

# TENDER LOVING GREED

MARY ADELAIDE MENDELSON



How the  
Incredibly Lucrative  
NURSING HOME  
"INDUSTRY" Is  
Exploiting America's  
Old People and  
Defrauding Us All

*THIS IS A BORZOI BOOK*

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## Lawless Government

GOVERNMENT EMERGES as the ultimate villain. We have pointed out in the preceding chapters many examples of government indifference to patient abuse and to swindling of the taxpayer by nursing home operators. Since government has taken the responsibility for regulating nursing homes, it must ultimately be held accountable for what happens in those homes. The smell of urine in a filthy nursing home is, therefore, the smell of corrupt regulators, and the silence that answers the cries of abused and neglected patients is the silence of government indifference.

Government has failed us at all levels. At the lowest level, it is the caseworker who continues to send patients to a nursing home where she knows they will be beaten and starved, because, when Christmas rolls around, the operator will give her a fur coat. (The patient wouldn't give her a fur coat for sending him to a better home.) At the other extreme, the failure is in state and federal regulators, and the elected officials who appoint them, who refuse to hear the truth about the scandalous state of the industry because its lobbyists are shouting in their ears and contributing to their campaigns. (The patients' shouts cannot be heard because they don't make campaign contributions.)

Corruption, however, is not the whole story. It would be tempting to attribute all of government's inaction to the buying of influence, but in my experience plain indolence is equally important. The government employee, whether he is a county caseworker or a Washington bureaucrat, is under constant pressure from the operators to see things their way. He is under no pressure in the other direction. If he does his job well, he has to work harder, he faces the antagonism of the operators with whom he has to deal every day—and he gets no reward. It is easier then, even if he is not on the take, to find ways to avoid doing his job as a regulator.

One tactic used frequently is to demand impossible amounts of information before acting. If someone brings in a complaint against a nursing home, the regulator will require more evidence than the person can supply as a condition for looking into the case. This, of course, amounts to asking the other person to do the bureaucrat's job for him. This tactic was used on me in Cleveland in 1970, after I had met with a group of senior citizens who had been organized into a government-financed project to reach out to elderly people. The group had extended its contacts into a nursing home, and its members did not like what they had found. I quote from a report written, painfully, by one of these senior citizens. She is describing a patient in the Euclid Manor Nursing Home in Cleveland, certified for Medicare, which supposedly puts it in the highest category of nursing homes. She writes:

When I reached the second floor, I had to wait for somebody to unlock the gate for me, then they told me she [the patient] was in the second room to my left. When I opened the door after knocking, to get permission to get in, I found a very frail woman crying very hard, wishing she could die. I got her quieted down a little bit and then asked her why she was unhappy. She told me how a white nurse and a colored nurse dragged her to the bathroom and threw her in the bathtub.

In one other occasion when they were giving her a bath after throwing her in, they broke her tail bone, which hurts her very much, when, sitting her in a hard chair, they tie her in that chair. The meals are very poor, she is paralyzed [sic] in the left arm and chronic arthritis in the hands and is unable to walk, she begged me not to tell on her as she does not want to be spit on and beaten anymore. This lady is 81 years of age and has very little company.

The delegation presented me with several similar reports of neglect and cruelty. They pleaded with me for help. They were older citizens and they were frightened. I could offer nothing more than a promise to call the director of the state health department licensure division. I was forced to admit to them that, based on previous experience, I didn't expect much to be done.

I called the director of licensure. I told him only that a delegation of senior citizens had come to my office to deliver some complaints about the Euclid Manor Nursing Home. He did not ask me to enumerate any of their complaints. Unless, he said, there is a witness other than the patient willing to sign his name to a complaint, the health department would not investigate. The health department would not even listen to the senior citizen delegation. Of course, by the very nature of the business, the only witness is the attendant who himself created the agony for the patient. Only in a most unusual situation would anyone else be around to witness a patient being "spit on and beaten" by an aide or nurse. Thus, officialdom has comfortably shielded itself from the necessity of action by requiring nearly impossible documentation of claims of cruelty.

Down in Washington, the Securities and Exchange Commission staff used exactly the same tactic to avoid conducting an investigation. The crime division of the Justice Department sent me over to the SEC when I reported some of my findings about nursing home chains. During our meet-

ing, the SEC's special corps in the crime division left their yellow note pads discouragingly blank. They did not, they explained, have time for the nursing home industry. But they had a proposition to make to me: if I would bring them a case all prepared for legal action they then would act. Obviously I myself could not collect all the legal data of fraud; they were safe. Having transferred their responsibility to me, they no longer had to worry.

