone develops a drug diary or chart
☐	☐2.	Unable to take medication unless administered by someone else.
☐	NA	No oral medications prescribed
☐	UK	Unknown

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

Prior	Current	
☐	☐0.	Able to independently take the correct medication and proper dosage at the correct times.
☐	☐1.	Able to take medication at the correct times if: (a) individual dosages are prepared in advance by another person, OR (b) given daily reminders.
☐	☐2.	Unable to take medication unless administered by someone else.
☐	☐NA	No inhalant/mist medication prescribed.
☐	UK	Unknown

(M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. **Excludes IV medications.**

Prior	Current	
☐	☐0.	Able to independently take the correct medication and proper dosage at the correct times.
☐	☐1.	Able to take injectable medication at correct times if: a) individual syringes are prepared in advance by another person, OR b) given daily reminders.
☐	☐2.	Unable to take injectable medications unless administered by someone else.
☐	☐NA	No injectable medications prescribed.
☐	☐UK	Unknown

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment/supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness)**

☐0. Patient manages all tasks related to equipment completely independently.
☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
☐4. Patient is completely dependent on someone else to manage all equipment.
☐NA No equipment of this type used in care **[If NA, skip M0820]**

(M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion therapy equipment, enteral/parenteral nutrition, ventilator therapy equipment or supplies): Caregivers' ability to set up, monitor, and change equipment reliably and safely, add appropriate fluids or medication, clean/store/dispose of equipment/supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

☐0. Caregiver manages all tasks related to equipment completely independently.
☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
☐3. Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
☐4. Caregiver is completely dependent on someone else to manage all equipment.
☐NA No caregiver
☐UK Unknown

Consents signed prior to TX: ☐Yes ☐No
Patient unable to sign due to:_____

Advance Directive: ☐Yes ☐No
Copy requested: ☐Yes ☐No I am ☐able ☐unable to furnish Agency with a copy of my Advance Directive.
Advance Directive document is a ☐ Durable Power of Attorney ☐ Living Will ☐ Out of Hospital DNR ☐ Other:_____
Treatment Choices Include: ☐ Do not Resuscitate ☐ Forego life-sustaining treatment ☐ Intubation ☐ Ventilator ☐ Tube Feeding ☐ IV hydration ☐ Other:_____

Prior to PT/CG signature, ST read/explained:
☐ Consent ☐ Rights/Responsibilities ☐ Advance Directive
☐ Confidentiality ☐ All admission documents
☐ Other:_____

Instructed PT/CG on: ☐ Safety Measures ☐ ER Procedures
☐ 24-Hr on-call numbers ☐ S/S to report ☐ other:_____
☐ PT/CG verbalizes understanding of instruction.
Left in Home: ☐ Admission Booklet ☐ Copies of all signed documents ☐Other:_____

MSS referral needed for problems identified in sections:
Patient history, living arrangements, environmental safety, supportive assistance, nuero/emotional/behavior status.
Referral made ☐Yes ☐No

PT OT referral needed for problems identified in sections:
ADL/IADL, muscular motor.
☐ PT ☐ OT ☐Yes ☐No

SKILLED INTERVENTION

_____ Evaluation	_____ Aural Rehab.	_____ Swallowing
_____ Language Processing	_____ Auditory Reception	_____ Automatic Speech
_____ Speech / Voice	_____ Verbal Expression	_____ Stimulability
_____ Alaryngeal Speech	_____ Augumentative Exp.	_____ Oral Motor
_____ Comprehensive	_____ Reading / Writing	_____ Breathing Exercises

Assessment and Skills Services:

Goals:

Therapist Signature:_____Date:_____Time in:_____Time out_____

SPEECH THERAPY RECERTIFICATION/FOLLOW-UP ASSESSMENT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI _____

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: _____

(M0016) Branch ID Number: _____ (Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: _____/_____/_____ (month day year)
☐NA - Not Applicable

(M0040) Patient Name:
_____ _____ _____ _____
First MI Last Suffix

(M0050) Patient's State of Residence: _____

Address: _____

(M0060) Patient Zip Code: _____

Patient Phone: (_____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - ____ - ____
☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: _____/_____/_____ (month day year)

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____
☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:
☐ 1-RN ☐ 2-PT ☒ 3-SLP/ST ☐ 4-OT

(M0090) Date Assessment Completed:
_____/_____/_____ (month day year)

(M0100) This assessment is currently being completed for the following reason:

- ☐1. Recertification (follow-up) reassessment [go to M0150]
- ☐2. Other follow-up (go to M0150)

☐ Increase in frequency ☐ Significant changes in s/s

DEMOGRAPHICS AND PATIENT HISTORY

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____

(M0200) Medical or Treatment Regimen Change within Past 14-days: Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

- ☐0. No (If NO, go to M0250)
- ☐1. Yes

Last MD Visit: _____

(M0210) List the patients Medical Diagnosis and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical or treatment regimen: (no surgical or V-codes)

Changed medical Regimen Diagnosis:	ICD
a. _____	(__ __ __.__ __)
b. _____	(__ __ __.__ __)
c. _____	(__ __ __.__ __)
d. _____	(__ __ __.__ __)

PROBLEMS:

(M0220) Conditions Prior to Medical or Treatment Regimen Change Within Past 14 days: If this patient experienced a change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the change in medical or treatment regimen. (Mark all that apply).

- ☐1. Urinary incontinence
- ☐2. Indwelling/suprapubic catheter
- ☐3. Intractable pain
- ☐4. Impaired decision making
- ☐5. Disruptive or socially inappropriate behavior
- ☐6. Memory loss to the extent supervision required
- ☐7. None of the above

(M0250) Therapies the patient receive at home: (Mark all that apply.)

- ☐1. Intravenous or Infusion Therapy (excludes TPN)
- ☐2. Parenteral Nutrition (TPN or lipids)
- ☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐4. None of the above

(M0280) Life Expectancy: (Physician documentation is not required.)
- ☐0. Life expectancy is greater than 6 months
- ☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**
- ☐1. Heavy smoking
- ☐2. Obesity
- ☐3. Alcohol Dependency
- ☐4. Drug Dependency
- ☐5. None of the above
- ☐ **MSS Referral**

LIVING ARRANGEMENTS

(M0300) Current Residence:
- ☐1. Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(M0310) Structural Barriers in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

(M0320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(M0330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

(M0340) Patient Lives With: **(Mark all that apply).**
- ☐1. Lives alone
- ☐2. With spouse/significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help (other than home care agency staff)
- ☐6. With other than above

SUPPORTIVE ASSISTANCE

(M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply).
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid Help
- ☐4. None of the above **(If None of the above, go to M0410)**

(M0360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc.) (Other than home care agency staff):
- ☐0. No one person **(If No one person, go to M0410)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or Neighbor or community or church member
- ☐5. Paid help

(M0370) How Often does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly

(M0380) Type of Primary Caregiver Assistance: **(Mark all that apply).**
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney
- ☐ **MSS REFERRAL**

SENSORY STATUS

(M0410) Speech and Oral (Verbal) Expression of Language (In patient's own language):
- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar of speech intelligibility; needs minimal prompting or assistance).

☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.
☐4. Unable to express basic needs even with maximal prompting assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
☐5. Patient unresponsive, unable to speak.

ORAL/MOTOR/VEGETATIVE FUNCTIONS:	Presence of feeding tube: _____Yes _____No Aspiration Risk: _____Yes _____No History of Weight Loss: _____Yes _____No Sensory/Motor/Functional Deficits

SPEECH CHARACTERISTICS:	C) Articulation:
A) Respiration	D) Prosody:
B) Phonation	E) Vocal Quality

1) Auditory Comprehension	2) Oral Expression/Cognition	3) Silent Reading Comprehension	4) Written Expression
a) Single words b) Body Parts (R) vs. (L) c) Yes/No Questions d) Sentences: Simple_____ Complex_____ e) Paragraphs: Simple_____ Complex_____ f) Directions: Simple_____ Complex_____ g) Response latency_____	a) Length of utterance_____ b) Grammatical structure_____ c) Word recall_____ d) Paraphasia_____ e) Yes/No response_____ f) Repetition: Words_____ Sent._____ g) Automatic speech_____ h) Oral reading: Words_____ Sent._____ i) Oral agility: Oral Apraxia_____ Verbal Apraxia_____ j) Response latency k) Confusion/Judgement/Problem Solving	a) Matching: Forms_____ Letters_____ Words_____ b) Single words_____ c) Sentences: Simple_____ Complex_____ d) Paragraphs: Simple_____ Complex_____ e) Reading rate_____	a) Letters b) Numbers c) Words d) Sentences e) Paragraphs

(M0420) Frequency of Pain interfering with the patient's activity or movement:

☐0. Patient has no pain or pain does not interfere with activity or movement.
☐1. Less often then daily
☐2. Daily, but not constantly
☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

☐0. No
☐1. Yes

(M0440) Does the patient have a **Skin Lesions** or an **Open Wound**? This excludes "OSTOMIES."

☐0. No **(If No, go to M0490)**
☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

☐0. No **(If No, go to MO468)**
☐1. Yes

(M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

	Pressure Ulcer Stages	Number of Pressure Ulcers				
		0 Zero	1	2	3	4 or more
a)	Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b)	Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The Ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c)	Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d)	Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage of muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e)	In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure Ulcer:

☐1. Stage 1
☐2. Stage 2
☐3. Stage 3
☐4. Stage 4
☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:

☐1. Fully granulating
☐2. Early/Partial granulation
☐3. Not healing
☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

☐0. No **[If No, go to M0482]**
☐1. Yes

(M0470) Current number of Observable Stasis Ulcer(s):

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer:

☐1. Fully granulating
☐2. Early/partial granulation
☐3. Not healing
☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**

☐0. No **(If No go to M0490)**
☐1. Yes

(M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0488) Status of Most Problematic (Observable) Surgical Wound:

☐1. Fully granulating
☐2. Early/Partial Granulation
☐3. Not healing
☐NA No observable surgical wound

(M0490) When is the patient dyspneic or noticeably **Short of Breath?**

☐0. Never, patient is not short of breath
☐1. When walking more than 20 feet, climbing stairs
☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
☐3. With minimal exertion (e.g., while eating, talking or performing ADLs) or with agitation
☐4. At rest (during day and/or night)

ADL/IADLs

For M0640-M0800, record what the patient currently is able to do.

(M0640) Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

☐0. Able to groom self unaided, with or without the use of assistive devices or adapted methods.
☐1. Grooming utensils must be placed within reach before able to complete grooming activities.
☐2. Someone must assist the patient to groom self.
☐3. Patient depends entirely upon someone else for grooming needs.

(M0650) Ability to Dress Upper Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

☐0. Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
☐1. Able to dress upper body without assistance if clothing is laid out or handed to the patient.
☐2. Someone must help the patient put on upper body clothing.
☐3. Patient depends entirely upon another person to dress the upper body.

