

ARE THE FEDERAL NURSING HOME STAFF POSTING REQUIREMENTS SERVING CONSUMERS?

**REPORT ON A YEAR LONG CAMPAIGN OF CONSUMER EXPERIENCE WITH
POSTINGS IN THEIR NURSING HOME(S), WITH RECOMMENDATIONS FOR
REGULATORY IMPROVEMENT**

**Long Term Care Community Coalition
(formerly the Nursing Home Community Coalition of New York State)
242 West 30th Street, Suite 306
New York, NY 10001
Phone: 212-385-0355
www.ltccc.org**

**Richard J. Mollot, Esquire
Associate Director**

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Executive Summary

Direct care staffing levels are widely recognized as one of the most important indicators of quality of care in nursing homes. Numerous studies have demonstrated a strong, direct correlation between staffing levels and resident safety and well-being. Many states have recognized this by requiring minimum ratios of staff to residents to safeguard residents.

In 2001, the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services announced its "Nursing Home Quality Initiative." The stated goals of this initiative include "continuing regulatory and enforcement systems and new and improved consumer information... and collaborative efforts to promote quality awareness and improvement."¹ As part of this initiative CMS mandated that as of January 1, 2003 every nursing home in the country must post in a prominent, public place the numbers of licensed and unlicensed direct care staff on duty for every shift. We were pleased to see CMS undertake these initiatives to improve quality and to inform consumers about these critical indicia.

From February 2003 through February 2004 the Long Term Care Community Coalition conducted a campaign asking people to report on the postings in nursing homes in their community. Our objective was to gain insights into real life experiences with the postings: were facilities complying?, were the postings easy for people to find?, were they understandable?, were they perceived to be accurate?, etc...² This campaign focused on New York State. However, it gained national attention, thanks to the National Citizens Coalition for Nursing Home Reform publicizing the campaign in its newsletter. As a result, we received feedback from individuals across the country, though the large majority were from New York State.

Our results indicate that though the federal requirement appears to be widely complied with, numerous strengths and weaknesses became apparent in how facilities were complying. For example, many facilities posted information by their reception area or entry, but many others put the posting in a variety of other areas, some far from the public view (in opposition to the CMS guidelines). Similarly, though the initial guidelines recommend that the postings be 8.5" x 14" or greater, the vast majority of reports we received did not comply, with approximately 8.5" x 11" being the most popular choice, but the sizes ranged widely – from 2" x 3" to 15" x 15".

Overall, our findings clearly indicate that the postings must be easy to find, easy to read, accurate and consistent in order for them to be valuable. They must also give people sufficient information to easily calculate a facility's staffing levels and be able to compare them to other facilities. In order for these goals to be

¹ 42 CFR Part 483 [Federal Register: February 27, 2004 (Volume 69, Number 39), pages 9282-9288].

² See Appendix for a copy of the form used to collect the information.

accomplished, the final regulations must clearly state the parameters for the postings as well as strong oversight mechanisms and fines for non-compliance.

Background of Requirement

Since January 1, 2003, Section 941 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) requires that nursing homes post daily, for each shift, the number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. According to the Centers for Medicare & Medicaid Services (CMS), “[t]he required facility nursing staff numbers must be prominently displayed in a public area. CMS suggests the size of the report be at least 8 ½ x 14 inches, and printed in a size font/print large enough to be easily read. This information must include the actual number of licensed and unlicensed nursing staff directly responsible for the care of residents for that particular day on each shift. This may mean that the nursing facility would post each shift staff numbers very close to the beginning of the shift in order to ensure that the posted numbers are the actual staff working the shift. Licensed and unlicensed nursing staff includes: registered nurses (RNs), licensed practical nurses (LPNs), and nurse aides.”³ According to the same directive, State Survey Agencies are charged with verifying that nursing staffing information is posted for all surveys performed on or after January 1, 2003.

Benefits of Requirement

Direct care staff – RNs, LPNs and CNAs (certified nurse aides) – are truly the lifeline for nursing home residents. Numerous studies have shown that there is a strong, direct correlation between staffing levels and resident safety and well-being.⁴ Unfortunately, understaffing is a widespread and serious problem throughout New York and the entire country. According to recent federal reports, greater “than 90 percent of the nation’s nursing homes have too few workers to take

³ Required Posting of Nursing Staff Numbers, Centers for Medicare & Medicaid Services, 2002, available at <http://www.cms.hhs.gov/medicaid/bipa/bipanah.asp>?. See, also, “Dear Administrator” letter from then Administrator Thomas Scully, available at <http://www.cms.hhs.gov/medicaid/bipa/bipaltr.pdf>, which repeats much of the same language and includes a “recommended template” for facilities to use.