Criminal justice authorities behave in much the same way. I have already described, in Chapter 3, the mishandling of the case of Eugene Woods, and in Chapter 4, the lackadaisical "investigation" of the charges concerning Max Strauss's Riverside Nursing Home, resulting in an aborted grand jury presentation. Those were not my first experiences with lax prosecution of cases concerning the nursing home industry. Two years earlier, I had made my first investigation of nursing homes in the Cleveland area.

My data, collected from the welfare department, based on reading records and reviewing monthly journals of vendor payments, were ultimately put into a report, one that suggested areas of fraud and disclosed case histories. These histories would not provide a legal proof of fraud, that being beyond my sphere of investigation, but they did illustrate the areas in which malpractices occurred to an extent suggesting fraud; they did describe countless violations of nursing home regulations that explained the delivery of reprehensible nursing care. The report begged for official investigation. Submitted to Senator Frank Moss, it formed at his request the nucleus for an investigation by the General Accounting Office. To the extent that the GAO was authorized to investigate, it substantiated my findings. By 1967 both my general findings and the GAO report had been released to the public. But my narrative report, consisting of case histories and names of vendors and of informants, was not made public. The report released by the General Accounting Office was statistical and free of any names.

The Cleveland news media clamored for names. Ultimately the county prosecutor, goaded into action, subpoenaed me to appear before his grand jury, to which I presented my two-hundred-page report. The whole procedure was a rout: it was either a comedy of inefficiency or a contrived situation aimed at protecting the nursing homes and discrediting the General Accounting Office investigation along with me.

For my first scheduled appearance before the grand jury, I arrived, but the jury had gone home. An unknown person had reported that I was ill. The next time, with my appointment protected somewhat by advance notice in the news media, the jury and I met. I presented them with my report, with the names decoded for the first time. I was the only person in the room who had seen the report before. Nevertheless, the prosecutor settled back on the sidelines and said in effect, "Tell your story." With no help from him, the jury had to labor through the complicated maze of that report for three hours. Prosecutor Corrigan never called any of my informants, never requested any of the supportive data.

The foreman of the jury, apparently finding public pressures great, eventually issued an interim report to the presiding judge. The foreman stated that he had made "detailed investigations too numerous to relate." But he named only one witness other than myself; the other witnesses remain unknown, if in fact there were any others. None of the people to whom I referred in the report as sources of information said they were questioned.

One paragraph in the foreman's letter deserves quoting because it illustrates the incredible inaccuracy of the jury's findings:

Among those who appeared before the Grand Jury in addition to Mrs. Mendelson was Mr. William Veigel of Columbus, Administrator of Nursing Homes for Ohio, who explained the rules, regulations and laws affecting the

operation of nursing homes in the State. He also discussed new legislation in recent years to improve the homes. It is quite significant that from January 1, 1965 to October, 1966, 81 nursing homes were closed in Cuyahoga County for not conforming to standards set by the State.

The closing of eighty-one homes would indeed have been significant, since there were only ninety-one homes in the area. In fact, however, exactly *five* homes had gone out of business—only one of these being closed for “not conforming to standards.” Yet this absurd claim was the foreman’s answer to a two-hundred-page report detailing cases and areas of malfeasance.

The grand jury report summarily dismissed the General Accounting Office report and mine without subpoenaing my records or my informants, ranging from the director of the Aid for the Aged Office to health department personnel, and without consultation with the General Accounting Office. The jury neither investigated malpractices nor weighed an indictment of any individual. They were given no case for specific action. And that was the end result of those two investigations, the GAO’s and mine.

While government seems to sleep through the working day, the nursing home industry vigorously pursues its interests. We saw in Chapter 6 how Joseph Kosow made political alliances in Massachusetts. In Ohio, several years ago, I watched a state reform effort turn into a victory for the industry. The deaths of sixty-three patients in the Fitchville, Ohio, fire and the nomadic escapade of Eugene Woods focused public attention on nursing homes long enough for the state legislature to agree to reexamine its laws. On the surface, the desire of the state was to strengthen the laws regulating nursing homes. With a tighter code, implemented by regulations enforced by inspectors, the appalling conditions existing in nursing homes would be alleviated. Or that was what the public thought.