(M0660) Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

☐0. Able to obtain, put on, and remove clothing/shoes without assistance.
☐1. Able to dress lower body without assistance if clothing and shoes are laid out or handed to the patient.
☐2. Someone must help the patient put on undergarments, slacks, socks, or nylons, and/or shoes.
☐3. Patient depends entirely upon another person to dress lower body.

(M0670) Bathing: Ability to wash entire body. **Excludes grooming (washing face and hands only).**

☐0. Able to bathe self in shower or tub independently.
☐1. With the use of devices, is able to bathe self in shower or tub independently.
☐2. Able to bathe in shower or tub with the assistance of another person:
(a)for intermittent supervision or encouragement or reminders, OR
(b) to get in and out of the shower or tub OR
(c) for washing difficult to reach areas.
☐3. Participates in bathing self in shower or tub, but requires presences of another person throughout the bath for assistance or supervision.
☐4. Unable to use the shower or tub and is bathed in bed or bedside chair.
☐5. Unable to effectively participate in bathing and is totally bathed by another person.

(M0680) Toileting: Ability to get to and from the toilet or bedside commode.

☐0. Able to get to and from the toilet independently with or without a device.
☐1. When reminded, assisted, or supervised by another person, able to get to and from the toilet.
☐2. Unable to get to and from the toilet but is able to use a bedside commode (with or without assistance.)
☐3. Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
☐4. Is totally dependent in toileting

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

☐0. Able to independently Transfer.
☐1. Transfers with minimal human assistance or with use of an assistive device.
☐2. Unable to transfer self but is able to bear weight and pivot during the transfer process.
☐3. Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
☐4. Bedfast, unable to transfer but is able to turn and position self in bed.
☐5. Bedfast, unable to transfer and is unable to turn and position self.

☐ **HHA Referral**

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

☐0. Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
☐1. Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
☐2. Able to walk only with supervision or assistance of another person at all times.
☐3. Chairfast, unable to ambulate but is able to wheel self independently.
☐4. Chairfast, unable to ambulate and is unable to wheel self.
☐5. Bedfast, unable to ambulate or be up in a chair

HAS PATIENT'S AMBULATION IMPROVED SINCE SOC?

☐ Yes
☐ No, If no include plan to improve ambulation in patient's POC
☐ N/A because:_____
☐ Patient remains homebound due to all above.

(M0710)Feeding/Eating: Ability to feed self meals and snacks. **Note: This refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

☐0. Able to independently feed self.
☐1. Able to feed self independently but requires:
(a) meal set-up; OR
(b) intermittent assistance or supervision from another person; OR
(c) a liquid, pureed or ground meat diet.
☐2. Unable to feed self and must be assisted or supervised throughout the meal/snack.
☐3. Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
☐4. Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
☐5. Unable to take in nutrients orally or by tube feeding.

(M0500) Respiratory Treatments utilized at home: **(Mark all that Apply).**
- ☐1. Oxygen (intermittent or continuous)
- ☐2. Ventilator (continually or at night)
- ☐3. Continuous positive airway pressure
- ☐4. None of the above

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
- ☐0. No
- ☐1. Yes
- ☐NA Patient on prophylactic treatment

(M0520) Urinary Incontinence or Urinary Catheter Presence:
- ☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
- ☐1. Patient is incontinent
- ☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) When does **Urinary Incontinence** occur?
- ☐0. Timed-voiding defers incontinence
- ☐1. During the night only
- ☐2. During the day and night

(M0540) Bowel Incontinence Frequency:
- ☐0. Very rarely or never has bowel incontinence
- ☐1. Less than once weekly
- ☐2. One to three times weekly
- ☐3. Four to six times weekly
- ☐4. On a daily basis
- ☐5. More often than once daily
- ☐NA Patient has ostomy for bowel elimination

(M0550) Ostomy for Bowel Elimination: Does this patient have an ostomy that (within the last 14 days) necessitated a change in medical or treatment regimen?
- ☐0. Patient does not have an ostomy for bowel elimination
- ☐1. Patient's ostomy did not necessitate change in medical or treatment regimen.
- ☐2. The ostomy did necessitate change in medical or treatment regimen.

(M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
- ☐0. Alert/oriented able to focus and shift attention, comprehends and recalls task directions independently.
- ☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
- ☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
- ☐3. Requires considerable assistance in routine situations. Is not alert and oriented or is unable to shift attention and recall directions more than half the time.
- ☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) When Confused (Reported or Observed):
- ☐0. Never
- ☐1. In new or complex situations only
- ☐2. On awakening or at night only
- ☐3. During the day and evening, but not constantly
- ☐4. Constantly
- ☐NA Patient nonresponsive

(M0580) When Anxious (Reported or Observed):
- ☐0. None of the time
- ☐1. Less often than daily
- ☐2. Daily, but not constantly
- ☐3. All of the time
- ☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply.)
- ☐1. Depressed mood (e.g. feeling sad, tearful)
- ☐2. Sense of failure or self reproach
- ☐3. Hopelessness
- ☐4. Recurrent thoughts of death
- ☐5. Thoughts of suicide
- ☐6. None of the above feelings observed or reported

(M0600) Patient Behaviors (Reported or Observed: (Mark all that apply.)
- ☐1. Indecisiveness, lack of concentration
- ☐2. Diminished interest in most activities
- ☐3. Sleep disturbances
- ☐4. Recent change in appetite or weight
- ☐5. Agitation
- ☐6. A suicide attempt
- ☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated at Least Once a Week **(Reported or Observed): (Mark all that apply.)**
- ☐1. Memory deficit; failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
- ☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
- ☐3. Verbal disruption: yelling, threatening, excessive profanity, sexual references, etc.
- ☐4. Physical aggression: aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects)
- ☐5. Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
- ☐6. Delusional, hallucinatory, or paranoid behavior
- ☐7. None of the above behaviors demonstrated

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., verbal disruption, physical aggression, wandering episodes, self abuse, etc.):
- ☐0. Never
- ☐1. Less than once a month
- ☐2. Once a month
- ☐3. Several times each month
- ☐4. Several times a week
- ☐5. At least daily

(M0630) Is this patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?
- ☐0. No
- ☐1. Yes
- ☐ **MSS REFERRAL**

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals:

☐0. (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
(b) is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
☐1. Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
☐2. Unable to prepare any light meals or reheat any delivered meals.

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

☐0. Able to independently drive a car or adapted car, OR uses a regular or handicapped-accessible public bus.
☐1. Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
☐2 Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.
☐ Patient remains homebound due to above

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

☐0. (a) Able to independently take care of all laundry tasks; OR
(b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely perform laundry tasks in the past (i.e., prior to this home care admission).
☐1. Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
☐2. Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

☐0. (a) Able to independently perform all housekeeping tasks; OR
(b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
☐1. Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
☐2. Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
☐3. Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
☐4. Unable to effectively participate in any housekeeping tasks.

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

☐0. (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; or
(b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
☐1. Able to go shopping, but needs some assistance:
(a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR
(b) Unable to go shopping alone, but can go with someone to assist.
☐2. Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
☐3. Needs someone to do all shopping and errands.

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

☐0. Able to dial numbers and answer calls appropriately and as desired.
☐1. Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
☐2. Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
☐3. Able to answer the telephone only some of the time or is able to carry only a limited conversation.
☐4. Unable to answer the telephone at all but can listen if assisted with equipment.
☐5. Totally unable to use the telephone.
☐NA Patient does not have a telephone.

HAS PATIENT IMPROVED IN ADL's ☐ Yes ☐ No

MEDICATIONS

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

☐0. Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
☐1. Able to take medication(s) at the correct times if:
(a) individual dosages are prepared in advance by another person; OR
(b) given daily reminders; OR
(c) someone develops a drug diary or chart
☐2. Unable to take medication unless administered by someone else.
☐NA No oral medications prescribed

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

☐0. Able to independently take the correct medication and proper dosage at the correct times.
☐1. Able to take medication at the correct times if:
(a) individual dosages are prepared in advance by another person; OR
(b) given daily reminders.
☐2. Unable to take medication unless administered by someone else.
☐NA No inhalant/mist medication prescribed.

(M0800) **Management of Injectable Medications:** Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. **Excludes IV medications.**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take injectable medication at correct times if:
  a) individual syringes are prepared in advance by another person, OR
  b) given daily reminders
- ☐2. Unable to take injectable medications unless administered by someone else.
- ☐NA No injectable medications prescribed.

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment/supplies using proper technique. **(Note: This refers to ability, not compliance or willingness.)**

- ☐0. Patient manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
- ☐4. Patient is completely dependent on someone else to manage all equipment.
- ☐N/A No equipment of this type used in care **[If NA, go to M0830]**

(M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion therapy equipment, enteral/parenteral nutrition, ventilator therapy equipment/supplies): Caregivers' ability to set up, monitor, and change fluids or medication, clean/store/dispose of equipment/supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness).**

- ☐0. Caregiver manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐3. Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment/supplies).
- ☐4. Caregiver is completely dependent on someone else to manage all equipment.

EMERGENT CARE

(M0830) Emergent Care: Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐0. No emergent care services **(If No, emergent care skip M0840)**
- ☐1. Hospital emergency room (includes 23-hours holding.)
- ☐2. Doctor's office emergency visit/house call.
- ☐3. Outpatient department/clinical emergency (includes urgicenter sites).
- ☐UK Unknown.**(If UK, skip M0840)**

(M0840) Emergent Care Reason: For what reason(s) did the patient/family seek emergent care **(Mark all that apply.)**

- ☐1. Improper medication administration, medication side effects, toxicity, anaphylaxis.
- ☐2. Nausea, dehydration, malnutrition, constipation, impaction.
- ☐3. Injury caused by fall or accident at home.
- ☐4. Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐5. Wound infection, deteriorating wound status, new lesion/ulcer.
- ☐6. Cardiac problems (e.g. fluid overload, exacerbation of CHF, chest pain).
- ☐7. Hypo/Hypergiycemia, diabetes out of control
- ☐8. GI Bleeding, obstruction
- ☐9. Other than above reasons
- ☐UK Reason Unknown

SKILLED INTERVENTION

____ Evaluation	____ Aural Rehab.	____ Swallowing
____ Language Processing	____ Auditory Reception	____ Automatic Speech
____ Speech / Voice	____ Verbal Expression	____ Stimulability
____ Alaryngeal Speech	____ Augumentative Exp.	____ Oral Motor
____ Comprehensive	____ Reading / Writing	____ Breathing Exercises

Assessment and Skills Services:

Goals:

Plan:

Therapist Signature:_____Date:_____Time in:_____Time out_____

SPEECH THERAPY DISCHARGE PATIENT ASSESSMENT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI _____

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: _____

(M0016) Branch ID Number: _____ (Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: _____/_____/_____ month day year

☐NA - Not Applicable

(M0040) Patient Name:

_____ ___ _____ _____
First MI Last Suffix

(M0050) Patient's State of Residence: _____

Address: _____

_____

(M0060) Patient Zip Code: _____

Patient Phone: (_____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - _____ - ____

☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: _____/_____/_____ month day year

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____

☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:

☐ 1-RN ☐ 2-PT ☒ 3-SLP/ST ☐ 4-OT

(M0090) Date Assessment Completed:

_____/_____/_____

month day year

Discharge from Agency - Not to an Inpatient Facility

(M0100) This assessment is currently being completed for the following reason:

- ☐1. **Death at home [go to M0906]**
- ☐2. **Discharge from agency [go to M0150]**
- ☐3. **Discharge from agency - no visits completed after start/resumption of care assessment [go to M0906]**

DEMOGRAPHICS AND PATIENT HISTORY

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____

(M0200) Medical or Treatment Regimen Change within Past 14-days: Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

- ☐0. No **(If NO, go to M0250)**
- ☐1. Yes

(M0210) List the patients **Medical Diagnosis** and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical or treatment regimen: (no surgical or V-codes)

Changed Medical Regimen Diagnosis: ICD

a. _____ (_ _ _ _ _)
b. _____ (_ _ _ _ _)
c. _____ (_ _ _ _ _)
d. _____ (_ _ _ _ _)

(M0220) Conditions Prior to Medical or Treatment Regimen Change Within Past 14 days: If this patient experienced a change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the change in medical or treatment regimen. **(Mark all that apply).**

- ☐1. Urinary incontinence
- ☐2. Indwelling/suprapubic catheter
- ☐3. Intractable pain
- ☐4. Impaired decision making
- ☐5. Disruptive or socially inappropriate behavior
- ☐6. Memory loss to the extent supervision required
- ☐7. None of the above

(M0250) Therapies the patient receives at home: **(Mark all that apply.)**

- ☐1. Intravenous or infusion Therapy (excludes TPN)
- ☐2. Parenteral Nutrition (TPN or lipids)
- ☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐4. None of the above

(M0280) Life Expectancy: (Physician documentation is not required.)

- ☐0. Life expectancy is greater than 6 months
- ☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**

- ☐1. Heavy smoking
- ☐2. Obesity
- ☐3. Alcohol Dependency
- ☐4. Drug Dependency
- ☐5. None of the above

DISCHARGE INSTRUCTIONS:
Client able to relate to home maintenance program:
- ☐ Yes
- ☐ No
- ☐ Instructions left in the home

LIVING ARRANGEMENTS

(M0300) Current Residence:
- ☐1. Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(MO310) Structural Barriers in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

(MO320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(MO330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

(M0340) Patient lives with: (Mark all that apply).
- ☐1. Lives alone
- ☐2. With spouse or significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help other than home care agency staff
- ☐6. With other than above

SUPPORTIVE ASSISTANCE
Names of Persons/Organizations Providing Assistance:
_____
_____
_____

(M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply).
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid Help
- ☐4. None of the above **(If none of the above, go to M0410)**

(MO360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):
- ☐0. No one person **(If No one person, go to MO410)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or neighbor or community or church member
- ☐5. Paid help

(M0370) How Often does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly

(M0380) Type of Primary Caregiver Assistance: (Mark all that apply).
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney

SENSORY STATUS
(M0410) Speech and Oral (Verbal) Expression of Language (in patients own language):
- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar or speech intelligibility; needs minimal prompting or assistance).
- ☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.

☐4. Unable to express basic needs even with maximal prompting or assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
☐5. Patient unresponsive, or unable to speak.

(M0420) Frequency of Pain interfering with patient's activity or movement:
☐0. Patient has no pain or pain does not interfere with activity or movement.
☐1. Less often then daily
☐2. Daily, but not constantly
☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

☐0. No
☐1. Yes

INTEGUMENTARY STATUS

(M0440) Does this patient have an **Skin Lesion** or **Open Wound**? This excludes "OSTOMIES."

☐0. No **(If No, go to M0490)**
☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

☐0. No **(If No, go to M0468)**
☐1. Yes

(M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

	Pressure Ulcer Stages	Number of Pressure Ulcers				
		0 Zero	1	2	3	4 or more
a)	Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b)	Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The Ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c)	Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d)	Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e)	In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure Ulcer:
☐1. Stage 1
☐2. Stage 2
☐3. Stage 3
☐4. Stage 4
☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:
☐1. Fully granulating
☐2. Early/Partial granulation
☐3. Not healing
☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

☐0. No **[If No, go to M0482]**
☐1. Yes

(M0470) Current Number of Observable Stasis Ulcer(s):
☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?
☐0. No
☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer):

☐1. Fully granulating
☐2. Early/partial granulation
☐3. Not healing
☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**

☐0. No **(If No, go to M0490)**
☐1. Yes

(M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0488) Status of Most Problematic (Observable) Surgical Wound:

☐1. Fully granulating
☐2. Early/partial Granulation
☐3. Not healing
☐NA No observable surgical wound

RESPIRATORY STATUS

(M0490) When is the patient dyspneic or noticeably **Short of Breath?**
☐0. Never, patient is not short of breath
☐1. When walking more than 20 feet, climbing stairs
☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
☐3. With minimal exertion (e.g., while eating, talking or performing other ADLs) or with agitation
☐4. At rest (during day or night)

(M0500) Respiratory Treatments utilized at home: **(Mark all that apply).**
☐1. Oxygen (intermittent or continuous)
☐2. Ventilator (continually or at night)
☐3. Continuous positive airway pressure
☐4. None of the above

ELIMINATION STATUS

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
☐0. No
☐1. Yes
☐NA Patient on prophylactic treatment

(M0520) Urinary Incontinence or Urinary Catheter Presence:
☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
☐1. Patient is incontinent
☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) When does Urinary Incontinence occur?
☐0. Timed-voiding defers incontinence
☐1. During the night only
☐2. During the day and night

(M0540) Bowel Incontinence Frequency:
☐0. Very rarely or never has bowel incontinence
☐1. Less than once weekly
☐2. One to three times weekly
☐3. Four to six times weekly
☐4. On a daily basis
☐5. More often than once daily
☐NA Patient has ostomy for bowel elimination

(M0550) Ostomy for Bowel Elimination: Does this patient have an ostomy for bowel elimination that (within the last 14 days) necessitated a change in medical or treatment regimen?

☐0. Patient does not have an ostomy for bowel elimination.
☐1. Patient's ostomy did not necessitate change in medical or treatment regimen.
☐2. The ostomy did necessitate change in medical or treatment regimen.

NEURO/EMOTIONAL BEHAVIORAL STATUS

(M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
☐0. Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
☐3. Requires considerable assistance in routine situations. Is not alert or oriented, or is unable to shift attention and recall directions more than half the time.
☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) When Confused (Reported or Observed):
- ☐0. Never
- ☐1. In new or complex situations only
- ☐2. On awakening or at night only
- ☐3. During the day and evening, but not constantly
- ☐4. Constantly
- ☐NA Patient nonresponsive

(M0580) When Anxious (Reported or Observed)
- ☐0. None of the time
- ☐1. Less often than daily
- ☐2. Daily, but not constantly
- ☐3. All of the time
- ☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply)
- ☐1. Depressed mood (e.g. feeling sad, tearful)
- ☐2. Sense of failure or self reproach
- ☐3. Hopelessness
- ☐4. Recurrent thoughts of death
- ☐5. Thoughts of suicide
- ☐6. None of the above feelings observed or reported

(M0600) Patient Behaviors (Reported or Observed): (Mark all that apply.)
- ☐1. Indecisiveness, lack of concentration
- ☐2. Diminished interest in most activities
- ☐3. Sleep disturbances
- ☐4. Recent change in appetite or weight
- ☐5. Agitation
- ☐6. A suicide attempt
- ☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated at Least Once a Week (Reported or Observed): (Mark all that apply.)
- ☐1. Memory deficit; failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
- ☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
- ☐3. Verbal disruption, yelling, threatening, excessive profanity, sexual references, etc.
- ☐4. Physical aggression, aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects).
- ☐5. Disruptive, infantile, or socially inappropriate behavior **(excludes** verbal actions)
- ☐6. Delusional, hallucinations, or paranoid behavior.
- ☐7. None of the above behaviors demonstrated.

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.)
- ☐0. Never
- ☐1. Less than once a month
- ☐2. Once a month
- ☐3. Several times each month
- ☐4. Several times a week
- ☐5. At least daily

(M0630) Is the patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?
- ☐0. No
- ☐1. Yes

ADL/IADL'S

For M0640-M0800, record what the patient currently is *able to do.*

(M0640) Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

- ☐0. Able to groom self unaided, with or without the use of assistive devices or adapted methods.
- ☐1. Grooming utensils must be placed within reach before able to complete grooming activities.
- ☐2. Someone must assist the patient to groom self.
- ☐3. Patient depends entirely upon someone else for grooming needs.

(M0650) Ability to Dress Upper Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

- ☐0. Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
- ☐1. Able to dress upper body without assistance if clothing is laid out or handed to the patient.
- ☐2. Someone must help the patient put on upper body clothing.
- ☐3. Patient depends entirely upon another person to dress the upper body.

(M0660) Ability to Dress Lower Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

- ☐0. Able to obtain, put on, and remove clothing or shoes without assistance.
- ☐1. Able to dress lower body without assistance if clothing or shoes are laid out or handed to the patient.
- ☐2. Someone must help the patient put on undergarments, slacks, socks, or nylons, and shoes.
- ☐3. Patient depends entirely upon another person to dress lower body.

(M0670) Bathing: Ability to wash entire body. **Excludes grooming (washing face and hands only).**

- ☐0. Able to bathe self in shower or tub independently.
- ☐1. With the use of devices, is able to bathe self in shower or tub independently.
- ☐2. Able to bathe in shower or tub with the assistance of another person:
  (a)for intermittent supervision or encouragement or reminders, OR
  (b) to get in and out of the shower or tub OR
  (c) for washing difficult to reach areas.
- ☐3. Participates in bathing self in shower or tub, but requires presences of another person throughout the bath for assistance or supervision.
- ☐4. Unable to use the shower or tub and is bathed in bed or bedside chair.
- ☐5. Unable to effectively participate in bathing and is totally bathed by another person.

(M0680) Toileting Ability: Ability to get to and from the toilet or bedside commode.

☐0. Able to get to and from the toilet independently with or without a device.
☐1. When reminded, assisted, or supervised by another person, able to get to and from the toilet.
☐2. Unable to get to and from the toilet but is able to use a bedside commode(with or without assistance).
☐3. Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
☐4. Is totally dependent in toileting

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

☐0. Able to independently Transfer.
☐1. Transfers with minimal human assistance or with use of an assistive device.
☐2. Unable to transfer self but is able to bear weight and pivot during the transfer process.
☐3. Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
☐4. Bedfast, unable to transfer but is able to turn and position self in bed.
☐5. Bedfast, unable to transfer and is unable to turn and position self.

