

# THE LTC JOURNAL

November/December 2015

Long Term Care Community Coalition

## New Standards Proposed for Nursing Homes

For the first time since the current federal nursing home regulations were promulgated in 1992, the U.S. government has proposed a sweeping revision to federal standards, known as the Requirements for Participation. The Requirements, which apply to all facilities that participate in the Medicare and/or Medicaid programs, affect all aspects of nursing home operations, from standards for caregivers to fire safety to discharge protocols.

The Centers for Medicare and Medicaid Services (CMS), the federal agency which oversees all services provided by Medicaid and Medicare providers, issued the proposed regulations over the summer and the public had until mid-October to submit comments. As of November 2015, CMS is reviewing the many thousands of comments received and drafting final Requirements. Once finalized, it will likely take some time for them to be implemented. The upcoming presidential election will undoubtedly have a significant affect on the future standards and their implementation as well, since it will be left to that administration to continue the work begun this year.

LTCCC and many of the organizations with which we work have been very concerned about the proposed changes. LTCCC participated in a workgroup convened by the National Consumer Voice for Quality Long-Term Care which reviewed the proposed language and developed comments on issues which we believe are important to resident well-being. Enclosed are LTCCC's comments. We have posted these and other organizations' comments at [www.nursinghome411.org](http://www.nursinghome411.org).

## State & National Changes to LTC Ombudsman Programs

The Long Term Care Ombudsman Program (LTCOP) advocates for the health, safety, welfare, and rights of residents in nursing homes and other residential care facilities. While they do not possess regulatory authority (and thus cannot penalize nursing homes), LTCOPs operate in every state under statutorily mandated functions and responsibilities delineated in Title VII of the Older Americans Act (OAA). These include: (1) identifying and resolving complaints made by or on behalf of residents, (2) representing the needs of residents to policy makers and the

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Please support LTCCC's 2015 Holiday Appeal and help us to provide a strong voice for nursing home & assisted living residents in 2016.

See p.6 for more information.

## LTC Ombudsman Program (continued)

the public, (3) advocating for systemic change by advocating or seeking to change laws and systems on behalf of residents, (4) providing information and educational materials about LTC, and (5) advocating for the health, safety, welfare, and rights of people residing in LTC settings.

Importantly, LTC ombudsmen have a regular presence in a facility, unlike state surveyors (inspectors) which only come about once a year. Given the weaknesses in state surveyor oversight, the presence of an ombudsman is often the only chance that a resident's voice is heard. Thus, from a consumer perspective, strong, well-educated and supported LTC Ombudsman Programs and volunteers are essential.

Two important developments are now underway that are critical for the LTCOP and the people it serves. On the national level, the federal ombudsman office has, for the first time, established regulations for how states must run their individual programs. These regulations include important requirements for LTCOP independence from state government and political influence.

On the New York State level, the state Program has regionalized the local programs which serve individuals directly. The map of the regions and new regional program sponsor organizations can be found at <http://www.ltcombudsman.ny.gov/PropRegion/indexpropreg.cfm>. LTCCC is proud to have been awarded the contract to run the Hudson Valley LTC Ombudsman Program.

### The Hudson Valley, NY LTC Ombudsman Program



Ellen Ott, who provided an outstanding voice for residents and families as leader of the Hudson Valley LTCOP Program for many years, is retiring. We wish her well and thank her for her tremendous generosity and support in the transition of the Program to LTCCC.

At left is a picture of Ellen at Hands On! The Hudson Valley's volunteer luncheon in September, where she was recognized by her volunteers, staff and board for her exceptional contributions to improving care, quality of life and dignity for facility residents. We would also like to take this opportunity to recognize the work of Ellen's staff, Katie Hammond, the Ombudsman Supervisor and Kathy Sorce, the administrative assistant.

LTCCC is very pleased to announce that Gloria Murray is the new Program Director for the Hudson Valley LTCOP and Erica Smith is the new Program Manager. Gloria is a certified ombudsman and LPN who has worked as a volunteer ombudsman. Erica is a recent graduate of Syracuse Law School. She interned for two summers at the Washington, DC, LTC Ombudsman Program. Please join us in welcoming them to LTCCC!

The address and phone number (845-229-4680) for the Hudson Valley LTCOP remain the same. Our new website, [www.hudsonvalleyltcop.org](http://www.hudsonvalleyltcop.org), is currently under construction.