The new bill, proposed by the administration of Gover-

nor James Rhodes and sponsored by the state health department, strongly indicated that the nursing home industry had gotten there first. That bill proposed to substitute a permanent license for the then annual license and to drop the requirement for annual inspections. The bill was sold to the legislators as an improvement.

The health department justified a permanent license on the grounds that the annual renewal procedure was a “harassment” of nursing home operators. It ignored what years of experience must surely have taught: it is easier to deny a license than it is to revoke one. Under the proposed bill, which was to become the law, a license could only be revoked, whereas formerly a license could be denied during the annual renewal.

As for mandatory inspection, the department argued that since it inspected homes anyway, a law requiring inspection was unnecessary.

I became involved in the struggle in the Ohio State Legislature over the bill, and in that struggle I learned why so many people, seeking redress for a nursing home abuse, have been denied help by a callous government. The nursing home industry is well organized, and the philanthropic homes joined the proprietary homes to fight strengthening amendments to the proposed bill. Though the philanthropic-homes gave different reasons, and the “good guys” in the proprietary groups espoused different arguments from those of the “bad guys,” they were all in fundamental agreement on one point: the nursing home industry is entitled to police itself without government intervention. And the government, at great cost to its wards, the patients and the taxpayers, joined hands with the industry behind the scenes.

A friendly Ohio state senator told me that money openly passed from the industry to legislators to influence their votes on the nursing home regulatory bill. Certainly Ohio did finish with a law essentially weaker than its original law—and all in the name of progress. The department

of health had worked closely with the industry in drawing up a bill which would meet the industry's approval. Any proposal to improve the protection of patients through strengthening the policing powers of the state was anathema to both the state and the industry.

The comment on money passing from the industry to the proper people is beyond my ability to prove. Yet a system of payoffs is the repeated explanation I am given of why government fails to respond to pressures to enforce its minimal regulations, to strengthen existing legislation, or even to understand the industry.

The shadow of bribery loomed once again in the spring of 1970. The Ohio State Legislature joined the rush by state legislatures to investigate abuses of Medicaid money. Despite the fact that nursing home care absorbs one-third of the total Medicaid budget, the state officials testifying before the committee at first scrupulously avoided mentioning nursing homes. Finally, forced to respond to inquiries by the legislators, the state welfare assistant director, Robert Canary, declared that the Welfare Department was totally satisfied that nothing was amiss. He even wished aloud that the other programs under Medicaid were as well administered as the nursing home program. I then testified before the committee, giving numerous examples of misappropriation of money. All my cases were documented, but all were glossed over by Mr. Canary when he was questioned about my testimony. Mr. Canary did admit that there had been no auditing of nursing home financial records and that he was aware of a few of the glaring examples I offered of the mishandling of tax dollars. He added that if mistakes were detected, the government pursued no punitive course. Both the legislators and the administration behaved uncomfortably when supplied with facts about Medicaid abuses committed by nursing home operators.

As the investigation neared its end, I met with Patrick Sweeney, a member of the committee, who told me of a call

he had just had from a nursing home operator. The operator, speaking for his organization, offered Mr. Sweeney \$20,000 for his assistance in raising reimbursement rates once again. Mr. Sweeney considered this an idle gesture, being convinced that the nursing homes, unable to make money, could not pay the \$20,000. Mr. Sweeney was unaware of the lucrative nature of the nursing home business. He, like most people, did not realize that the owners of nursing homes include many wealthy people.

The outcome was that Governor Rhodes requested and received a 40 percent increase in the rates—a raise from \$10 to \$14 daily for maximum care. The following year, in 1971, the nursing homes won a vote for still another rate increase from the Ohio House of Representatives. The good news was conveyed by letter to its members by the Ohio Nursing Home Council. The letter describing how the legislature was won was punctuated with upper-case headlines beginning with OUR PREDICTION OF AN INCREASE COMES TRUE. This, however, was not achieved without WEEKS OF ANXIETY. The council reported that its lobbyist, one J. F. Farmer, had been working on the legislature for the past several weeks, and one member had been particularly helpful: MR. NETZLEY GETS THE CREDIT. State Representative Robert Netzley, who opposed “wasteful” welfare programs, nonetheless favored adequate payment to nursing homes. Netzley felt the operation had to be done quietly, so the nursing home lobbyist was SWORN TO SECRECY. The reason was that publicity about a nursing home rate increase might incite other groups to try to get more money, and after all, as the letter explained, “the goal was the money, not the publicity.” In any event, they got the money and the members were advised to thank Mr. Netzley by letter.