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

☐0. Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
☐1. Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
☐2. Able to walk only with supervision or assistance of another person at all times.
☐3. Chairfast, unable to ambulate but is able to wheel self independently.
☐4. Chairfast, unable to ambulate and is unable to wheel self.
☐5. Bedfast, unable to ambulate or be up in a chair

(M0710)Feeding or Eating: Ability to feed self meals and snacks. **Note: this refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

☐0. Able to independently feed self.
☐1. Able to feed self independently but requires:
(a) meal set-up; OR
(b) intermittent assistance or supervision from another person;OR
(c) a liquid, pureed or ground meat diet.
☐2. Unable to feed self and must be assisted or supervised throughout the meal/snack.

☐3. Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
☐4. Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
☐5. Unable to take in nutrients orally or by tube feeding.

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals.

☐0. (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
(b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
☐1. Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
☐2. Unable to prepare any light meals or reheat any delivered meals.

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

☐0. Able to independently drive a car or adapted car, OR uses a regular or handicapped-accessible public bus.
☐1. Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
☐2 Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

☐0. (a) Able to independently take care of all laundry tasks; OR
(b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
☐1. Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
☐2. Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

☐0. (a) Able to independently perform all housekeeping tasks; OR
(b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
☐1. Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
☐2. Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
☐3. Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
☐4. Unable to effectively participate in any housekeeping tasks.

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

- ☐0. (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR
  (b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
- ☐1. Able to go shopping, but needs some assistance:
  (a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR
  (b) Unable to go shopping alone, but can go with someone to assist.
- ☐2. Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
- ☐3. Needs someone to do all shopping and errands.

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

- ☐0. Able to dial numbers and answer calls appropriately and as desired.
- ☐1. Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
- ☐2. Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
- ☐3. Able to answer the telephone only some of the time or is able to carry only a limited conversation.
- ☐4. Unable to answer the telephone at all but can listen if assisted with equipment.
- ☐5. Totally unable to use the telephone.
- ☐NA Patient does not have a telephone.

OUTCOMES IMPROVED

Client's ADL ability has improved to be independent with:
☐ Hygiene ☐ Dressing ☐ Meal Prep ☐ Feeding
☐ Ambulation ☐ Transfer

MEDICATIONS

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

- ☐0. Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
- ☐1. Able to take medication(s) at the correct times if:
  (a) individual dosages are prepared in advance by another person; OR
  (b) given daily reminders; OR
  (c) someone develops a drug diary or chart
- ☐2. Unable to take medication unless administered by someone else.
- ☐NA No oral medications prescribed

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take medication at the correct times if:
  (a) individual dosages are prepared in advance by another person; OR
  (b) given daily reminders; OR
- ☐2. Unable to take medication unless administered by someone else.
- ☐NA No inhalant/mist medication prescribed.

(M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. **Excludes IV medications.**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take injectable medication at correct times if:
  a) individual syringes are prepared in advance by another person, OR
  b) given daily reminders
- ☐2. Unable to take injectable medications unless administered by someone else.
- ☐NA No injectable medications prescribed.

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness)**

- ☐0. Patient manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
- ☐4. Patient is completely dependent on someone else to manage all equipment.
- ☐NA No equipment of this type used in care **[If NA, go to M0830]**

(M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion equipment, enteral/parenteral nutrition, ventilator therapy equipment/supplies): Caregivers' ability to set up, monitor, and change equipment reliably and safely add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐0. Caregiver manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐3. Caregiver is only able to complete small portion of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
- ☐4. Caregiver is completely dependent on someone else to manage all equipment.
- ☐NA No caregiver

EMERGENT CARE

(M0830) Emergent Care: Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐0. No emergent care services **(If No emergent care, go to M0855)**
- ☐1. Hospital emergency room (includes 23-hours holding.)
- ☐2. Doctor's office emergency visit/house call.
- ☐3. Outpatient department/clinic emergency (includes urgicenter sites).
- ☐UK Unknown.**(If UK, go to M0855)**

(M0840) Emergent Care Reason: For what reason(s) did the patient/family seek emergent care **(Mark all that apply.)**

- ☐1. Improper medication administration, medication side effects, toxicity, anaphylaxis.
- ☐2. Nausea, dehydration, malnutrition, constipation, impaction.
- ☐3. Injury caused by fall or accident at home.
- ☐4. Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐5. Wound infection, deteriorating wound status, new lesion/ulcer.
- ☐6. Cardiac problems (e.g. fluid overload, exacerbation of CHF, chest pain).
- ☐7. Hypo/Hyperglycemia, diabetes out of control
- ☐8. GI Bleeding, obstruction
- ☐9. Other than above reasons
- ☐UK Reason Unknown

(M0855) To which **Inpatient Facility** has the patient been admitted?

- ☐1. Hospital **[Go to M0890]**
- ☐2. Rehabilitation facility **[Go to M0903]**
- ☐3. Nursing home **[Go to M0900]**
- ☐4. Hospice **[Go to M0903]**
- ☐NA No Inpatient Facility Admission

(M0870) Discharge Disposition: Where is the patient after discharge from your agency? **(Choose only one answer).**

- ☐1. Patient remained in the community (not in hospital, nursing home, or rehab facility)
- ☐2. Patient transferred to a noninstitutional hospice **(Go to M0903)**
- ☐3. Unknown because patient moved to a geographic location not served by this agency **(Go to M0903)**
- ☐UK Other unknown **(Go to M0903)**

(M0880) After discharge, does the patient receive health, personal, or support **Services or Assistance? (Mark all that apply)**

- ☐1. No assistance or services.
- ☐2. Yes, assistance or services provided by family or friends.
- ☐3. Yes, assistance or services provided by other community resources (e.g., meals-on-wheels, home health services, homemaker assistance, transportation assistance, assisted living, board and care).

INPATIENT FACILITY ADMISSION

(M0890) If the patient was admitted to an acute care **Hospital** for what **Reason** was he/she admitted?

- ☐1. Hospitalization for emergent (unscheduled) care
- ☐2. Hospitalization for urgent (scheduled within 24 hours of admission) care
- ☐3. Hospitalization for elective (scheduled more than 24 hours before admission) care
- ☐UK Unknown

(M0900) For What **Reason(s)** was the patient **Admitted** to **Nursing Home? (Mark all that apply.)**

- ☐1. Therapy services
- ☐2. Respite care
- ☐3. Hospice care
- ☐4. Permanent placement
- ☐5. Unsafe for care at home
- ☐6. Other
- ☐UK Unknown

(M0903) Date of Last (Most Recent) Home Visit:

_____/_____/_____
month day year

(M0906) Discharge/Transfer/Death Date: Enter the date of the discharge, transfer, or death (at home) of the patient.

_____/_____/_____
month day year

☐UK Unknown

SKILLED INTERVENTION

_____	Evaluation	_____	Aural Rehab.	_____	Swallowing
_____	Language Processing	_____	Auditory Reception	_____	Automatic Speech
_____	Speech / Voice	_____	Verbal Expression	_____	Stimulability
_____	Alaryngeal Speech	_____	Augumentative Exp.	_____	Oral Motor
_____	Comprehensive	_____	Reading / Writing	_____	Breathing Exercises

Assessment and Skills Services:

Goals:

Therapist Signature:_____Date:_____Time in:_____Time out_____

OCCUPATIONAL THERAPY DISCHARGE PATIENT ASSESSMENT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI ____

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: _____

(M0016) Branch ID Number: _____ (Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: _____/_____/_____ month day year

☐NA - Not Applicable

(M0040) Patient Name:

_____ ___ _____ _____
First MI Last Suffix

(M0050) Patient's State of Residence: _____

Address: _____

(M0060) Patient Zip Code: _____

Patient Phone: (_____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - _____ - ____

☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: _____/_____/_____ month day year

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____

☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:

☐ 1-RN ☐ 2-PT ☐ 3-SLP/ST ☒ 4-OT

(M0090) Date Assessment Completed:

_____/_____/_____
month day year

Discharge from Agency - Not to an Inpatient Facility

(M0100) This assessment is currently being completed for the following reason:

- ☐1. **Death at home [go to M0906]**
- ☐2. **Discharge from agency [go to M0150]**
- ☐3. **Discharge from agency - no visits completed after start/resumption of care assessment [go to M0906]**

DEMOGRAPHICS AND PATIENT HISTORY

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____

(M0200) Medical or Treatment Regimen Change within Past 14-days: Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

- ☐0. No **(If NO, go to M0250)**
- ☐1. Yes

(M0210) List the patients **Medical Diagnosis** and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical or treatment regimen: (no surgical or V-codes)

Changed Medical Regimen Diagnosis: ICD

a. _____ (_ _ _._ _)
b. _____ (_ _ _._ _)
c. _____ (_ _ _._ _)
d. _____ (_ _ _._ _)

(M0220) Conditions Prior to Medical or Treatment Regimen Change Within Past 14 days: If this patient experienced a change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the change in medical or treatment regimen. **(Mark all that apply).**

- ☐1. Urinary Incontinence
- ☐2. Indwelling/suprapubic catheter
- ☐3. Intractable pain
- ☐4. Impaired decision making
- ☐5. Disruptive or socially inappropriate behavior
- ☐6. Memory loss to the extent supervision required
- ☐7. None of the above

(M0250) Therapies the patient receives at home: **(Mark all that apply.)**

- ☐1. Intravenous or Infusion Therapy (excludes TPN)
- ☐2. Parenteral Nutrition (TPN or lipids)
- ☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
- ☐4. None of the above

(M0280) Life Expectancy: (Physician documentation is not required.)