## LTC News Briefs

### **U.S. Centers for Disease Control & Prevention (CDC) finds that up to 75% of antibiotic prescriptions given to nursing home residents are either unnecessary or incorrectly prescribed.**

On September 15, 2015, the CDC reported that “Approximately 4.1 million Americans are admitted to or reside in nursing homes each year. Antibiotics are the most frequently prescribed medications in nursing homes. Up to 70 percent of residents receive one or more courses of antibiotics during a year. Up to 75 percent of antibiotics prescribed in nursing homes are given incorrectly, meaning either the drug is unnecessary or the prescription is for the wrong drug, dose, or duration.” The CDC recommended that all nursing homes should take immediate steps “to improve antibiotic prescribing practices and reduce their inappropriate use to protect residents from the consequences of antibiotic-resistant infections, such as *C. difficile*.”

**CMS Begins Rollout of Payroll Based Nursing Home Staff Reporting.** Having sufficient numbers of care staff has long been recognized as critical for nursing home resident safety and well-being. Nursing Home Compare provides staffing levels for all nursing homes that accept Medicare or Medicaid, however that information is self-reported by facilities and unaudited by the states. In the face of widespread concerns that many nursing homes are providing inaccurate information about their staffing, CMS is developing a staff reporting system that is supposed to be based on actual payroll data. It began rolling this system out on a voluntary basis in October 2015. The system is expected to become mandatory July 1, 2016.

LTCCC and other consumer representatives have significant concerns about how CMS is going to ensure that facilities will report accurate information and, most importantly, how the public can determine how many caregivers are “on the floor” (i.e., providing care, not doing administrative or other work or absent for vacation, etc...). We will report more on this system’s implementation in the future.

**U.S. Inspector General Issues 2016 Work Plan.** The U.S. DHHS Office of the Inspector General (OIG), which has frequently played a critical role in identifying for the public problems in nursing home and other Medicare/Medicaid care, issued its 2016 work plan in November which includes plans for investigations related to quality of care and fraud for nursing home, hospice and home care services. In recent years the OIG has identified high levels of inappropriate antipsychotic drugging and the frequent prevalence of harm to short-term Medicare residents in nursing homes. Advocates had hoped that the OIG would follow up on this important work but, unfortunately, the 2016 work plan does not indicate that. Following are two of the planned LTC investigations from the OIG’s 2016 Work Plan:

**I. State agency verification of deficiency corrections.** We will determine whether State survey agencies verified correction plans for deficiencies identified during nursing home recertification surveys. A prior OIG review found that one State survey agency did not always verify that nursing homes corrected deficiencies identified during surveys in accordance with Federal requirements. Federal regulations require nursing homes to submit correction plans to the State survey agency or CMS for deficiencies identified during surveys. CMS requires State survey agencies to verify the correction of identified deficiencies through onsite reviews or by obtaining other evidence of correction.

**II. Medicaid beneficiary transfers from group homes and nursing facilities to hospital emergency rooms.** We will review the rate of and reasons for transfer from group homes or nursing facilities to hospital emergency departments. High occurrences of emergency transfers could indicate poor quality of care. Prior OIG work examined transfers to hospital emergency departments, raising concerns about the quality of care provided in some nursing facilities.

## LTCCC Holds Annual Cocktail Party

On October 20, 2015, LTCCC held its annual cocktail party. This year we were pleased to honor Susan Dooha & David Silva, two extraordinary individuals who have made a positive difference in the lives of seniors and people with disabilities in New York. Thank you to everyone who supported us and helped make the event a success!



## With Appreciation For Our Supporters!

### Grand Hosts

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*Community Service Society of New York*

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*AARP*

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A special thank you to  
Alzheimer's Association,  
New York City for hosting  
our event this year.



## NY State Enforcements

### Federal Enforcement Actions for Nursing Home Deficiencies

Federal CMPs are one of a number of remedies that the state and federal governments can use when a nursing home fails to meet minimum standards. Typically, when a nursing home is found to be failing to provide the quality of care, quality of life and/or other conditions that it promises to provide in order to receive Medicaid or Medicare money other remedies, such as requiring a “plan of correction,” are implemented first.

Name of Home	Location	Survey Date <sup>3</sup>	Amount
Absolut Center for Nursing & Rehab Dunkirk LLC	Dunkirk	2/4/2015	\$11,475.50 <sup>4</sup>
Bethany Gardens Skilled Living Center	Rome	1/16/2014	\$28,050.00
Bronx-Lebanon Highbridge Woodycrest Center	Bronx	5/29/2015	\$54,600.00 <sup>4</sup>
Ellis Residential & Rehabilitation Center	Schenectady	7/17/2014	\$19,142.50 <sup>4</sup>
Good Shepherd Fairview Home	Binghamton	6/18/2015	\$7,800.00 <sup>4</sup>
Help/PSI, Inc.	Bronx	8/8/2014	\$18,037.50 <sup>4</sup>
Indian River Rehabilitation & Nursing Center	Granville	11/8/2014	\$31,200.00 <sup>4</sup>
Medford Multicare Center for Living	Medford	1/23/2015	\$1,800.00
Orchard Manor Rehab & Nursing Center	Medina	2/19/2015	\$39,747.50 <sup>4</sup>
The Orchard Nursing & Rehab Centre	Granville	9/18/2014	\$23,010.00 <sup>4</sup>
Riverhead Care Center LLC	Riverhead	7/26/2013	\$28,500.00 <sup>5</sup>
Waterview Nursing Care Center	Flushing	3/12/2015	\$10,172.50 <sup>4</sup>

<sup>1</sup> Civil Money Penalties (CMPs) – a federal monetary sanction against nursing homes that fail to comply with minimum standards.