This happy outcry indicates why the most active nursing home lobbying is in the state legislatures: that is where the Medicaid rate, the single most important fact of life in the industry, is set. But ultimate responsibility for regulating

nursing homes must be considered to lie in Washington. That is where most of the money comes from; even though the states set the Medicaid rate, Washington pays from 50 to 80 percent of the bill. It was the federal government that adopted Medicaid and Medicare. And, of course, it is only in Washington that a national policy on nursing homes can be framed.

The Department of Health, Education, and Welfare, which administers Medicare and the federal share of Medicaid, is by far the most important federal agency involved with nursing homes. You would hardly know that, to listen to HEW spokesmen, for much of their effort goes to fobbing responsibility off on others—the states, the Congress, and even, on one occasion, the public. That was when then Assistant Secretary (later Secretary) Wilbur Cohen was discussing with me the department's position on proposals opposed by the industry. If the press ran enough stories critical of nursing homes (presumably indicating public interest), HEW could oppose the industry; if not, the industry's will would prevail. In reality, most action (more accurately, inaction) by HEW tends to favor the interests of the industry over those of the patients or the taxpayers. (Among many other examples in this book, we saw in Chapter 8 how HEW tiptoed away from a collision with both the nursing home and brand-name drug interests over the issue of generic drugs.)

One policy HEW consistently has followed is that of secrecy. The department has not varied over the years in its opposition to giving the public information about nursing homes; when its opposition was not overt, it was dragging its feet. In Chapter 5, we cited the time HEW evaded the intent of a congressional directive to find out who owns Medicaid-certified nursing homes. Similarly, the Medicare authorities in HEW do not feel the public is entitled to know who owns Medicare-certified homes. The peculiar reason they give is that many physicians own such homes, and would be em-

barrassed to have it known, since that ownership would appear to be a conflict of interest. In my own experience, I have not found many homes that are in fact owned by doctors—but if they are, and if there is a possible conflict of interest, why withhold that information from the public?

The most blatant form of secrecy practiced by HEW has to do with the reports of nursing home inspections. If there is any single piece of information to which the public should be entitled, it is the inspector's current report on a nursing home. Any member of the public should have the right to see that report before he chooses a nursing home, not to mention the taxpayers' interest in what the home is doing with their money. The only effect of hiding that information is to protect the operator who runs a bad home (and the inspector who lets him get away with it). That fig leaf was at last ripped (or so it seemed) from the industry in 1972 by the courts: a successful suit by a newsman, Mal Schechter, of the magazine *Hospital Practice*, forced HEW to grant access to Medicare inspection reports. The federal policy of secrecy on Medicare has its counterpart in the states' position concerning Medicaid inspections. Also in 1972, Michigan was forced to make public its inspection reports by a court action brought by a Detroit-based patient advocacy group, Citizens for Better Care. Other cases were under way in California and Florida.

The bureaucracies resisted stubbornly. HEW interpreted its defeat in the courts to mean only that Schechter himself could have access to the eight reports on which he had brought his suit—not that the public at large had any right to see Medicare inspection reports. In Michigan the state appealed the decision ordering Medicaid reports into the open. Then, in 1972, the Congress adopted legislation requiring HEW to make public both Medicare and Medicaid reports. That seemed to be that—but it wasn't, because, as always, it is up to the agency, not Congress, to implement the law, and HEW was far from giving up the struggle to

keep the public in the dark. As of this writing, the regulations proposed by HEW would only make public an “extract” from the inspector’s report, not the full report. According to Mal Schechter, an HEW official said this was because the public “wouldn’t understand” the full report. Furthermore, that extract in the case of Medicare could only be seen (not ordered by mail or phone) at the local Social Security office; in the case of Medicaid, one can inspect the extract at the local welfare office. Thus a member of the public can see those “extracts”—if he is willing to find his way to the proper office no matter how far, and if (the biggest “if” of all) he happens to find out that he is entitled to the information. As of this writing, no one is broadcasting the news.