- ☐0. Life expectancy is greater than 6 months
- ☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**

- ☐1. Heavy smoking
- ☐2. Obesity
- ☐3. Alcohol Dependency
- ☐4. Drug Dependency
- ☐5. None of the above

DISCHARGE INSTRUCTIONS:
Client able to relate to home maintenance program:
- ☐ Yes
- ☐ No
- ☐ Left instructions in the home

LIVING ARRANGEMENTS

(M0300) Current Residence:
- ☐1. Patient's owned or rented residence (house, apartment, or mobile home owned or rented by patient/couple/significant other)
- ☐2. Family member's residence
- ☐3. Boarding home or rented room
- ☐4. Board and care or assisted living facility
- ☐5. Other (specify)_____

(MO310) Structural Barriers in the patient's environment limiting independent mobility: **(Mark all that apply).**
- ☐0. None
- ☐1. Stairs inside the home which must be used by the patient (e.g. to get to toileting, sleeping, eating areas)
- ☐2. Stairs inside home which are used optionally (e.g., to get to laundry facilities)
- ☐3. Stairs leading from inside house to outside
- ☐4. Narrow or obstructed doorways

(MO320) Safety Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. Inadequate floor, roof, or windows
- ☐2. Inadequate lighting
- ☐3. Unsafe gas/electric appliance
- ☐4. Inadequate heating
- ☐5. Inadequate cooling
- ☐6. Lack of fire safety devices
- ☐7. Unsafe floor coverings
- ☐8. Inadequate stair railings
- ☐9. Improperly stored hazardous materials
- ☐10. Lead based paint
- ☐11. Other (specify)_____

(MO330) Sanitation Hazards found in the patient's current place of residence: **(Mark all that apply).**
- ☐0. None
- ☐1. No running water
- ☐2. Contaminated water
- ☐3. No toileting facilities
- ☐4. Outdoor toileting facilities only
- ☐5. Inadequate sewage disposal
- ☐6. Inadequate/improper food storage
- ☐7. No food refrigeration
- ☐8. No cooking facilities
- ☐9. Insects/rodents present
- ☐10. No scheduled trash pickup
- ☐11. Cluttered/soiled living area
- ☐12. Other (specify)_____

(M0340) Patient lives with: (Mark all that apply).
- ☐1. Lives alone
- ☐2. With spouse or significant other
- ☐3. With other family member
- ☐4. With a friend
- ☐5. With paid help other than home care agency staff
- ☐6. With other than above

SUPPORTIVE ASSISTANCE
Names of Persons/Organizations Providing Assistance:

_____
_____
_____

(M0350) Assisting Person(s) Other than Home Care Agency Staff: (Mark all that apply).
- ☐1. Relatives, friends, or neighbors living outside the home
- ☐2. Person residing in the home (EXCLUDING paid help)
- ☐3. Paid Help
- ☐4. None of the above **(If none of the above, go to M0410)**

(MO360) Primary Caregiver taking lead responsibility for providing or managing the patient's care, providing the most frequent assistance, etc. (other than home care agency staff):
- ☐0. No one person **(If No one person, go to MO410)**
- ☐1. Spouse or significant other
- ☐2. Daughter or son
- ☐3. Other family member
- ☐4. Friend or neighbor or community or church member
- ☐5. Paid help

(M0370) How Often does the patient receive assistance from the primary caregiver?
- ☐1. Several times during day and night
- ☐2. Several times during day
- ☐3. Once daily
- ☐4. Three or more times a week
- ☐5. One to two times per week
- ☐6. Less often than weekly

(M0380) Type of Primary Caregiver Assistance: (Mark all that apply).
- ☐1. ADL assistance (e.g. bathing, dressing, toileting, bowel/bladder, eating/feeding)
- ☐2. IADL assistance (e.g., meds, meals, housekeeping, laundry, telephone, shopping, finances)
- ☐3. Environmental support (housing, home maintenance)
- ☐4. Psychosocial support (socialization, companionship, recreation)
- ☐5. Advocates or facilitates patient's participation in appropriate medical care
- ☐6. Financial agent, power of attorney, or conservator of finance
- ☐7. Health care agent, conservator of person, or medical power of attorney

SENSORY STATUS
(M0410) Speech and Oral (Verbal) Expression of Language (In patients own language):
- ☐0. Expresses complex ideas, feelings, and needs clearly, completely, and easily in all situations with no observable impairment.
- ☐1. Minimal difficulty in expressing ideas and needs (may take extra time; makes occasional errors in word choice, grammar or speech intelligibility; needs minimal prompting or assistance).
- ☐2. Expresses simple ideas or needs with moderate difficulty (needs prompting or assistance, errors in word choice, organization or speech intelligibility). Speaks in phrases or short sentences.
- ☐3. Has severe difficulty expressing basic ideas or needs and requires maximal assistance or guessing by listener. Speech limited to single words or short phrases.

☐4. Unable to express basic needs even with maximal prompting or assistance but is not comatose or unresponsive (e.g., speech is nonsensical or unintelligible).
☐5. Patient unresponsive, or unable to speak.

(M0420) Frequency of Pain interfering with patient's activity or movement:
☐0. Patient has no pain or pain does not interfere with activity or movement.
☐1. Less often then daily
☐2. Daily, but not constantly
☐3. All of the time

(M0430) Intractable Pain: Is the patient experiencing pain that is not easily relieved, occurs at least daily, and affects the patient's sleep, appetite, physical or emotional energy, concentration, personal relationships, emotions, or ability or desire to perform physical activity?

☐0. No
☐1. Yes

INTEGUMENTARY STATUS

(M0440) Does this patient have an **Skin Lesion** or **Open Wound**? This excludes "OSTOMIES."

☐0. No **(If No, go to M0490)**
☐1. Yes

(M0445) Does this patient have a **Pressure Ulcer**?

☐0. No **(If No, go to M0468)**
☐1. Yes

(M0450) Current Number of Pressure Ulcers at Each Stage: (Circle one response for each stage.)

	Pressure Ulcer Stages	Number of Pressure Ulcers				
		0 Zero	1	2	3	4 or more
a)	Stage 1: Nonblanchable erythema of intact skin; the heralding of skin ulceration. In darker-pigmented skin, warmth, edema, hardness, or discolored skin may be indicators	0	1	2	3	4
b)	Stage 2: Partial thickness skin loss involving epidermis and/or dermis. The Ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater.	0	1	2	3	4
c)	Stage 3: Full-thickness skin loss involving damage or necrosis of subcutaneous tissue which may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue.	0	1	2	3	4
d)	Stage 4: Full-thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone or supporting structures (e.g., tendon, joint capsule, etc.)	0	1	2	3	4
e)	In addition to the above, is there at least one pressure ulcer that cannot be observed due to the presence of eschar or a nonremovable dressing, including casts? ☐ 0 - No ☐ 1 - Yes					

(M0460) Stage of Most Problematic (Observable) Pressure Ulcer:
☐1. Stage 1
☐2. Stage 2
☐3. Stage 3
☐4. Stage 4
☐NA No observable pressure ulcer

(M0464) Status of Most Problematic (Observable) Pressure Ulcer:
☐1. Fully granulating
☐2. Early/Partial granulation
☐3. Not healing
☐N/A No observable pressure ulcer

(M0468) Does the patient have a **Stasis Ulcer?**

☐0. No **[If No, go to M0482]**
☐1. Yes

(M0470) Current Number of Observable Stasis Ulcer(s):
☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0474) Does this patient have at least one **Stasis Ulcer that Cannot be Observed** due to the presence of a nonremovable dressing?
☐0. No
☐1. Yes

(M0476) Status of Most Problematic (Observable) Stasis Ulcer):

☐1. Fully granulating
☐2. Early/partial granulation
☐3. Not healing
☐NA No observable stasis ulcer

(M0482) Does this patient have a **Surgical Wound?**

☐0. No **(If No, go to M0490)**
☐1. Yes

(M0484) Current Number of (Observable) Surgical Wounds: (If a wound is partially closed but has more than one opening, consider each opening as a separate wound.)

☐0. Zero
☐1. One
☐2. Two
☐3. Three
☐4. Four or more

(M0486) Does this patient have at least one **Surgical Wound that Cannot be Observed** due to the presence of a nonremovable dressing?

☐0. No
☐1. Yes

(M0488) Status of Most Problematic (Observable) Surgical Wound:

☐1. Fully granulating
☐2. Early/partial Granulation
☐3. Not healing
☐NA No observable surgical wound

RESPIRATORY STATUS

(M0490) When is the patient dyspneic or noticeably **Short of Breath?**
☐0. Never, patient is not short of breath
☐1. When walking more than 20 feet, climbing stairs
☐2. With moderate exertion (e.g., while dressing, using commode or bedpan, walking distances less than 20 feet)
☐3. With minimal exertion (e.g., while eating, talking or performing other ADLs) or with agitation
☐4. At rest (during day or night)

(M0500) Respiratory Treatments utilized at home: **(Mark all that apply).**
☐1. Oxygen (intermittent or continuous)
☐2. Ventilator (continually or at night)
☐3. Continuous positive airway pressure
☐4. None of the above

ELIMINATION STATUS

(M0510) Has this patient been treated for a **Urinary Tract Infection** in the past 14 days?
☐0. No
☐1. Yes
☐NA Patient on prophylactic treatment

(M0520) Urinary Incontinence or Urinary Catheter Presence:
☐0. No incontinence or catheter (includes anuria or ostomy for urinary drainage) **[If No got to M0540]**
☐1. Patient is incontinent
☐2. Patient requires a urinary catheter (i.e. external, indwelling, intermittent, suprapubic)**[Go to M0540]**

(M0530) When does Urinary Incontinence occur?
☐0. Timed-voiding defers incontinence
☐1. During the night only
☐2. During the day and night

(M0540) Bowel Incontinence Frequency:
☐0. Very rarely or never has bowel incontinence
☐1. Less than once weekly
☐2. One to three times weekly
☐3. Four to six times weekly
☐4. On a daily basis
☐5. More often than once daily
☐NA Patient has ostomy for bowel elimination

(M0550) Ostomy for Bowel Elimination: Does this patient have an ostomy for bowel elimination that (within the last 14 days) necessitated a change in medical or treatment regimen?

☐0. Patient does not have an ostomy for bowel elimination.
☐1. Patient's ostomy did not necessitate change in medical or treatment regimen.
☐2. The ostomy did necessitate change in medical or treatment regimen.

NEURO/EMOTIONAL BEHAVIORAL STATUS

(M0560) Cognitive Functioning: (Patient's current level of alertness, orientation, comprehension, concentration, and immediate memory for simple commands.)
☐0. Alert/oriented, able to focus and shift attention, comprehends and recalls task directions independently.
☐1. Requires prompting (cuing, repetition, reminders) only under stressful or unfamiliar conditions.
☐2. Requires assistance and some direction in specific situations (e.g., on all tasks involving shifting of attention), or consistently requires low stimulus environment due to distractibility.
☐3. Requires considerable assistance in routine situations. Is not alert or oriented, or is unable to shift attention and recall directions more than half the time.
☐4. Totally dependent due to disturbances such as constant disorientation, coma, persistent vegetative state or delirium.