⁴ See U.S. General Accounting Office, *Nursing Homes: Quality of Care More Related to Staffing than Spending*, GAO-02-431R (Washington, D.C.: June 13, 2002); Centers for Medicare & Medicaid Services, *Report to Congress: Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes, Phase II Final Report* (Baltimore, Md.: December 2001); U.S. Department of Health and Human Services, *Quality of Care in Nursing Homes: An Overview*, Office of Inspector General (Washington, D.C.: March 1999); and Institute of Medicine, *Nursing Staff in Hospitals and Nursing Homes: Is it Adequate?* (Washington, D.C.: National Academy Press, 1996).

proper care of patients”⁵ and approximately 98 percent of New York’s nursing homes lack sufficient staff to provide adequate care.⁶

As a result of this crisis in staffing there is a crisis in care: residents in facilities with low staffing are much more likely to experience malnourishment, dehydration, bedsores and other serious – often life threatening – health problems. Thus, the potential benefits of requiring that every facility post its staffing levels are enormous. If done well they give consumers – nursing home residents and potential residents as well as their families and friends – timely and accurate information on the current staffing levels in an individual nursing home.

Having reliable, accessible information on a nursing home's staffing levels is of tremendous benefit to consumers for a number of reasons:

- It gives key insight into the level of care a facility is providing
- It enables consumers to easily compare staffing levels in different homes
- It gives potential residents the chance to “walk away” before being admitted to a facility if they don't like what they see
- It allows consumers and their families to know how a facility benchmarks against known staffing level standards
- It enables consumers and advocates to have access to key information that they can use for advocacy with the government, in the media and with the providers themselves
- It gives long term care ombudsman and government surveyors a key piece of information relating to a facility's ability to provide adequate care and a safe environment
- By its very existence – publicizing staffing levels – the posting has the potential of compelling providers to improve staffing ratios in their facilities.

Impetus for Present Study

As noted above, there are numerous ways in which the staff posting requirement could be extremely helpful for improving care to nursing home residents on both individual and systemic bases. However, in order for it to be useful, the information must not only be accurate and up to date, it must also be easily accessible and understandable. In addition, the information must be comprehensive and complete – enabling the reader to easily make accurate determinations about the level of care in any given facility, with the ability to easily compare levels between facilities and against state, national and other data.

To gain insight into these issues, the Long Term Care Community Coalition (formerly the Nursing Home Community Coalition) conducted a campaign from

⁵ See Robert Pear, *Nursing Homes in U.S. Lack Adequate Staff, a Government Study Finds*, The New York Times, February 18, 2002, (reporting on findings of 2002 Healthcare Financing Administration (now CMS) report on nursing home staffing).

⁶ HCFA (now CMS), *Appropriateness of Minimum Nursing Staff Ratios in Nursing Homes*, Report to Congress, July 2000.

the beginning of 2003 to the beginning of 2004 asking people who go to nursing homes to report to us on the staff posting. Our key goal was to gain insight into how people were perceiving the posting: was it useful. In order to find out, we developed a one page form for people to fill out which asked for the following information: name, address, county and zip code and then ten short answer questions: date and time posting was checked, was there a posting?, was it easy to find?, easy to read?, how large?, where posted?, what were numbers posted?, did the respondent feel the numbers were accurate?, if they know how many residents were in facility and if yes the number, and (added in the middle of campaign) whether person reporting was a resident, family/friend, staff, ombudsman, other? The form also had a space where the respondent could, at their option, list personal information.

The form was publicized and distributed through our newsletters and website. In addition, many of our members (which exist of both organizations and individuals) printed out and distributed copies, a press release calling for contributions was sent to newspapers throughout New York state and the National Citizens Coalition For Nursing Home Reform publicized the campaign, resulting in our receiving reports from people across the country.

Following is a presentation of our findings.