The distance between HEW’s policy of secrecy and a policy of protecting the public interest can be most clearly measured by contrasting what the agency did with what it has *not* done. At no time did HEW take the simple, effective step of ordering operators of all nursing homes receiving federal money to post the latest inspection report prominently in the home, with copies available to potential applicants. That would make available to those most concerned the inspector’s judgment on the home, and would also enable someone reading the posted report to contrast what the inspector said with the reality around him. That, in my opinion, is what HEW should have done long ago.

HEW’s policy of secrecy seems, at times, to be directed as much against itself as against the public. The department evidently does not want to know much about nursing homes. Not only does it not want to collect information on nursing home ownership, it does not inform itself about profits—and it does not accumulate any systematic knowledge about conditions in nursing homes. (Several years ago Senator Frank Moss asked HEW to do a study of profits in the industry similar to the later study, described in Chapter 2, commissioned by my organization. HEW’s response was to

do nothing.) Elementary statistics—like the amount spent on ancillary services for nursing homes—are often befuddled. Apparently the facts about the industry HEW regulates are none of its business. Perhaps such facts would disturb the bureaucracy's sleep.

Much of HEW's role in overseeing the spending of its money has been in effect abdicated to the health industry. This has happened in the choice of what are called "fiscal intermediaries." When Medicaid and Medicare were created, it was obvious that they would cause a flood of paper work in the form of millions of individual bills being presented to government for payment. Existing organizations were retained by Medicare, and in some states Medicaid, to process the papers—to audit and pay the individual bills for the government. This lightened the government work load, but it also removed from government much responsibility for the newly created programs.

The organizations selected as fiscal intermediary in most parts of the country are Blue Cross and its sister organization, Blue Shield. Blue Cross is itself part of the health industry. Controlled by hospitals and doctors, it was founded to help hospitals collect their bills. It has always defended the interests of the health industry in conflicts with those who pay the bills, whether consumers or government. Nursing homes are first cousins to hospitals; their financial practices are similar, and so are the ways in which their costs are unnecessarily inflated and passed on to government. So when government chose Blue Cross as a fiscal intermediary, it was to a large extent allowing the health industry to regulate itself.

The results were soon visible. As noted in the case of California in Chapter 8, the transfer of auditing to Blue Cross greatly reduced the amount of regulation to which nursing homes (and other parts of the health industry) were subject—just at the time that much more money was being pumped into the system. In Ohio at one time Blue Cross was

almost three years behind in its auditing of nursing home bills: for all that time, the bills were being paid without the simplest examination of the nursing homes' claims. The logical conclusion came when, after a number of scandals showed that the Medicaid administration was in trouble, HEW did the inevitable: it appointed a committee to study the problem. The chairman of the committee was Walter McNerny—president of the Blue Cross Association. The industry was being asked to evaluate its own regulation of itself.

Other insurance companies retained as fiscal intermediary have a different kind of conflict of interest. In some states Prudential acts as a fiscal agent, but Prudential also holds mortgages on nursing homes. It is not in Prudential's interest to crack down on payments to nursing homes when those payments will ultimately go to paying off Prudential's mortgages. Traveler's also acts as a fiscal agent. As reported in Chapter 7, the Traveler's then director of Medicare operations appeared at one time on the board of Geri-Care, the nursing home chain linked to Joseph Kosow.

In contrast to most bureaucracies, HEW is diligent in avoiding power, at least when it comes to regulating nursing homes. If it had more regulatory power, it would presumably have to use it, and that would go against the interests of the nursing home industry. So the department has stalled, opposed, or watered down proposals intended to give it more regulatory responsibilities. Nursing home representatives within HEW have collaborated in that effort.

One example involves the Moss Amendments of 1967 and Harold Baumgarten, the professor-nursing home operator-consultant introduced in Chapter 9. The Moss Amendments were designed to tighten federal regulation of nursing homes, and one of them directed HEW to write standards that nursing homes would have to meet in order to qualify for Medicaid. The content of those standards became an issue on which the nursing home lobby, led by the

American Nursing Home Association, showed its teeth. A key question was the role of the licensed practical nurse (LPN). Homes are required to have a registered nurse on duty at least forty hours a week; the issue was who should be in charge the rest of the time. Some felt it should be an LPN; the industry held that a less-trained person was adequate. It was important to the patients whether the person in charge of their care for most hours of the week had any professional training at all; it was equally important to the operators to avoid having to pay the difference between an LPN's salary and that of a less trained employee.