(M0570) When Confused (Reported or Observed):
- ☐0. Never
- ☐1. In new or complex situations only
- ☐2. On awakening or at night only
- ☐3. During the day and evening, but not constantly
- ☐4. Constantly
- ☐NA Patient nonresponsive

(M0580) When Anxious (Reported or Observed)
- ☐0. None of the time
- ☐1. Less often than daily
- ☐2. Daily, but not constantly
- ☐3. All of the time
- ☐NA Patient nonresponsive

(M0590) Depressive Feelings Reported or Observed in Patient: (Mark all that apply)
- ☐1. Depressed mood (e.g. feeling sad, tearful)
- ☐2. Sense of failure or self reproach
- ☐3. Hopelessness
- ☐4. Recurrent thoughts of death
- ☐5. Thoughts of suicide
- ☐6. None of the above feelings observed or reported

(M0600) Patient Behaviors (Reported or Observed): (Mark all that apply.)
- ☐1. Indecisiveness, lack of concentration
- ☐2. Diminished interest in most activities
- ☐3. Sleep disturbances
- ☐4. Recent change in appetite or weight
- ☐5. Agitation
- ☐6. A suicide attempt
- ☐7. None of the above behaviors observed or reported

(M0610) Behaviors Demonstrated <u>at Least Once a Week</u> (Reported or Observed): (Mark all that apply.)
- ☐1. Memory deficit; failure to recognize familiar persons/places, inability to recall events of past 24 hours, significant memory loss so that supervision is required.
- ☐2. Impaired decision-making; failure to perform usual ADLs or IADLs, inability to appropriately stop activities, jeopardizes safety through actions.
- ☐3. Verbal disruption, yelling, threatening, excessive profanity, sexual references, etc.
- ☐4. Physical aggression, aggressive or combative to self and others (e.g., hits self, throws objects, punches, dangerous maneuvers with wheelchair or other objects).
- ☐5. Disruptive, infantile, or socially inappropriate behavior (**excludes** verbal actions)
- ☐6. Delusional, hallucinations, or paranoid behavior.
- ☐7. None of the above behaviors demonstrated.

(M0620) Frequency of Behavior Problems (Reported or Observed) (e.g., wandering episodes, self abuse, verbal disruption, physical aggression, etc.)
- ☐0. Never
- ☐1. Less than once a month
- ☐2. Once a month
- ☐3. Several times each month
- ☐4. Several times a week
- ☐5. At least daily

(M0630) Is the patient receiving **Psychiatric Nursing Services** at home provided by a qualified psychiatric nurse?
- ☐0. No
- ☐1. Yes

ADL/IADL'S

For M0640-M0800, record what the patient currently is able to do.

(M0640) Grooming: Ability to tend to personal hygiene needs (i.e., washing face and hands, hair care, shaving or make-up, teeth or denture care, fingernail care).

- ☐0. Able to groom self unaided, with or without the use of assistive devices or adapted methods.
- ☐1. Grooming utensils must be placed within reach before able to complete grooming activities.
- ☐2. Someone must assist the patient to groom self.
- ☐3. Patient depends entirely upon someone else for grooming needs.

(M0650) Ability to Dress <u>Upper</u> Body (with or without dressing aids) including undergarments, pullovers, front-opening shirts and blouses, managing zippers, buttons and snaps:

- ☐0. Able to get clothes out of closets and drawers, put them on and remove them from the upper body without assistance.
- ☐1. Able to dress upper body without assistance if clothing is laid out or handed to the patient.
- ☐2. Someone must help the patient put on upper body clothing.
- ☐3. Patient depends entirely upon another person to dress the upper body.

(M0660) Ability to Dress <u>Lower</u> Body (with or without dressing aids) including undergarments, slacks, socks, or nylons, shoes:

- ☐0. Able to obtain, put on, and remove clothing or shoes without assistance.
- ☐1. Able to dress lower body without assistance if clothing or shoes are laid out or handed to the patient.
- ☐2. Someone must help the patient put on undergarments, slacks, socks, or nylons, and shoes.
- ☐3. Patient depends entirely upon another person to dress lower body.

(M0670) Bathing: Ability to wash entire body. **<u>Excludes</u> grooming (washing face and hands only).**

- ☐0. Able to bathe self in <u>shower or tub</u> independently.
- ☐1. With the use of devices, is able to bathe self in shower or tub independently.
- ☐2. Able to bathe in shower or tub with the assistance of another person:
  (a)for intermittent supervision or encouragement or reminders, <u>OR</u>
  (b) to get in and out of the shower or tub <u>OR</u>
  (c) for washing difficult to reach areas.
- ☐3. Participates in bathing self in shower or tub, <u>but</u> requires presences of another person throughout the bath for assistance or supervision.
- ☐4. <u>Unable</u> to use the shower or tub and is bathed in <u>bed or bedside chair</u>.
- ☐5. Unable to effectively participate in bathing and is totally bathed by another person.

(M0680) Toileting Ability: Ability to get to and from the toilet or bedside commode.

- ☐0. Able to get to and from the toilet independently with or without a device.
- ☐1. When reminded, assisted, or supervised by another person, able to get to and from the toilet.
- ☐2. Unable to get to and from the toilet but is able to use a bedside commode(with or without assistance).
- ☐3. Unable to get to and from the toilet or bedside commode but is able to use a bedpan/urinal independently.
- ☐4. Is totally dependent in toileting

(M0690) Transferring: Ability to move from bed to chair, on and off toilet or commode, into and out of tub or shower, and ability to turn and position self in bed if patient is bedfast.

- ☐0. Able to independently Transfer.
- ☐1. Transfers with minimal human assistance or with use of an assistive device.
- ☐2. Unable to transfer self but is able to bear weight and pivot during the transfer process.
- ☐3. Unable to transfer self and is unable to bear weight or pivot when transferred by another person.
- ☐4. Bedfast, unable to transfer but is able to turn and position self in bed.
- ☐5. Bedfast, unable to transfer and is unable to turn and position self.

(M0700) Ambulation/Locomotion: Ability to SAFELY walk, once in standing position, or use a wheelchair, once in a seated position, on a variety of surfaces.

- ☐0. Able to independently walk on even and uneven surfaces and climb stairs with or without railings (i.e., needs no human assistance or assistive device).
- ☐1. Requires use of a device (e.g., cane, walker) to walk alone or requires human supervision or assistance to negotiate stairs or steps or uneven surfaces.
- ☐2. Able to walk only with supervision or assistance of another person at all times.
- ☐3. Chairfast, unable to ambulate but is able to wheel self independently.
- ☐4. Chairfast, unable to ambulate and is unable to wheel self.
- ☐5. Bedfast, unable to ambulate or be up in a chair

(M0710)Feeding or Eating: Ability to feed self meals and snacks. **Note: this refers only to the process of eating, chewing, and swallowing not preparing the food to be eaten.**

- ☐0. Able to independently feed self.
- ☐1. Able to feed self independently but requires:
  (a) meal set-up; OR
  (b) intermittent assistance or supervision from another person;OR
  (c) a liquid, pureed or ground meat diet.
- ☐2. Unable to feed self and must be assisted or supervised throughout the meal/snack.
- ☐3. Able to take in nutrients orally and receives supplemental nutrients through a nasogastric tube or gastrostomy.
- ☐4. Unable to take in nutrients orally and is fed nutrients through a nasogastric tube or gastrostomy.
- ☐5. Unable to take in nutrients orally or by tube feeding.

(M0720) Planning and Preparing Light Meals: (e.g., cereal, sandwich) or reheat delivered meals.

- ☐0. (a) Able to independently plan and prepare all light meals for self or reheat delivered meals; OR
  (b) Is physically, cognitively, and mentally able to prepare light meals on a regular basis but has not routinely performed light meal preparation in the past (i.e., prior to this home care admission).
- ☐1. Unable to prepare light meals on a regular basis due to physical, cognitive, or mental limitations.
- ☐2. Unable to prepare any light meals or reheat any delivered meals.

(M0730) Transportation: Physical and mental ability to safely use a car, taxi, or public transportation (bus, train, subway).

- ☐0. Able to independently drive a car or adapted car, OR uses a regular or handicapped-accessible public bus.
- ☐1. Able to ride in a car only when driven by another person; OR able to use a bus or handicap van only when assisted or accompanied by another person.
- ☐2 Unable to ride in a car, taxi, or bus or van and requires transportation by ambulance.

(M0740) Laundry: Ability to do own laundry - to carry laundry to and from washing machine, to use washer and dryer, to wash small items by hand.

- ☐0. (a) Able to independently take care of all laundry tasks; OR
  (b) Physically, cognitively, and mentally able to do laundry and access facilities, but has not routinely performed laundry tasks in the past (i.e., prior to this home care admission).
- ☐1. Able to do only light laundry, such as minor hand wash or light washer loads. Due to physical, cognitive, or mental limitations, needs assistance with heavy laundry such as carrying large loads of laundry.
- ☐2. Unable to do any laundry due to physical limitation or needs continual supervision and assistance due to cognitive or mental limitation.

(M0750) Housekeeping: Ability to safely and effectively perform light housekeeping and heavier cleaning tasks.

- ☐0. (a) Able to independently perform all housekeeping tasks; OR
  (b) Physical, cognitively, and mentally able to perform all housekeeping tasks but has not routinely participated in housekeeping tasks in the past (i.e., prior to this home care admission).
- ☐1. Able to perform only light housekeeping (e.g. dusting, wiping kitchen counters) tasks independently.
- ☐2. Able to perform housekeeping tasks with intermittent assistance or supervision from another person.
- ☐3. Unable to consistently perform any housekeeping tasks unless assisted by another person throughout the process.
- ☐4. Unable to effectively participate in any housekeeping tasks.

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

- ☐0. (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR (b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
- ☐1. Able to go shopping, but needs some assistance: (a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR (b) Unable to go shopping alone, but can go with someone to assist.
- ☐2. Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
- ☐3. Needs someone to do all shopping and errands.

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

- ☐0. Able to dial numbers and answer calls appropriately and as desired.
- ☐1. Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
- ☐2. Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
- ☐3. Able to answer the telephone only some of the time or is able to carry only a limited conversation.
- ☐4. Unable to answer the telephone at all but can listen if assisted with equipment.
- ☐5. Totally unable to use the telephone.
- ☐NA Patient does not have a telephone.

OUTCOMES IMPROVED

Client's ADL ability has improved to be independent with:
☐ Hygiene ☐ Dressing ☐ Meal Prep ☐ Feeding
☐ Ambulation ☐ Transfer

MEDICATIONS

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. Excludes **injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

- ☐0. Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
- ☐1. Able to take medication(s) at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR (c) someone develops a drug diary or chart
- ☐2. Unable to take medication unless administered by someone else.
- ☐NA No oral medications prescribed

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. Excludes **all other forms of medication (oral tablets, injectable and IV medications).**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take medication at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR
- ☐2. Unable to take medication unless administered by someone else.
- ☐NA No inhalant/mist medication prescribed.

(M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. Excludes **IV medications.**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take injectable medication at correct times if: a) individual syringes are prepared in advance by another person, OR b) given daily reminders
- ☐2. Unable to take injectable medications unless administered by someone else.
- ☐NA No injectable medications prescribed.

