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Valerie Thomas visits her mother, Maggie Gibson, 81, at Brian Center; she was moved from Carver Living Center.  
Staff Photo by Chuck Liddy

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## Nursing-home records closed off

### Bush administration changes are sharply criticized by patient advocates

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After Maggie Gibson, in pain, took an ambulance ride to the hospital from a Durham nursing home, family members were stunned to learn that doctors had found a hip fracture.

No one at Carver Living Center had said anything to them about an accident.

With persistence, Gibson's daughter was able to get to the bottom of what happened to her mother in the 2006 incident. But a recent Bush administration change in federal rules on nursing home inspections makes it nearly impossible for others to do the same, say opponents of the federal action.

Put into effect in October with little notice and without a public comment period, the federal move is getting sharp criticism locally and nationally for closing off what advocates call crucial information.

"It's an extremely troubling development -- it puts a lot of information related to nursing-home inspections off-limits," said Eric Carlson, director of the Long-Term Care Project of the National Senior Citizens Law Center, a California-based nonprofit group funded in part by the federal Administration on Aging.

"I think it's certainly bad for consumers and the folks who represent them."

Officials of the Department of Health and Human Services said employees have been too burdened by requests for information. Under the rule change, state employees who inspect nursing homes for the federal government are reclassified as federal employees who aren't allowed to provide "privileged" information or documents to the public without approval from the head of the Centers for Medicare and Medicaid Services.

"Although any specific request for testimony or documents may not be unduly burdensome, the requests divert employees from their federal survey, certification, and enforcement responsibilities," Michael Leavitt, secretary of the Department of Health and Human Services, said in announcing the

change.

"The cumulative effect of these requests can impede these activities."

Raleigh resident Valerie Thomas, Gibson's daughter, learned what happened only by reviewing follow-up reports from state inspectors -- documents that under the new rules can't be released without specific approval from the chief of the giant federal agency that oversees Medicare and Medicaid.

The reports that Thomas got from state regulators said a nurse's aide had allowed her mother to fall. She then got other aides to help prop up Gibson in a chair without reporting the incident to a supervising nurse as required, the state report said.

More than two weeks passed before Gibson, now 81, who has dementia, got treatment for the break. She lost her ability to walk as a consequence, her daughter said.

"How can I trust my loved ones to someplace and I can't even find out what's going on?" said Thomas, 41. "There ought to be an open policy where I can find out what's going on with my relatives."

Anne Marie Regan, a public-interest lawyer in Louisville, Ky., said the new rule has already slowed to a crawl her efforts to represent a resident of a Pine Knot, Ky., nursing home in a suit that charges he was illegally discharged.

"This totally goes against the normal rules that apply in a lawsuit," Regan said. "It's interfering with our ability to get the information we need to prove our case."

\* \* \*

Anne Duvoisin, a Raleigh attorney, is representing Thomas in a claim against Carver Living Center. Being able to get detailed survey reports is important not only for lawyers, but also for family members, potential residents or policy makers -- anyone who wants direct knowledge of how well nursing homes are doing their jobs, Duvoisin said.

"It is of great public interest to anyone who has a relative in long-term care or anyone who is contemplating having a relative in long-term care," she said.

If Thomas had gotten only the summarized information that's available under the changed regulations, family members would never have known about the circumstances of the fall -- just that Gibson had suffered a fracture at the home, the daughter said.

"From where I sit as a daughter and a caregiver, I feel like I would have to live there and never leave to possibly know what happened," Thomas said of the nursing home.

According to notes from the state surveyor who interviewed staff after the incident, an unnamed staff member saw Gibson fall on July 27, 2006. The report said a nursing assistant walked four to five feet behind Gibson into the dining hall, even though Carver records said staff should have equipped her with a wide strap called a "gait belt" to make sure she did not fall.

The aide attending Gibson told her to sit down, the state report said.

"The chair was beside her on her left side and I saw the walker shake a little and she fell to the right," the report quoted the witness as saying. "It was like she lost her balance and fell. (The aide attending Gibson) was near to the table but not near enough to catch her."

Officials at Carver did not respond Tuesday to messages requesting comment.

Gibson, who now lives at the Brian Center in Durham, can no longer walk.

\* \* \*

After the fall, three aides picked up Gibson and placed her upright in a chair without informing a nurse as policy dictated, the report said.

Thomas soon noted distinct changes in her mother's behavior.

About two weeks earlier, Gibson had been alert and mobile enough to go to Goodberry's and Chick-fil-A to eat and joke with her daughter.

"I got to the point where I would say, 'Something is wrong -- she's grimacing,'" Thomas said.

"She's sleeping, but her face is frowned up."

Thomas called 911, learned of the fracture after prolonged tests by doctors, then complained to the state Division of Facility Services, now the Division of Health Service Regulation. An initial letter said only that nursing home had not taken good enough care of her to prevent an accident; the more detailed documents she asked for spelled out the series of events.

Despite Carver's poor record -- federal records released last week called it one of the worst nursing homes in the Triangle -- Gibson's family had kept her there because the home accepted her despite violent episodes that led to psychiatric hospitalization in her past. Thomas visited her mother as often as possible -- usually at least once a day -- to monitor her care, but couldn't be there constantly, the mother of three said.

Carlson, the California advocate, said more public knowledge of what goes on in nursing homes, not less, is crucial to improving quality of care.

"Keeping inspectors' information private is a dramatic step in the wrong direction," he said.

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## **OTHER BUSH ACTIONS**

Some legislators and advocates have charged President George W. Bush's administration with rushing through late-term rules and other changes that could have long-term impact in areas including health-care and the environment. Changes such as the restriction on releasing detailed nursing-home inspection information can be issued without a comment period if officials say they are administrative and have no significant public impact.

Administration officials have said many of the changes were long in the making. A few of the recent developments include:

- \* A rule that shores up protections for doctors and other healthcare workers who, because of religious or moral objections, refuse to participate in abortions and other procedures;
- \* Endangered-species rules that would allow federal agencies to bypass scientists who specialize in affected species and move ahead on projects if the agencies themselves decide that the endangered species would not be harmed;
- \* A rule exempting farms from reporting releases of hazardous air pollution from animal waste to authorities.

THOMAS GOLDSMITH, WITH INFORMATION FROM THE ASSOCIATED PRESS

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