<sup>2</sup> As reported by CMS. For further details contact the CMS FOIA Officer at 212-616-2439.

<sup>3</sup> Date of initial survey. In some instances the facility may have been revisited.

<sup>4</sup> Amount reflects a 35% reduction as the facility waived its right to Appeal as permitted under law.

<sup>5</sup> Amount reflects a settlement agreement.

## Please Support LTCCC This Holiday Season

*Working for a Better Today, for Our Parents, and a Better Tomorrow for Us All*

**DONATE TO OUR ANNUAL APPEAL:** You can send a check to “Long Term Care Community Coalition” at One Penn Plaza, Suite 6252, NY, NY 10119 or donate on-line at [www.ltccc.org/about/support.shtml](http://www.ltccc.org/about/support.shtml). All donations are 100% tax-deductible. Any amount is truly appreciated!

**SHOP & SUPPORT LTCCC:** Go to [smile.amazon.com](http://smile.amazon.com) and choose LTCCC as your charity or go to [www.igive.com/Ltccc](http://www.igive.com/Ltccc) to shop at 100s of stores, from Macy’s to Brooks Brothers to Walgreens, even travel sites like Expedia.com. All shopping is secure and donations are made at no cost to you.

## NY State Enforcements

### NY State Nursing Homes Designated as Special Focus Facilities

The federal Special Focus Facility (SFF) Program was created to address the widespread problem of nursing homes that have persistent, serious problems. Once a facility is selected for inclusion in the Program it receives special attention from the state, including at least twice as many surveys as normal. The goal is that within 18-24 months of being in the Program a facility will either: (1) develop long term solutions to its persistent problems or (2) be terminated from the Medicare and Medicaid programs. Due to resource limitations, only a small number of nursing homes are selected for participation in the SFF Program at any given time, though many more would “qualify” due to their poor care. **Important Notes:** (1) Because the SFF Program is so limited, LTCCC recommends that consumers consider any facility with a one star overall rating on Nursing Home Compare ([www.medicare.gov/nursinghomecompare](http://www.medicare.gov/nursinghomecompare)) to be the equivalent of an SFF, amongst the worst in the country. (2) Numbers in parentheses below indicate the number of months a facility has been an SFF. An asterisk means the facility is a repeat SFF. (2) Numbers in parentheses below indicate the number of months a facility has been an SFF. An asterisk means the facility is a repeat SFF.

Newly Identified as a SFF	Shown Improvement	Not Improved	Recently Graduated from the SFF Program	No Longer Participating in the Medicare and Medicaid Program
Guilderland Center Rehabilitation And E C F (3)	Indian River Rehab And Nursing Center (15)	Medford Multicare Center For Living (13)	The Cottages At Garden Grove, A Skilled Nursing Community (39)*	None

### Actions Taken by the Office of the Medicaid Inspector General

OMIG is charged with: investigating allegations of fraud within LTC facilities, ensuring that those who are enrolled as providers in the Medicaid program are properly vetted and excluding providers who have abused their positions as caregivers. In addition to its own investigations, OMIG makes determinations to exclude based on other agency actions, including the State Education Department (SED), the Medicaid Fraud Control Unit (MFCU), and Human Health Services (HHS).

This quarter OMIG took action against 45 caregivers in the following facilities: Beechwood Homes (Amherst); Bishop Charles Waldo MacLean Episcopal NH (Queens); Blossom North Nursing & Rehab. Center (Rochester); Cortland Regional Medical Center’s Nursing & Rehab. Center (Cortland); Evergreen Commons Nursing Home (East Greenbush); Golden Hill Health Care Center (Kingston); Harding Nursing Home (Waterville); Heather Heights of Pittsford (Pittsford); Highpointe of Michigan Healthcare Facility (Buffalo); Jennie B. Richmond Chaffee Nursing Home (Springville); Lakeside Beikirch Care Center(Brockport); Livingston Hills Nursing & Rehab. Center (Livingstone); Medford Multicare Center for Living (Medford); North Shore-LIJ Stern Family Center for Rehab. (Manhasset); Palisade Nursing Home (Bronx); Port Jefferson Health Care Facility (Brookhaven); Rosa Coplon Jewish Home and Infirmary (Buffalo); Rosewood Heights Health Center (Syracuse); Samaritan Summit Village (Watertown); Split Rock Rehabilitation and Health Care Center (Bronx); and Wayne County Nursing Home (Lyons).