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness)**

- ☐0. Patient manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
- ☐4. Patient is completely dependent on someone else to manage all equipment.
- ☐NA No equipment of this type used in care **[If NA, go to M0830]**

(M0820) Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion equipment, enteral/parenteral nutrition, ventilator therapy equipment/supplies): Caregivers' ability to set up, monitor, and change equipment reliably and safely add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐0. Caregiver manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐3. Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
- ☐4. Caregiver is completely dependent on someone else to manage all equipment.
- ☐NA No caregiver

EMERGENT CARE

(M0830) Emergent Care: Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐0. No emergent care services **(If No emergent care, go to M0855)**
- ☐1. Hospital emergency room (includes 23-hours holding.)
- ☐2. Doctor's office emergency visit/house call.
- ☐3. Outpatient department/clinic emergency (includes urgicenter sites).
- ☐UK Unknown.**(If UK, go to M0855)**

(M0840) Emergent Care Reason: For what reason(s) did the patient/family seek emergent care **(Mark all that apply.)**

- ☐1. Improper medication administration, medication side effects, toxicity, anaphylaxis.
- ☐2. Nausea, dehydration, mainutrition, constipation, impaction.
- ☐3. Injury caused by fall or accident at home.
- ☐4. Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐5. Wound infection, deteriorating wound status, new lesion/ulcer.
- ☐6. Cardiac problems (e.g. fluid overload, exacerbation of CHF, chest pain).
- ☐7. Hypo/Hyperglycemia, diabetes out of control
- ☐8. GI Bleeding, obstruction
- ☐9. Other than above reasons
- ☐UK Reason Unknown

(M0855) To which **Inpatient Facility** has the patient been admitted?

- ☐1. Hospital **[Go to M0890]**
- ☐2. Rehabilitation facility [Go to M0903]
- ☐3. Nursing home **[Go to M0900]**
- ☐4. Hospice [Go to M0903]
- ☐NA No Inpatient Facility Admission

(M0870) Discharge Disposition: Where is the patient after discharge from your agency? **(Choose only one answer).**

- ☐1. Patient remained in the community (not in hospital, nursing home, or rehab facility)
- ☐2. Patient transferred to a noninstitutional hospice **(Go to M0903)**
- ☐3. Unknown because patient moved to a geographic location not served by this agency **(Go to M0903)**
- ☐UK Other unknown **(Go to M0903)**

(M0880) After discharge, does the patient receive health, personal, or support **Services or Assistance**? **(Mark all that apply)**

- ☐1. No assistance or services.
- ☐2. Yes, assistance or services provided by family or friends.
- ☐3. Yes, assistance or services provided by other community resources (e.g., meals-on-wheels, home health services, homemaker assistance, transportation assistance, assisted living, board and care).

INPATIENT FACILITY ADMISSION

(M0890) If the patient was admitted to an acute care **Hospital** for what **Reason** was he/she admitted?

- ☐1. Hospitalization for emergent (unscheduled) care
- ☐2. Hospitalization for urgent (scheduled within 24 hours of admission) care
- ☐3. Hospitalization for elective (scheduled more than 24 hours before admission) care
- ☐UK Unknown

(M0900) For What **Reason(s)** was the patient Admitted to **Nursing Home? (Mark all that apply.)**

- ☐1. Therapy services
- ☐2. Respite care
- ☐3. Hospice care
- ☐4. Permanent placement
- ☐5. Unsafe for care at home
- ☐6. Other
- ☐UK Unknown

(M0903) Date of Last (Most Recent) Home Visit:

_____/_____/_____
month day year

(M0906) Discharge/Transfer/Death Date: Enter the date of the discharge, transfer, or death (at home) of the patient.

_____/_____/_____
month day year

☐UK Unknown

Summary of care provided during visit (if applicable):

ADL TRAINING		EDUCATION	
Dressing		Family	
Grooming		Patient	
Toileting		Home Program	
Bathing		Staff	
Feeding		COGNITION	
Household Activities		Problem Solving	
MOTOR TRAINING		Decision Making	
UE Fine Coordination		Memory	
UE Gross Coordination		VISION/PERCEPTION	
ROM		ADAPTIVE EQUIPMENT / ORTHOTICS	
Balance		Fabricate	
Strengthening		Repair/Modify	
Re-education		Training	
SENSORY RETRAINING		EDEMA CONTROL	
Stimulation		FUNCTIONAL TRANSFERS	
Precautions		BED/W/C MOBILITY	
DEVELOPMENTAL ACTIVITIES		JOINT PROTECTION	
OTHER		EVALUATION	

Assessment / Skilled Services:_____

_____

Progress / Response to Therapy:_____

_____

_____

☐ **Instructed client of D/C from all services.**
☐ **Instruction sheet left with client.**

Therapist Signature_____Date:_____

PLACE YOUR AGENCY'S DISCHARGE SUMMARY HERE TO BE COMPLETED BY RN/THERAPIST.

SPEECH THERAPY SOC/ RESUMPTION OF CARE
COMPREHENSIVE PATIENT ASSESSMENT

Copyright © 1998 Center for Health Services and Policy Research, All Rights Reserved.

CLINICAL RECORD ITEMS: Client's Name: Last _____ First _____ MI ____

(M0010) Agency Medicare Provider Number: _____

(M0012) Agency Medicaid Provider Number: _____

Branch Identification: (Optional, for Agency Use)

(M0014) Branch State: ____

(M0016) Branch ID Number: _____
(Agency-assigned)

(M0020) Patient ID Number: _____

(M0030) Start of Care Date: _____

(M0032) Resumptions of Care Date: ____/____/____
☐NA - Not Applicable month day year

(M0040) Patient Name:
First _____ MI ____ Last _____ Suffix _____

(M0050) Patient's State of Residence: _____

Address: _____

(M0060) Patient Zip Code:

Patient Phone: (____) _____

(M0063) Medicare Number: (including suffix if any) ☐ NA No Medicare _____

(M0064) Social Security Number ____ - ____ - ____
☐ UK - Unknown or Not Available

(M0065) Medicaid #: _____ ☐ NA No Medicaid

(M0066) Birth Date: ____/____/____
month day year

(M0069) Gender: ☐1 - Male ☐2 - Female

(M0072) Primary Referring Physician ID: _____
☐ UK - Unknown or Not Available

(M0080) Discipline of Person Completing Assessment:
☐ 1-RN ☐ 2-PT ☒ 3-SLP/ST ☐ 4-OT

(M0090) Date Assessment Completed:
____/____/____
month day year

(M0100) This Assessment is Currently Being Completed for the Following Reason:

Start / Resumption of Care
- ☐1. Start of care - further visits planned
- ☐2. Start of care - no further visits planned
- ☐3. Resumptions of care (after inpatient stay)

DEMOGRAPHICS AND PATIENT HISTORY

(M0140) Race/Ethnicity (as identified by patient): **(Mark all that apply)**

- ☐1. American Indian or Alaska Native
- ☐2. Asian
- ☐3. Black or African-American
- ☐4. Hispanic or Latino
- ☐5. Native Hawaiian or Pacific Islander
- ☐6. White
- ☐UK Unknown

(M0150) Current Payment Sources for Home Care: (Mark all that apply.)

- ☐0. None, no charge for current services
- ☐1. Medicare (traditional fee-for-service)
- ☐2. Medicare (HMO/managed care)
- ☐3. Medicaid (traditional fee-for-service)
- ☐4. Medicaid (HMO/managed care)
- ☐5. Worker's Compensation
- ☐6. Title programs (e.g., Title III, V, or XX)
- ☐7. Other Government (e.g., CHAMPUS, VA, etc.)
- ☐8. Private Insurance
- ☐9. Private HMO/managed care
- ☐10. Self-pay
- ☐11. Other (specify) _____
- ☐UK Unknown

(M0160) Financial factors limiting the ability of the patient/family to meet basic health needs: **(Mark all that apply.)**

- ☐0. None
- ☐1. Unable to afford medicine or medical supplies
- ☐2. Unable to afford medical expenses that are not covered by Insurance/Medicare (e.g., copayments)
- ☐3. Unable to afford rent/utility bills
- ☐4. Unable to afford food
- ☐5. Other (specify) _____
- ☐ **MSS referral**

(M0170) From which of the following **Inpatient Facilities** was the patient discharged during the past 14 days? **(Mark all that apply.)**

- ☐1. Hospital
- ☐2. Rehabilitation Facility
- ☐3. Nursing Home
- ☐4. Other (specify) _____
- ☐N/A Patient was not discharged from an inpatient facility **(If N/A, go to MO200)**

(M0180) Inpatient Discharge Date (most recent):

____/____/____
month day year

☐UK Unknown

(M0190) Inpatient Diagnosis and ICD code categories (three digits required, five digits optional) for only those conditions treated during an inpatient facility stay within the last 14 days (no surgical or V-codes):

Inpatient Facility Diagnosis	ICD
a. _____	(_ _ _._ _)
b. _____	(_ _ _._ _)

(M0200)**Medical or Treatment Regimen Change within Past 14-days:** Has this patient experienced a change in medical or treatment regimen (e.g., medication, treatment, or service change due to new or additional diagnosis, etc.) within the last 14 days?

☐0. No **(If NO, go to M0220)**
☐1. Yes

(M0210) List the patients **Medical Diagnosis** and ICD code categories (three digit required; five digit optional) for those conditions requiring changed medical regimen: (no surgical or V-codes)

Changed Medical Regimen Diagnosis:	ICD
a. _____	(__ __ __.__ __)
b. _____	(__ __ __.__ __)
c. _____	(__ __ __.__ __)
d. _____	(__ __ __.__ __)

(M0220)**Conditions Prior to Medical or Treatment Regimen Change or Inpatient Stay Within Past 14 days:** If this patient experienced an inpatient facility discharge or change in medical or treatment regimen within the past 14 days, indicate any conditions which existed prior to the inpatient stay or change in medical or treatment regimen. **(Mark all that apply).**

☐1. Urinary Incontinence
☐2. Indwelling/suprapubic catheter
☐3. Intractable pain
☐4. Impaired decision-making
☐5. Disruptive or socially inappropriate behavior
☐6. Memory loss to the extent supervision required
☐7. None of the above
☐NA No inpatient facility discharge and no change in medical or treatment regimen in past 14 days
☐UK Unknown

Last MD Visit: _____

CURRENT ILLNESS

(M0230/M0240) Diagnoses and Severity Index: List each medical diagnosis or problem for which the patient is receiving home care and ICD code category (three digits required; five digits optional - no surgical or V-codes) and rate them using the following severity index. (Choose one value that represents the most severe rating appropriate for each diagnosis.)

0 - Asymptomatic, no treatment needed at this time
1 - Symptoms well controlled with current therapy
2 - Symptoms controlled with difficulty, affecting daily functioning; patient needs ongoing monitoring
3 - Symptoms poorly controlled, patient needs frequent adjustment in treatment and dose monitoring
4 - Symptoms poorly controlled, history of rehospitalizations

(M0230) Primary Diagnosis	ICD	Severity Rating					Exacerbation Date
a. _____	(__ __ __.__ __)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
(M0240) Other Diagnoses	**ICD**	**Severity Rating**					
b. _____	(__ __ __.__ __)						_____
c. _____	(__ __ __.__ __)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
d. _____	(__ __ __.__ __)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
e. _____	(__ __ __.__ __)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
f. _____	(__ __ __.__ __)	☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____
		☐ 0	☐ 1	☐ 2	☐ 3	☐ 4	_____

PROBLEMS:

(M0250)Therapies the patient receives at home: **(Mark all that apply.)**

☐1. Intravenous or Infusion therapy (excludes TPN)
☐2. Parenteral nutrition (TPN or lipids)
☐3. Enteral nutrition (nasogastric, gastrostomy, jejunostomy, or any other artificial entry into the alimentary canal)
☐4. None of the above

(M0260) Overall Prognosis: BEST description of patient's overall prognosis for recovery from this episode of illness.