HEW assigned to draft the standards a three-person group headed by Frank Frantz, then at HEW and formerly with the Senate subcommittee that had written the Moss Amendments. As "consultant" to Frantz, HEW hired one Harold Smith, a former official of the Louisiana Nursing Home Association and at that crucial moment chairman of the Legislative Committee of the American Nursing Home Association. The appointment was defended by Frantz's superior, Dr. Francis Land, on the grounds that Smith was an expert and that all experts suffered some conflicts of interest.

Smith's conflict was pretty clear. He is named in the ANHA legislative news report, for June 26, 1967, reporting on the association's efforts to dilute the Moss Amendments. The report stated that:

Because of the testimony of Mrs. Mendelson of the Cleveland, Ohio, Welfare Federation, the General Accounting Office report on Cleveland, Ohio, and on several situations in the various states, there is mounting pressure for additional federal legislation to regulate nursing homes. The staff of the Select Committee on Aging has used these unfair reports in an equally unfair way to promote the Moss Bill. . . . Because of the impression which Mrs. Mendelson's testimony and the GAO Report left on members of the House Ways and Means Committee we were forced to attempt to prove that these alleged conditions generally

were not true and not widespread. In previous legislative letters and other reports, we have discussed what was done to combat the bad publicity. Last year, the present Chairman of Legislative Committee (Harold Smith) and others had several conferences with members of the staff of the Senate Select Committee on Aging to suggest changes in the Moss Bill. . . .

Despite the presence of Harold Smith, the Frantz group came up with draft standards that included the requirement that an LPN be in charge when the RN was absent. That roused the opposition of the nursing home lobby, opposition which was quickly felt within the ranks of HEW. Dr. Land was approached by Charles Cubbler with a proposal that he, Cubbler, be allowed to rewrite the standards. Cubbler, as noted in Chapter 9, was an HEW employee and staff man for the advisory council headed by Harold Baumgarten; he was also a member of the board of directors of Baumgarten's Cranford, New Jersey, nursing home operation. With Dr. Land's permission, Cubbler brought in Harold Smith, the nursing home lobbyist, to rewrite the standards. In the new version, the LPN requirement was gone, along with other provisions that would have improved patient care at the expense of the operators' profits.

This new version, in effect written by the industry, was brought before Baumgarten's advisory council for its approval—though the council in fact had no legal jurisdiction over the standards. Fortunately, the attempt to get the council's approval was blocked by a minority of council members, who were opposed to the industry's version of what the standards should be. (Later, apparently uneasy about the whole episode, Baumgarten twice denied that the standards had come before his council.) In this case, the public interest won a rare victory: after another year of internal struggle, a set of standards came out that was close to the original Frantz version. But it took that long, and the fight was almost lost, because industry representatives like

Harold Smith and Harold Baumgarten, and industry-connected civil servants like Charles Cubbler, were permitted to take part in the department's supposedly impartial decisions. On May 7, 1970, Senator Frank Moss surveyed the wreckage of the amendments adopted twenty-nine months earlier. Some had been diluted to the point of meaninglessness; others had been evaded. Not much was left of the original intent of Congress. As he opened a subcommittee hearing, Senator Moss observed to the audience:

We say to our young people that a citizen may not choose which laws he will obey and which he will not. As I review the performance of the Department of Health, Education and Welfare on implementing these provisions of law designed for the protection of nursing home patients, the question is inescapable: Are government officials asserting the right to choose which laws they will obey? Evidence of government lawlessness is not lost on our young people whom we admonish about law and order.

Senator Moss's statement is a fair summary of HEW's performance. I would add only that you do not have to be young to be made cynical by government lawlessness.

Other agencies whose actions affect nursing homes have a record similar to that of Health, Education, and Welfare. We saw in Chapter 6 that the Federal Housing Administration, which insures loans for nursing home construction, is lax enough to have insured a second loan for Joseph Kosow's associate, Dr. Frank Romano, after Romano had gone bankrupt without paying off earlier FHA-insured loans.

The FHA also practices the standard policy of secrecy. When I was investigating the Harold Baumgarten operation in New Jersey (Chapter 9), I called the Newark office of FHA to get some basic data about the mortgage FHA had insured on the Baumgarten nursing home. The representative, then a Mr. Crowdy, refused to give out the figures, asking: "Why *should* I tell you?" I had thought the public

was entitled to know how a government agency spent its money, but Mr. Crowdy evidently shared the HEW view that the interests of nursing home operators should prevail over those of the public. The Securities and Exchange Commission, as we noted in Chapter 7, fails to gather easily available evidence that would help protect investors from the nursing-stock hustlers.