## NY State Enforcements

## Actions Taken by the Medicaid Fraud Control Unit in the Office of the Attorney

Nursing Home	Location	Defendant	Narrative	Sentence
Absolut Center for Nursing and Rehabilitation-Endicott	Broome	Beth Coleman, RN	The defendant made false entries in the electronic narcotic medication records to cover-up her theft and possession of controlled substances.	8/28/2015: One-year Conditional Discharge with continued attendance in a substance abuse treatment program and Restitution of \$75.
Auburn Nursing Home	Cayuga	Michelle Seneca-Jones, LPN	The defendant diverted narcotics intended for residents at Auburn Nursing Home.	4/23/2015: Three-years Probation and mental health and substance abuse treatment.
Bayview Nursing and Rehabilitation Center	Nassau	Vicki Price, LPN	LPN Vicki Price mistakenly administered morphine to a nursing home resident who was not prescribed morphine. When she realized her mistake, she did not tell anyone or do anything to help the resident. Subsequently, the resident overdosed and was sent to the hospital for five days. The defendant also falsified documents to cover-up her actions.	4/1/2015: Three-years probation and 50 hours of community service with special conditions that she surrender her nursing license, not work as a nurse or participate in any activity which involves caring for persons, in any capacity. In addition, Ms. Price made a videotaped statement in which she admits to her crime and answers questions about the impact of that incident with the understanding that the recording will be used in future anti-resident abuse and neglect training seminars.
Crest Manor Living and Rehabilitation Center	Monroe	Denise Caler, Assistant Director of Nursing	Caler, RN, ADON, at Crest Manor, diverted numerous discontinued narcotic drugs that were scheduled to be destroyed for her own personal use.	4/28/2015: Two-years probation with continued drug treatment as needed.
Elcor Nursing and Rehabilitation Center	Chemung	Lisa Rumsome Clark, LPN	LPN Rumsome Clark diverted nearly 200 pills from eight separate patients over a period of just 30 days.	8/12/2015: Jail-60 days and Three-years Probation.
Extended Home Care Agency	Kings	Tara Justin, RN	The defendant was a supervising nurse at Extended Home Care in Manhattan and was responsible for supervising and verifying the provision of home health care services by HRAs employed by Extended. Between June 12, 2012 and September 18, 2012 the defendant completed paperwork and was paid for supervised visits at the home of one patient when, in fact, she made no such visits and provided no such supervision.	8/25/2015: Conditional Discharge conditioned on paying restitution in the amount of \$477
Franklin County Nursing Home	Franklin	Jamie Jarvis, LPN	LPN Jamie Jarvis failed to check blood sugar levels of four residents prior to giving insulin per MD orders.	9/4/2015: Conditional Discharge, Fine of \$1,000 and One-year suspension of LPN License.
Gold Crest Nursing Home	Bronx	Sandra Kerr, CNA	On September 12, 2012, a hidden camera, installed by the resident's family, caught the defendant snapping the resident's arm back, throwing/pushing her into the metal railing of her bed, and pushing the padding from the resident's bed onto her body. On September 14, 2012, the camera caught the defendant striking the resident twice on her side. The resident is a frail elderly woman who suffers from dementia and Alzheimer's disease, and she is non-verbal.	8/17/2015: Two-years Probation, was ordered to participate in a court approved anger management program, and must surrender her certificate
Gowanda Rehabilitation and Nursing Center	Cattaraugus	Sandra Miller, RN	RN stole liquid morphine at Gowanda Rehabilitation and Nursing Center.	6/23/2015: One-year Conditional Discharge, Fine of \$325 and Surcharge of \$205. Defendant to also continue with drug/mental health counseling.
Heritage Health Care Center	Oneida	Robert Hartnett, RN	The defendant failed to notify the doctor of a resident's panic-high potassium laboratory result.	7/10/2015: One-Year Conditional Discharge.
Heritage Health Care Center	Oneida	Sarah Egert, RN	On or about July 29 and July 30, 2014, while employed as a Registered Nurse at Heritage Health Care Center defendant knowingly possessed a controlled substance.	8/19/2015: Three-years Probation and Surcharge of \$250.
Indian River Rehab and Nursing Center	Washington	Barrett Michael larossi, LPN	On March 31, 2014, Defendant falsely documented 6 medical records by indicating that Hydrocodone, Xanax and Ativan were either removed for or administered to residents when none of the residents received their narcotics.	5/5/2015: Three-years probation, \$245 Fine, \$205 Surcharge, \$50 DNA fee and surrender LPN License.
Kaaterskill Care Skilled Nursing and Rehab	Greene	Rachael Corneli, LPN	On January 1, 2015, Rachael Corneli, while employed as a LPN at Kaaterskill Care Nursing and Rehab, stole a blister pack of 37 discontinued Percocet pills along with the controlled substance record for resident R.C. to cover up her theft.	6/18/2015: Conditional Discharge on condition complete a drug treatment program and refrain from work as a LPN while in treatment.
Lakeside Belkirk Care Center	Monroe	Zoraida Santana, LPN	Santana, a per diem LPN, failed to give medications and/or overmedicated nine nursing home patients by dispensing medications more than an hour before their ordered administration time. She also pre-poured and pre-signed medications for four additional patients whose medications were discovered in cups in her medication cart after Santana was escorted out of the facility that evening.	6/10/2015: Three-years Probation and successful completion of Stop Elder Abuse and Mistreatment Program.