Key Findings & Recommendations

Overall, we received 309 responses that were usable, meaning that they contained sufficient information, responded appropriately to the questions asked and were legible enough for us to read. Of these responses, at least 42 came from outside of New York (several responses listed incomplete location data), with Rhode Island, Puerto Rico, Louisiana, Washington, California, Nevada, Missouri and Montana all represented. Sixty eight people responded with reports for the evening shift, 182 for the day shift and 53 for the night shift, with 6 respondents not giving a reporting time.

Was there a posting?

Yes: 284 (approximately 98%) No: 6 (approximately 2%) N/A: 19

- ***Significance:***

Approximately 98% of the respondents found or noticed the posting. For 2% of the respondents either the nursing home was not in compliance with the law or had not posted in a conspicuous place.

- **Recommendation:**

While 98% is a very high compliance finding, given that anyone who took the time to take part in the campaign was likely to be more actively seeking out the posting than the general public, we had hoped it would be 100%. Several people noted that that they found the posting in an out of the way place or a place where the public does not generally go, a further indication that for the general public this number would likely be lower than that reported here. See our recommendations below related to site and size of posting.

What was size of posting?

We received a surprisingly wide range of responses to this question, from 2" x 3" to 15" x 15". 176 people reported that the posting in their facility was approximately 8.5" x 11", representing approximately 57% of all respondents. Forty people (approximately 13%) reported that the posting in their facility was approximately 8" x 14" and 30 (approximately 10%) reported posting of approximately 5" x 8".

- **Significance:**

These three reported posting sizes, represented 246 (almost 80%) of the respondents. Another 20% of respondents reported a wider range of diverse sizes and shapes.

- **Recommendation:**

Because size is a critical factor in the value of the staff posting information – people need to be able to readily find the posting and easily read the information it contains – CMS must require a minimum size. Especially given that the population of nursing home residents and visitors is older than the average population, bigger is better. We also recommend consistency in the size of the required form, to make identification easier for people and also recommend that the required size be a standard for which paper is readily available, to facility compliance with the regulation. Given all of these considerations, we recommend that CMS require that the posting be 11" x 14", "legal size" paper which is readily available and can be used in most office equipment. Under no circumstances should it be permitted for the posting to be less than 8.5" x 11" (a standard sheet).

Where was sheet posted?

Similar to the size question, we received a great variety of responses to this question. The findings:

115 people (approximately 39%): the lobby/entry/reception area, 57 (approximately 19%) on a community bulletin board,
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48 (approximately 16%) by an elevator,
31 (10%) by a nurses' station,
24 (approximately 8%) by a director of nursing or other administrative office,
17 (approximately 6%) were in a place where the public generally didn't go
(such as by an employee time clock), and
4 (approximately 1%) found the postings on residence floors.
22 did not answer the question and 9 gave information that was not usable.

It is important to note that several people reported on multiple postings in a given facility, which is why the total number above is more than 309. One person reported, remarkably, that their facility was not posting the data, but instead handing it out as an enclosure in a packet given to residents.

- **Significance:**

Like the size of the posting, this is also a very significant issue: people should be able to easily locate the posting in a facility. Otherwise, the entire enterprise is of little use. It was unfortunate to see such diverse responses, since it would be most beneficial for people to have a single established place to find the postings.

- **Recommendation:**

CMS should amend its regulations to require consistency in placement of posting among all facilities by mandating a specific place in the facility where the information should be posted. One person we talked to said that the posting should be "as easy to find as the front door." Needless to say, this should be a prominent place to which residents and visitors have easy access, and where they would expect to find notices and other information. The Coalition strongly recommends that CMS require the posting to be in the reception area or entry, the place where visitors routinely gather. If possible, it would be preferable for facilities to post in a prominent within the facility too, in a place where residents frequent, such a community bulletin board.

Do you believe that the numbers posted are accurate?

The findings indicate that only 78% of the respondents felt the numbers were accurate.

Yes: 190 people (approximately 78%),
No: 33 (approximately 14%),
Not sure: 20 (approximately 8%),
N/A: 66.

- **Significance:**

Since this study focused on impressions and did not authenticate the numbers, we are limited in the extent to which we can judge whether the answers to this question accurately reflect conditions in the nursing homes. However, since a large number of the people who reported to us were ombudsman⁷ and therefore had a greater ability than the average person to see what is going on in a facility and get a sense of actual staffing levels or were citizen advocates or family advocates who would have a good ability to make judgments on this issue, believe their perceptions are accurate. Thus, it is meaningful that only 78% of those answering this question felt that the posting was accurate. It indicates two possibilities: that some of the facilities are not being honest about their staffing levels (which coincides with the widely held belief that many facilities inflate their staffing figures for reporting purposes and at survey times) and/or that those who reported that the posting was not accurate had little faith in the quality and/or integrity of their facility. Neither possibility reflects well on the nursing home industry.