Finally a word should be said here about the Internal Revenue Service. This book is filled with examples of nursing home operators beating the government with methods that are frequently illegal. Do they always pay their income taxes on their illicit profits? When a nursing home operator pockets the personal expense money of his patients, when he gets a Cadillac as a kickback from his pharmacist—does he report it? It seems reasonable to guess that most often he does not, yet I have heard of no income tax convictions of nursing home operators. Perhaps, if it were motivated, Internal Revenue could do what the other agencies are unwilling or unable to do—just as they were finally able to jail Al Capone for tax evasion.

Congress has shown occasional bursts of interest in the nursing home problem, although the legislature's record is good only when compared to that of the executive branch. Much of the information available on nursing home abuses was dug up by congressional committees and by the investigating arm of Congress, the General Accounting Office. In the Senate, the Subcommittee on Long-Term Care, chaired by Frank Moss, and its staff have been active in trying to dig into the nursing home mess. The Senate Finance Committee held some hearings that brought out information on nursing home financing back in 1969, when John Williams was still in the Senate; but Williams is gone now, and since his departure the committee has failed to pursue its investigations in this area with the same thoroughness.

The House has been less active than the Senate. The

Ways and Means Committee did respond to my original investigation by sending the GAO into Ohio, but it let the subject drop after that. David Pryor of Arkansas, a lonely figure in the House (he left in January 1973, after losing a Senate primary race), had persistently, and without success, sought the formation of a special House committee on nursing homes with authority to conduct a full investigation of the industry. As we have already noted, Pryor had become a crusader after he had, his identity concealed, worked as an aide in a nursing home in Washington, D.C. By the time I interviewed him in 1970, he was deeply pessimistic. He said that, after he had become known for his interest in the field, he had heard from many state and local bureaucrats who said they were prevented from doing their jobs as regulators because of the political power of the nursing home associations. They told the congressman they would lose their jobs if it were known they had been in touch with him. Pryor was also afraid to turn over to HEW letters he had received describing nursing home conditions. He explained why:

The Social Security Administration has asked us to turn over our files to them, but I have not seen fit to do so. If I felt it would do any good I would be glad to. I think there is such a close relationship between the various levels of the bureaucracy on the local, on the state and on the Federal level—there is such a close relationship, personal and political, to the nursing home owners, to the nursing home industry and to the nursing home associations. There is such intertwinement here of people, and the relationships are so close that I think I might be jeopardizing the positions of the patients and the relatives who have written me and complained.

The General Accounting Office, as reported in earlier chapters, has conducted several productive investigations of the nursing home industry. The public has learned far more from the GAO than it has from the Department of Health,

Education, and Welfare, although the latter has far greater resources to call on. But the GAO, itself an arm of Congress, and the staffs of congressional committees operate under severe limitations. For one thing, their staffs are small compared to those of executive agencies. Secondly, they can only devote those limited resources to what Congress wants investigated, and the legislative interest in nursing homes, while greater than that of the bureaucracy, is still slight. Finally, no matter what Congress might legislate, actual enforcement is up to the executive, and those agencies, notably HEW, have made it clear over the years that enforcement is not what they intend to do.

I have spent a decade talking to bureaucrats about nursing homes, from caseworkers in small towns to state officials to agency heads in Washington. As I look back on meetings without number in a hundred anonymous offices, they all begin to look alike. (There are honorable exceptions to the following description, that is, the outraged employees who risked their jobs to give me information. But they remain only exceptions. I am writing here about the people who set the tone of government.) I am in that office with three or four bureaucrats. We are sitting around a table, and they all have yellow lined pads in front of them. I have my briefcase by my chair. I have come either to seek information or to offer it. If I seek information, there are two standard answers: what I want is "confidential" or it is "unavailable." If I am there to offer information on which they might act, there are several possible responses. Their staff is limited, so they can't look into it. If I brought them an airtight case, they could act, otherwise not. If I leave my information, months and years go by—and nothing happens. I have heard them all, and I am profoundly cynical.

It is this background of government that is indifferent to human suffering, too lazy or corrupt to obey its own laws, that makes me skeptical of all the panaceas currently being offered as solutions to the nursing home scandal.