San Simeon by the Sound	Suffolk	Matthew Piegari, RN	RN Matthew Piegari administered Haldol, a prescription medication, to an eighty-eight year-old resident without a prescriber's order and intentionally omitted from medical records that he administered the sedative to her.	5/1/2015: Three-years Probation, 100 hours of community service, \$100 Fine and surrender of his nursing license. Defendant also was directed to not work or participate in any activity, which involves caring for incompetent persons due to age, physical disability or mental disease or defect, in any capacity during his three-year period of probation.
Seton Health Schuyler Ridge Residential	Saratoga	Fiona Jennings, CNA	CNA Fiona Jennings violated the care plan of resident by transferring resident by herself on 02/22/15. The resident subsequently fell from her bed onto the floor, striking her face and sustaining a fracture to her right ankle. CNA attempted to cover up by asking another CNA to make a false statement.	7/22/2015: Conditional Discharge on condition to refrain from work as a Certified Nurse Assistant for a period of six months
St. Barnabas Rehabilitation & Continuing Care	Bronx	Liloutie Pooran, CNA	The defendant, while working as a CNA at St. Barnabas NH, failed to get the required blood glucose levels for three insulin dependent diabetic residents. The defendant thereafter falsified the blood glucose levels on the residents' medical charts, which resulted in one resident receiving the incorrect amount of insulin.	6/17/2015: One-year Conditional Discharge, condition of completion of required in-service training programs and community services hours.
St. Regis Nursing Home, Inc.	Saint Lawrence	Crystal Burdick, CNA	Defendant did not report resident's fall. No assessment was done. When questioned by the facility, defendant provided the facility with a written statement denying that the resident fell.	4/30/2015: One-year Conditional Discharge and 40 hours of Community Service.
Sunrise Care Center	Onondaga	Amy Taylor, LPN	On three separate occasions, Percocet was marked as dispensed to a resident who was not in the facility but in the hospital.	6/4/2015: One-year Conditional Discharge and \$100 Fine.
The Baptist Home at Brookmeade	Dutchess	Aneka Marie Grover, CNA	Defendant mistreated 2 residents at The Baptist Home at Brookmeade by spraying water directly into a resident's face, over her cries of protest, and subjecting another resident to verbal abuse and rough treatment. Both residents were also transferred in violation of their care plans.	9/9/2015: Interim probation, which required her to complete 50 hours of community service.
The Highlands Living Center	Monroe	Jessica Myers Leitten, RN	Jessica Myers, an RN at the Highlands Living Center, misread a prescription for Roxanol relative to a 96 year old hospice patient. She administered two .75 mL doses of Roxanol rather than two .25 mL doses. Upon discovering that she had administered the incorrect doses, she falsified the narcotics log in two places to conceal her mistake.	8/20/2015: Conditional Discharge and eight hours of community service.
The Stanton Nursing and Rehab Center	Warren	Courtney Allen, CNA	On 9/14/14, Courtney Allen, while employed as a CNA, failed to follow a care plan for resident when she provided toileting care to resident by herself and left the resident unattended in the bathroom, against facility policy, resulting in the resident falling and fracturing her hip.	4/27/2015: One-year Conditional Discharge and surrender her CNA Certification for a period of six months.
Valley Health Services	Herkimer	Renee Gelo, CNA	The defendant verbally and physically abused two residents. One resident had pants thrown in her face and was told to smell her filthy crotch. Second resident was sworn at and choked by accused.	6/11/2015: One-year Conditional Discharge and \$205 surcharge.
Valley Health Services	Herkimer	Jordan Gonzalez, Jordan, CNA	The defendant gave false information regarding an incident of abuse and encouraged others to give false information.	6/11/2015: One-year Conditional Discharge and \$205 surcharge.
Victory Lake Nursing Center	Dutchess	Maria Fernandez, LPN	In September 2013, defendant engaged an 83 y.o. wheelchair-bound resident in a verbal dispute and slapped the resident in the face while the resident was seated at a dining table.	5/14/2015: One-year Conditional Discharge with the requirements that she complete anger-management training and refrain from working in the health-care industry providing care for any client, patient or resident.
Waterfront Center for Rehab	Erie	Jennifer A. Muehl, LPN	Stole Lorab from discontinued meds locker.	4/15/2015: One-year Conditional Discharge with mental health counseling and \$120 Fine.
Wayne Health Care/DeMay Living Center	Wayne	Ronald Hunte, LPN	LPN Ronald Hunte transferred a nursing home patient to bed after she fell to the floor and did not follow proper notification and documentation protocols. After the transfer, the patient complained of pain and Hunte gave her Tylenol. Hunte failed to document the fall and failed to summon a nurse manager to assess the patient.	8/26/2015: Conditional Discharge and 100 hours of Community Service.