- **Recommendation:**

CMS must promulgate a strong enforcement mechanism to ensure that posting data is accurate and meets other requirements of the final regulation. Otherwise, there is a great risk that the entire enterprise will be meaningless. Possible enforcement mechanisms include a significant fine structure, a strong oversight role for the states and ombudsman (which could be funded by fines collected), a toll-free number and easy to use website for consumers to voice complaints or concerns about violations, establishment of a procedure for verification of posting information by employee records or payroll records (either on a regular basis or spot checking).

Was posting easy to find and easy to read?

Easy to Find:

Yes: 272 (approximately 95%)

No: 15 (approximately 5%)

N/A: 22

⁷ We changed our posting form early in the year in which we collected data to include a question asking the reporter to identify whether they were friend/family, resident, staff, ombudsman, etc... Unfortunately, due to the fact that many people continued to use copies of the original form, and that we had already collected significant data before changing the form, we do not have enough information to accurately report and assess the make-up of people who participated in the campaign. However, because we received a large number of forms from Ombudsman offices, and that the National Coalition for Nursing Home Reform, which is host to the National Long Term Care Ombudsman Resource Center, had a big role in publicizing this campaign and disseminating the posting forms, we believe that ombudsman represented a large number of respondents.

Easy to Read?

Yes: 257 (approximately 97%)

No: 8 (approximately 3%)

N/A: 38

- **Significance:**

We were glad to see that approximately 95% of respondents felt that the posting was easy to find and 97% found it easy to read, particularly given the lack of guidelines from CMS. However, again, these findings must be interpreted in light of the fact that all respondents set out to find the posting and were, minimally, more aware of the posting and what it was supposed to be reporting than the average person.

- **Recommendation:**

CMS should standardize the chart with a model that has been pilot tested to ensure maximum comprehension and minimal confusion among its potential audience. It is further recommended that the daily posting be posted with an explanation of what the posting means, how to use them to determine staffing levels (ratios), the significance of the information and contacts for where to go with questions, concerns or complaints.

Preliminary Guidelines

On February 27, 2004 the Centers for Medicare and Medicaid Services issues proposed rules for the nursing home staff posting. Following are the key provisions:

- Posting must “[c]ontain current nurse staffing numbers (FTEs) [full time equivalents] for each shift”
- It is expected that the “form would be completed at the end of each shift with a total FTE count of nursing staff who were actually present and providing direct care to residents.”
- It is expected “that the actual completion of the FTE count would not commence until after the staff for that shift had actually worked.”
- Posting must “[c]ontain the daily resident census”
- Posting must be “posted on the CMS Daily Nurse Staffing Form”⁸
- “[P]roposed regulation would not require data collection on other staff, volunteers, or feeding assistants”
- Posting must “[b]e displayed in a prominent place readily accessible to residents and visitors”

⁸ Proposed standard posting form, 9287 Federal Register, Vol. 69, No. 39, p. 9287. The form is a standard 8 ½ x 11” sheet of paper. To view or download from the Internet, go to <http://www.regulations.gov/fredpdfs/04-03732.pdf>.

- Facilities would be required to make collected information available to the public and to “retain the Daily Nurse Staffing Form for a minimum of 3 years, or as required by State law, whichever is greater”
- Facilities would not be required to report information to CMS or state agencies “at this time”

Further Recommendations

In addition to our recommendations stemming directly from the results of the reporting campaign (presented above in bold with each key finding), we have general comments and recommendations regarding the preliminary guidelines issued by the CMS in February. These recommendations are based on the hundreds of reports we received of individual citizens' real life experiences with the posting forms as well as our own extensive experience in advocacy and research on nursing home care, oversight and regulation:

- **The posting must include data on the present shift of direct care workers.** In order for this information to be of value, people must be able to have the ability to verify the information posted. This would be impossible if the present shift is not posted. Information should be posted within an hour of the beginning of the shift. In addition, we strongly recommend that the previous day's postings for all three shifts be required to be posted as well, so that people can readily see important information about a facility's most recent staffing patterns.
- **A resident census must be included in the posting.** This is also a critical feature that is necessary for the posting to be of value. It is not helpful to know how many workers are in the facility if one does not know how many people they have to care for. We are glad to see this in the preliminary guidelines from CMS and strongly support their inclusion in the final regulation.
- **Posting should use standardized size and format that offers maximum clarity for consumers.** We support the development of a standard posting form, as stated in the proposed guidelines, but believe that the size should be standardized too, to legal size paper (11" x 14") which is easily available and suitable for standard office equipment (therefore not overly burdensome for providers) yet it will provide a large size to facilitate viewing ease.
- **If other personnel besides licensed nurses and CNAs – such as so-called feeding assistants –are allowed to provide direct care to residents, they should be required to be listed on the form separately.** Many consumers, consumer advocates and experts are concerned by the Department of Health and Human Services recent decision to allow feeding assistants with a fraction of the training required of CNAs to provide vital services to vulnerable nursing home residents with little supervision. We believe that if the states and federal government allow nursing homes to set up a new tier

of direct care workers these people must be listed in the posting separately. This is an important piece of information integral to any determination of care levels (whether one is in favor of feeding assistants or opposed to them).

- **The facilities should be required to keep the information collected and make it available to the public for at least three years.** We strongly support this aspect of the proposed guidelines.
- **Facilities should be required to submit all posting information to CMS, or at least, a protocol should be established for submission to the individual states and for the establishment of state databases.** We were disappointed to see CMS take the opposite viewpoint in the proposed regulations; this could be a very valuable way for them to track this important information.

HELP THE NURSING HOME COMMUNITY COALITION KEEP TABS ON STAFFING IN NURSING HOMES

As of January 1, 2003, nursing homes are required to post "in a clearly visible place" the number of nursing staff on duty for each shift. Those who must be included are the Registered Nurses (RNs), Licensed Practical Nurses (LPNs) and Nurse Aides directly responsible for resident care. Some nursing homes might show RNs and LPNs together as "licensed nurses."

Families, friends, residents and staff from all over the state will be contributing to this important effort. Please take a few moments to answer the following questions for the nursing home you live in or visit.

NHCC will use your answers to make sure that nursing homes are complying with the law and that the information is posted in a way that is helpful to consumers. It will also help us determine whether we need to advocate for improvements to the law in the future.

This is important information that can help you and other consumers determine the kind of care a facility is providing.

We encourage you to make and distribute copies of this form so that we can get as much information as possible. Feel free to fill out a form every time you visit – every report we receive will help us determine if this new law is working to benefit residents. Even if you have found that there was no posting, it is extremely important that we hear from you.

Thank you.

HELP THE NURSING HOME COMMUNITY COALITION KEEP TABS ON STAFFING IN NURSING HOMES

NURSING HOME POSTING OF STAFF ON DUTY - REPORTING FORM

- Please Print -

Name of Nursing Home: _____

Address & County of Nursing Home: _____

1. Date and time of day posting was checked: _____ Day Eve Night
2. Does the Nursing Home have a posting? Yes No
3. Is it easy to find? Yes No
4. Is it easy to read? Yes No
5. How large is it (approximately)? _____
6. Where was it posted (check all that apply)?
 Near the entry or reception desk On or near a community bulletin board
 On residence floors Near nurse station(s) Somewhere else (please tell us where) _____
7. What were the numbers posted? ____ RNs ____ LPNs ____ Nurse Aides
(NOTE: If numbers are only given for "Licensed" and "Unlicensed" Nursing Staff, please fill in under LPNs and Nurse Aides, respectively, and check here)
8. Do you feel that this number accurately reflected the number of direct care staff on duty? Yes No Why? _____
9. If you know how many residents are in the facility, write number: _____
10. Are you Family Member/Friend Resident Staff Ombudsman Other

Optional Information (all personal information will be kept confidential):

Your Name: _____

Contact Information: _____

Email Address: _____ Check to join our Action Alert List:

Comments:

RETURN THIS PAGE TO NHCC Posting, 11 John Street, Suite 601, New York, NY 10038 or fax 212-732-6945. PLEASE DO NOT ATTACH ANY ADDITIONAL FORMS OR INFORMATION.

Thank You.