

NEW STUDY:

GOVERNMENT MONITORING & OVERSIGHT OF NURSING HOME CARE

WHY DO PROBLEMS PERSIST DESPITE JOINT STATE AND FEDERAL OVERSIGHT? INCLUDES SPECIAL CASE STUDY ON OVERSIGHT OF NURSING HOMES IN NEW YORK STATE.

Contact: Richard Mollot - 212-385-0355 or richard@ltccc.org

NEW YORK, May 28, 2010: The public spends billions of dollars a year on nursing home care in the United States. Approximately 1.5 million of our most vulnerable and frail citizens depend on nursing homes for their care. Yet, despite this trust and enormous public investment, every day, in nursing homes across the country, frail elderly and disabled residents suffer because their nursing homes fail them.

Despite laws which mandate that every single nursing home resident is to receive the care and services that they need to achieve and maintain their highest practicable physical, emotional and social well-being, nursing home abuse and neglect are a silent epidemic. "How can this be?, said Richard Mollot, LTCCC's executive director, "How can the public pour so much money into nursing homes year after year, with so little accountability for the quality of the services we are purchasing or the outcomes that we get in return? How can we continually entrust so many of our loved ones to this system? Where is the accountability?"

Using New York State Department of Health as a case-study, the report released today by the Long Term Care Community Coalition, *Government Monitoring & Oversight of Nursing Home Care: The Relationship Between Federal and State Agencies*, presents an in-depth assessment of how well the state and federal inspection agencies are working to jointly enforce minimum safety, health and quality of life standards in U.S. nursing homes. While the federal Centers for Medicare and Medicaid Services (CMS) is responsible for monitoring the care of all beneficiaries of Medicaid and Medicare, for those in nursing homes, it contracts out this responsibility to the states. It then has the role of monitoring state performance - to make sure that the states are complying with the contract and ensuring nursing home resident safety. LTCCC assessed the efficacy of this relationship: what are its strengths and weaknesses? How is it that so many nursing homes fail to provide good care or quality of life or dignity for their residents year after year, with relative impunity?

The report provides insights into the many issues surrounding this failure. It specifically assesses the working of the relationship between New York State's oversight agency, the Department of Health, and the regional CMS office responsible for holding it accountable. "Our data indicate that New York State has been underreporting problems in our state's nursing homes year after year, and although the CMS office in New York has a number of different remedies and sanctions at its disposal, it rarely uses more than training and technical advice. Clearly, this strategy is not working for the many nursing home residents across our state who are stuck in facilities that can't – or won't – meet even minimum standards of care," said Cynthia Rudder, PhD., lead author of the report.

Among the issues raised by the report are:

- Insufficient funding for inspections on both the state and federal levels hobbles effective oversight and accountability – even of the nation’s worst nursing home providers.
- States are given too much leeway in the quality of their performance, well beyond that prescribed in either federal law or regulation. As a result, even when they systematically fail to properly identify incidents of resident harm and other violations in their state’s nursing home, they are not held accountable. Our study of New York’s relationship with CMS indicated that the latter functions more as an educator than a regulator.
- CMS does not have a clear way to measure whether a state has a "pattern of failure" to identify nursing home problems, which would lead to more significant sanctions. In a state like New York this means that it is difficult, if not impossible, to ever label the state with such a pattern even when it fails to identify serious care problems.
- In New York, CMS does not use the remedies and sanctions available to it that might help New York improve such as directed quality assurance plans or speaking to state leaders who might effect change, such as the Governor or Legislative leaders.

The report presents a number of recommendations for overcoming the issues identified in the study that ultimately prevent effective oversight of nursing home care. These include:

- Current CMS policies and procedures for assessing a state’s oversight performance and choosing sanctions should be modified so that they reflect the language and purpose of the protections in federal law. For instance, CMS offices should have clear directions for when each sanction or remedy must be imposed when a state has ongoing problems identifying nursing home resident abuse or neglect.
- The CMS office in New York must be more aggressive in its efforts and bring the issues related to problems in identifying serious care problems directly to the attention of those most in power to create change such as the governor and leaders of state legislators. Perhaps if the Governor or legislature understood that the state could lose federal funding if it does not perform, they would make sure that the Department of Health had the funding it needed to adequately monitor nursing home care.
- CMS and State oversight agencies must receive adequate funding. Congress and state legislatures must understand that spending money on oversight will save money for both Medicare and Medicaid: it can reduce incidences of poor care (and its associated costs), cut down on provider fraud and increase the amount of fines collected. Most importantly, from the perspective of consumers and the public, appropriate oversight can lead to better care outcomes for nursing home residents.

The report is available on LTCCC’s nursing home website: www.nursinghome411.org.

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LTCCC is a non-profit organization dedicated to protecting the rights and welfare of long term care consumers in all settings, including nursing homes, assisted living facilities and the community, through policy research, systemic advocacy and public education. For more information on this and other long term care issues, visit our website: www.ltccc.org.