The Medicaid Fraud Control Unit (MFCU) prosecutes cases of Medicaid fraud and patient abuse in nursing homes. To report fraud, abuse or neglect go to

<http://www.ag.ny.gov/comments-mfcu> or call (800) 771-7755.

Note: Following is a portion of recent MFCU actions. For the full list of actions reported to us by the agency go to

<http://www.ltccc.org/enforcements/archives.shtml>.

## NEW!

I. LTCCC is now posting (on a quarterly basis) all NY State Nursing Home Deficiencies listed on Nursing Home Compare for the last three years on our website, [ltccc.org](http://ltccc.org).

Search by facility name, zip code or town for information on violations in nursing homes in your community.

II. The Coalition for Quality Care has posted information on all nursing homes that have repeats of the same deficiencies on NH Compare on its website: [coalitionqualitycare.org](http://coalitionqualitycare.org).



## LTCCC's Comments on Proposed Requirements for Nursing Homes

**Note:** the rest of the *LTC Journal* is comprised of the letter LTCCC submitted to CMS with our comments and concerns re. the proposed changes to federal Requirements for nursing homes.



October 14, 2015

Andy Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Room 445-G, Hubert H. Humphrey Building  
200 Independence Ave., S.W.  
Washington, D.C. 20201

**Re: Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care Facilities**

**MCS-3260-P**

Submitted Electronically via <http://www.regulations.gov>

Dear Acting Administrator Slavitt:

On behalf of the Long Term Care Community Coalition (LTCCC), I am hereby submitting comments on the proposed Requirements of Participation for Long Term Care Facilities.

LTCCC is a non-profit organization wholly dedicated to improving quality of life and quality of care for elderly and disabled individuals who rely on long term care services, particularly those who reside in nursing homes or other residential care settings. Our focus is on systemic advocacy; in furtherance of our mission we research relevant state and national laws and policies that affect the lives of long term care consumers; assess the effectiveness of oversight and accountability mechanisms; and educate state and federal policymakers and the general public on the critical issues that affect care and quality of life for people who live in assisted living and nursing homes.

### General Comments & Recommendations

#### Systemic Change is Urgently Needed

We thank CMS for its work and these extensive revisions of the Requirements of Participation (RoPs). The 1987 Nursing Home Reform Law provides strong protections for nursing home residents in terms of both quality of care and quality of life. While we strongly believe that the existing regulations are robust and *should* be sufficient to ensure

## LTCCC Comments: Reform of Requirements for Long-Term Care Facilities

that every resident receives the quality of care and quality of life that he or she deserves<sup>2</sup> and which, for the majority of residents, taxpayers pay for<sup>3</sup>. It has become clear that changes are needed in the implementation of these standards, if not the regulatory language itself, to realize the mandates of the Reform Law to a meaningful extent. In short, the persistence of widespread problems, many of which are serious, calls for a new, more vigorous approach to preventing abuse, neglect, inhumane conditions and the waste of public funds.

The need to move expeditiously to improve care and accountability in any and every way possible is clear. The pervasiveness and persistence of nursing home neglect and abuse<sup>4</sup> not to mention failures to provide the quality of services which the public pays for and has a right to expect<sup>5</sup> since the current regulations were promulgated are incontrovertible. Numerous US Government Accountability Office (GAO) studies have highlighted the unfortunate persistence of nursing home care problems and their under-identification by state and federal regulators.<sup>6</sup> The US Inspector General for DHHS, Daniel R. Levinson, has stated publicly that “[t]oo many... [nursing homes] fail to comply with federal regulations designed to prevent overmedication, giving nursing home patients antipsychotic drugs in ways that violate federal standards for unnecessary drug use.... Government, taxpayers, nursing home residents, as well as their families and caregivers should be outraged and seek solutions.”<sup>7</sup>