☐0. Poor: little or no recovery is expected and/or further decline is imminent
☐1. Good/Fair: partial to full recovery is expected
☐UK Unknown

(M0270) Rehabilitative Prognosis: BEST description of patient's prognosis for functional status

☐0. Guarded: minimal improvement in functional status is expected; decline is possible
☐1. Good: marked improvement in functional status is expected
☐UK Unknown

(M0280) Life Expectancy: (Physician documentation is not required.)

☐0. Life expectancy is greater than 6 months
☐1. Life expectancy is 6 months or less

(M0290) High Risk Factors characterizing this patient: **(Mark all that apply.)**

☐1. Heavy smoking
☐2. Obesity
☐3. Alcohol Dependency
☐4. Drug Dependency
☐5. None of the above
☐UK Unknown

☐ **MSS Referral**

(M0760) Shopping: Ability to plan for, select, and purchase items in a store and to carry them home or arrange delivery.

- ☐0. (a) Able to plan for shopping needs and independently perform shopping tasks, including carrying packages; OR (b) Physically, cognitively, and mentally able to take care of shopping, but has not done shopping in the past (i.e. prior to this home care admission).
- ☐1. Able to go shopping, but needs some assistance: (a) By self is able to do only light shopping and carry small packages, but needs someone to do occasional major shopping; OR (b) Unable to go shopping alone, but can go with someone to assist.
- ☐2. Unable to go shopping, but is able to identify items needed, place orders, and arrange home delivery.
- ☐3. Needs someone to do all shopping and errands.

(M0770) Ability to use Telephone: Ability to answer the phone, dial numbers, and effectively use the telephone to communicate.

- ☐0. Able to dial numbers and answer calls appropriately and as desired.
- ☐1. Able to use a specially adapted telephone (i.e., large numbers on the dial, teletype phone for the deaf) and call essential numbers.
- ☐2. Able to answer the telephone and carry on a normal conversation but has difficulty with placing calls.
- ☐3. Able to answer the telephone only some of the time or is able to carry only a limited conversation.
- ☐4. Unable to answer the telephone at all but can listen if assisted with equipment.
- ☐5. Totally unable to use the telephone.
- ☐NA Patient does not have a telephone.

OUTCOMES IMPROVED

Client's ADL ability has improved to be independent with:
☐ Hygiene ☐ Dressing ☐ Meal Prep ☐ Feeding
☐ Ambulation ☐ Transfer

MEDICATIONS

(M0780) Management of Oral Medications: Patient's ability to prepare and take all prescribed oral medications reliably and safely, including administration of the correct dosage at the appropriate times/intervals. **Excludes injectable and IV medications. (Note: This refers to ability, not compliance or willingness).**

- ☐0. Able to independently take the correct oral medication(s) and proper dosage(s) at the correct times.
- ☐1. Able to take medication(s) at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR (c) someone develops a drug diary or chart
- ☐2. Unable to take medication unless administered by someone else.
- ☐NA No oral medications prescribed

(M0790) Management of Inhalant/Mist Medications: Patient's ability to prepare and take all prescribed inhalant/mist medications (nebulizers, metered dose devices) reliably and safely, including administration of the correct dosage at the appropriate time/intervals. **Excludes all other forms of medication (oral tablets, injectable and IV medications).**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take medication at the correct times if: (a) individual dosages are prepared in advance by another person; OR (b) given daily reminders; OR
- ☐2. Unable to take medication unless administered by someone else.
- ☐NA No inhalant/mist medication prescribed.

(M0800) Management of Injectable Medications: Patient's ability to prepare and take all prescribed injectable medications reliably and safely, including administration of correct dosage at the appropriate time/intervals. **Excludes IV medications.**

- ☐0. Able to independently take the correct medication and proper dosage at the correct times.
- ☐1. Able to take injectable medication at correct times if: a) individual syringes are prepared in advance by another person, OR b) given daily reminders
- ☐2. Unable to take injectable medications unless administered by someone else.
- ☐NA No injectable medications prescribed.

EQUIPMENT MANAGEMENT

(M0810) Patient Management of Equipment (includes ONLY oxygen, IV/infusion therapy, enteral/parenteral nutrition equipment/supplies): Patient's ability to set up, monitor and change equipment reliably and safely, add appropriate fluids, medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to the ability, not compliance or willingness)**

- ☐0. Patient manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment (i.e., fills portable oxygen tank, provides patient with prepared solutions), patient is able to manage all other aspects of equipment.
- ☐2. Patient requires considerable assistance from another person to manage equipment, but independently completes portions of the task.
- ☐3. Patient is only able to monitor equipment (e.g., liter flow, fluid in bag) and must call some else to manage the equipment.
- ☐4. Patient is completely dependent on someone else to manage all equipment.
- ☐NA No equipment of this type used in care **[If NA, go to M0830]**

(M0820) **Caregiver Management of Equipment (includes ONLY oxygen, IV/infusion equipment, enteral/parenteral nutrition, ventilator therapy equipment/supplies):** Caregivers' ability to set up, monitor, and change equipment reliably and safely add appropriate fluids or medication, clean/store/dispose of equipment or supplies using proper technique. **(NOTE: This refers to ability, not compliance or willingness.)**

- ☐0. Caregiver manages all tasks related to equipment completely independently.
- ☐1. If someone else sets up equipment, caregiver is able to manage all other aspects.
- ☐2. Caregiver requires considerable assistance from another person to manage equipment, but independently completes significant portions of task.
- ☐3. Caregiver is only able to complete small portions of task (i.e., administer nebulizer treatment, clean/store/dispose of equipment or supplies).
- ☐4. Caregiver is completely dependent on someone else to manage all equipment.
- ☐NA No caregiver

EMERGENT CARE

(M0830) Emergent Care: Since the last time OASIS data were collected, has the patient utilized any of the following services for emergent care (other than home care agency services)? **(Mark all that apply.)**

- ☐0. No emergent care services **(If No emergent care, go to M0855)**
- ☐1. Hospital emergency room (includes 23-hours holding.)
- ☐2. Doctor's office emergency visit/house call.
- ☐3. Outpatient department/clinic emergency (includes urgicenter sites).
- ☐UK Unknown.**(If UK, go to M0855)**

(M0840) Emergent Care Reason: For what reason(s) did the patient/family seek emergent care **(Mark all that apply.)**

- ☐1. Improper medication administration, medication side effects, toxicity, anaphylaxis.
- ☐2. Nausea, dehydration, malnutrition, constipation, impaction.
- ☐3. Injury caused by fall or accident at home.
- ☐4. Respiratory problems (e.g., shortness of breath, respiratory infection, tracheobronchial obstruction)
- ☐5. Wound infection, deteriorating wound status, new lesion/ulcer.
- ☐6. Cardiac problems (e.g. fluid overload, exacerbation of CHF, chest pain).
- ☐7. Hypo/Hyperglycemia, diabetes out of control
- ☐8. GI Bleeding, obstruction
- ☐9. Other than above reasons
- ☐UK Reason Unknown

(M0855) To which **Inpatient Facility** has the patient been admitted?

- ☐1. Hospital **[Go to M0890]**
- ☐2. Rehabilitation facility **[Go to M0903]**
- ☐3. Nursing home **[Go to M0900]**
- ☐4. Hospice [Go to M0903]
- ☐NA No Inpatient Facility Admission

(M0870) Discharge Disposition: Where is the patient after discharge from your agency? **(Choose only one answer).**

- ☐1. Patient remained in the community (not in hospital, nursing home, or rehab facility)
- ☐2. Patient transferred to a noninstitutional hospice **(Go to M0903)**
- ☐3. Unknown because patient moved to a geographic location not served by this agency **(Go to M0903)**
- ☐UK Other unknown **(Go to M0903)**

(M0880) After discharge, does the patient receive health, personal, or support **Services or Assistance?** **(Mark all that apply)**

- ☐1. No assistance or services.
- ☐2. Yes, assistance or services provided by family or friends.
- ☐3. Yes, assistance or services provided by other community resources (e.g., meals-on-wheels, home health services, homemaker assistance, transportation assistance, assisted living, board and care).

INPATIENT FACILITY ADMISSION

(M0890) If the patient was admitted to an acute care **Hospital** for what **Reason** was he/she admitted?

- ☐1. Hospitalization for emergent (unscheduled) care
- ☐2. Hospitalization for urgent (scheduled within 24 hours of admission) care
- ☐3. Hospitalization for elective (scheduled more than 24 hours before admission) care
- ☐UK Unknown

(M0900) For What **Reason(s)** was the patient **Admitted to Nursing Home?** **(Mark all that apply.)**

- ☐1. Therapy services
- ☐2. Respite care
- ☐3. Hospice care
- ☐4. Permanent placement
- ☐5. Unsafe for care at home
- ☐6. Other
- ☐UK Unknown

(M0903) Date of Last (Most Recent) Home Visit:

_____/_____/_____
month day year

(M0906) Discharge/Transfer/Death Date: Enter the date of the discharge, transfer, or death (at home) of the patient.

_____/_____/_____
month day year

☐UK Unknown

THERAPEUTIC EXERCISES
(P=Passive A/A=Active-Assisted A=Active MR=manually Resisted)

LOWER EXTREMITY:	Reps	Sets	Assist Resist	▲	UPPER EXTREMITY:	Reps	Sets	Assist Resist	▲
LE Isometrics					Bicep Curls				
SAQ					Tricep Extension				
FAQ					**SHOULDER:**				
SLR (Flex, ext, ab, ad)					Abd/Add				
Bridging					Flex/Ext				
Ankle Circles					Int. Rot./Ext. Rot.				
Heel Slides					(Horiz) Abd/Add				
Knee Flexion					Codmans				
Marching					Press				
TRUNK:					**CERVICAL:**				
Williams Flex Ex.					ROM				
Extension					Shoulder Shrugs/Circle				
Rotation Ex.					Scap. Retraction				

SUBJECTIVE REPORT, ASSESSMENT:_____

PLAN/FOCUS FOR NEXT VISIT:_____

HOMEBOUND DUE TO:_____

( ) COMMUNICATION WITH MD ( ) PROGRESS NOTE TO MD
( ) ORDERS WRITTEN ( ) NEW ORDERS
( ) PT. INFORMED OF POC CHANGE ( ) AGREES
( ) 5 DAY NOTICE TO PT ( ) DISAGREES

COMMENTS:

Therapist Signature:_____ **Date:**_____