In another study, the Office of the Inspector General found that an astounding one in three Medicare beneficiaries experienced harm during their stay in a nursing home. According to the report, “[p]hysician reviewers determined that 9 percent of these adverse events and temporary harm events were clearly or likely preventable. They attributed much of the preventable harm to substandard treatment, inadequate resident monitoring, and failure or delay of necessary care.”<sup>8</sup> Our own recent study found that states only find harm to residents 4.1% of the time that they cite a deficiency. Even in the case of pressure ulcers, a serious and costly problem, states cite nursing homes the equivalent of less than 3% of the time that a resident has a pressure ulcer. When states do cite a facility for inadequate

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<sup>1</sup> Examples of relevant GAO reports over the years include: *Nursing Homes: Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses*, GAO-08-517 (May 9, 2008); *Nursing Homes: Stronger Complaint and Enforcement Practices Needed to Better Ensure Adequate Care*, HHS-99-89 (Mar 22, 1999). Publicly Released: Mar 22, 1999; *Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents*, HHS-99-80 (Mar 22, 1999); *Increased Compliance Needed With Nursing Home Health and Sanitary Standards*, MWD-76-8 (Published: Aug 18, 1975); *Nursing Homes: Many Shortcomings Exist in Efforts to Protect Residents from Abuse*, GAO-02-448T (Published: Mar 2, 2002); and *Nursing Home Oversight: Industry Examples Do Not Demonstrate That Regulatory Actions Were Unreasonable*, HHS-99-154R (Aug 13, 1999).

<sup>2</sup> *Overmedication of Nursing Home Patients Troubling*, Statement by Daniel R. Levinson, Inspector General, US Department of Health and Human Services (May 9, 2011).

<sup>3</sup> *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries*, OEI-06-11-00370 (Feb. 2014).

# LTCCC Comments: Reform of Requirements for Long-Term Care Facilities

pressure ulcer care or prevention, they only identify this as harmful to residents about 25% of the time.<sup>4</sup>

In general, we appreciate and support the overall focus on person-centered care that is found throughout the proposed regulations. With meaningful enforcement, we believe this focus will enhance residents' quality of care and quality of life. There are other aspects of the proposed requirements that we support as well, including its greater focus on resident choice and preferences; more robust protections against abuse and neglect; and enhancements to the care planning process, such as greater emphasis on resident participation. We are also pleased that residents' rights have been strengthened in certain provisions.

LTCCC has signed on in support of the comments submitted by both the National Consumer Voice for Quality Long-Term Care and the American Association for Justice. In addition, we strongly support the comments submitted by the Center for Medicare Advocacy, California Advocates for Nursing Home Reform, both CANHR's general comments and, perhaps most importantly, their separate comments on dementia care and antipsychotic drugging standards and justice in aging.

## Specific Comments & Recommendations

In the interest of brevity, we are limiting our comments on specific areas of the proposed Requirements to those which we believe merit particular emphasis.

### Arbitration

Nursing facilities should not be permitted to obtain, in any manner, arbitration agreements from residents (or their representatives) prior to a dispute arising. As a number of our colleagues (mentioned above) have written, the use of pre-dispute arbitration agreements in the nursing home context is patently unfair to consumers and, for this and other reasons, extremely poor public policy. It is unfair for nursing facilities to bind residents to arbitration at the time of admission. As a practical matter, residents (or resident representatives) sign arbitration agreements at admission not because they think arbitration is a good choice, but because they are signing in a rote manner and under difficult and stressful circumstances everything put in front of them in order to gain admission to the facility.

In addition, unlike other types of pre-dispute arbitration agreements, which may cover a single transaction or a specific type of dispute, arbitration agreements in nursing facilities cover every single aspect of a resident's life, and may apply through weeks, months or years that the resident lives in the facility. Also, nursing facility arbitration agreements often involve claims involving (for example) pressure sores, infections, malnutrition,

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<sup>4</sup> Safeguarding NH Residents & Program Integrity: A National Review of State Survey Agency Performance (April 2015).

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dehydration, asphyxiation, sexual assault, and death. It is unreasonable to expect residents and their representatives to make decisions regarding such catastrophic events during admission, long before the events have occurred.

We appreciate that CMS has recognized the significant negative impact of pre-dispute arbitration agreements. However, we are extremely concerned by the proposed language that attempts to establish procedural protections. As others have noted, CMS's proposed language, however well-intentioned, would make matters worse. No amount of procedural protections can change the basic power imbalance between an incoming resident (and his or her family) and the facility. Worse, if CMS's proposed language were to become law, facilities would be able to cite the regulatory language to courts as evidence that CMS approves nursing facility arbitration, and could argue that compliance with the regulation was proof that the arbitration agreement and the circumstances surrounding its signing were fair.

## Care Staff

Along with many of our colleagues who are submitting comments (and many others, including residents, family members and ombudsmen with whom we work, who are unable to comment directly) we are very concerned that CMS has failed to address the greatest problem in nursing homes today—insufficient staffing. Good staffing practices are necessary for facilities to deliver quality person-centered care. They start with adequate numbers of nurses and nurse aides. Building on that foundation, good practices include competent staff, as well as systems that promote individualized care and consistent assignment.

The absence of a minimum staffing standard and a registered nurse in the facility around-the-clock can and does harm nursing home residents every day. In addition to the harm caused to residents, it results in the public not receiving the level and quality of care which it pays for through Medicare and Medicaid. The proposed language of "sufficient nursing staff" with "competencies" based on a facility assessment does not adequately protect residents when nursing homes owned by corporations or private equity firms are incentivized in many ways to reduce staffing to dangerously low levels. The proposed regulations must explicitly establish a level below which staffing cannot be cut. Without detailed, explicit staffing standards, many nursing homes have not and will not meet the needs of the frail elders and individuals with disabilities who reside there, nor will they comply with critical regulatory standards (either current or proposed).

As currently written, the proposed requirement calls for "sufficient nursing staff with the appropriate competencies and skills sets." This fails to address the long-standing problem that "sufficient" has not been sufficient to ensure that residents receive the care and services that they need and for which the public pays. Too often we see statements of Deficiencies (SoDs) in which inadequate staffing is clearly a problem, yet insufficient staffing is not cited. And, even when staffing is cited, it is rarely identified as resulting in

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harm to residents, even when the conditions described in the SO are clearly harmful. Our recent study of Nursing Home Compare data indicated that the annual rate of staffing deficiencies per resident is infinitesimal—0.042%—and that less than five percent (5%) of those deficiencies are identified as resulting in harm. Furthermore, for the three-year period covered in Nursing Home Compare which we examined, 21 state agencies never cited insufficient staffing as having resulted in harm to any nursing home resident in their states.<sup>5</sup>

The persistence of serious staffing problems in our nation's nursing homes, despite the longstanding requirement that they have sufficient staff to ensure that residents attain and maintain their highest practicable physical, emotional and psycho-social well-being, makes clear the need for concrete standards. We call on CMS to require that nursing homes maintain a minimum staffing level of 4.1 hours per resident day for RNs, LPNs and CNAs and require that nursing homes have an RN in the facility 24 hours per day.

Quality of Life

We urge CMS to maintain the Quality of Life provisions in their current structure, as an independent Requirement of Participation (RoP). Dispersing the Quality of Life provisions in the RoPs, as currently proposed, sends the message that they are not important and essential and of themselves. Moreover, the significant structural changes proposed will undoubtedly result in confusion and, under the best of circumstances, a lengthy “learning curve” for surveyors and stakeholders (including providers). Our nation's nursing home residents simply cannot afford to have their ability to access a decent and dignified quality of life already tenuous but further at risk.

History, as well as our day-to-day experience, speak to the need to ensure that Quality of Life standards are clearly and distinctly articulated. One of the most important and valuable aspects of the Reform Law is its recognition of the importance of quality of life. In the years since its passage in 1987, both science and our society have further recognized that quality of life and quality of care go hand-in-hand, and that quality of life for all people is a critical component of one's overall well-being.

In 2009, CMS itself recognized the significant need to address quality of life practices when it issued revisions to Appendix PP, “Guidance to Surveyors” addressing, *inter alia*, resident dignity, self-determination and home-like environment.<sup>6</sup> Unfortunately, despite an initial public outreach effort by CMS, the need for meaningful implementation of the Reform Law's quality of life promise continues. We urge CMS to work within the existing RoP structure to ensure that this promise is better fulfilled when the new RoPs are promulgated.

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<sup>5</sup> Id. at pp. 23-24.

<sup>6</sup> CMS, Pub. 100-07 State Operations Provider Certification, Transmittal 88 (June 12, 2009).

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Dementia Care

The proposed regulations are virtually silent on dementia care. Nothing is more central to the purpose of nursing homes than providing good care to people with dementia, who comprise half (if not more) of the nursing home resident population. The quality of care for persons who have dementia is often poor. Too often, residents who have dementia are chemically restrained, deprived of needed care and treated without dignity. Setting standards for dementia care in nursing homes is a common-sense necessity. We again refer to the specific comments on dementia care and chemical restraints submitted by CANHR, which articulates many of the concerns and recommendations which we and other stakeholders have been working with CMS to address since DHS Inspector General Levinson issued his statement on antipsychotic drugging in nursing homes over four years ago.

Thank you for the opportunity to comment and for your consideration of our comments.

Sincerely,



Richard J. Mollot  
Executive Director



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