

# THE LTC JOURNAL

Spring 2017

The Long Term Care Community Coalition

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## In This Issue

<b>Two Reports on Nursing Home Care ID Widespread “Chronic Deficiencies” &amp; Need to Improve Detection of Resident Harm .....</b>	<b>2</b>
Background.....	2
Report #1. Chronic Deficiencies in Care: The Persistence of Recurring Failures to Meet Minimum Safety & Dignity Standards in U.S. Nursing Homes .....	3
Report #2. The Identification of Resident Harm in Nursing Home Deficiencies .....	3
<b>LTCCC Re-Launches Website With More News &amp; Resources for Resident-Centered Advocacy ..</b>	<b>4</b>
<b>Consumer Statement on Need for Stronger Protection of Nursing Home Residents .....</b>	<b>4</b>
<b>LTC News &amp; Briefs.....</b>	<b>5</b>
Study: Home Beats Nursing Home Rehab for Knee, Hip Replacement Recovery .....	5
Federal Judge Admonishes NY State on Warehousing of Mentally Ill .....	5
Antipsychotic Drugs Found Ineffective for Patients with Delirium in Palliative Care .....	7
U.S. Supreme Court Sides With Nursing Home, Allowing Facility to Force Arbitration in Wrongful Death Claim .....	7
Study: Facial Injuries in Nursing Homes a Serious Yet Underappreciated Problem.....	8
Study: Hospital Care Better During Facility Inspections .....	8
<b>LTCCC Resources For Residents, Families, Ombudsmen &amp; Advocates .....</b>	<b>8</b>
Free Programs for Residents, Families, LTC Ombudsmen & Advocates .....	8
Fact Sheet: Medicare Coverage of Skilled Nursing & Skilled Therapy Services .....	9
Fact Sheet: Admission & Discharge Rights in NY State Nursing Homes.....	9
Piecing Together Quality Long-Term Care: A Consumer's Guide to Choice and Advocacy in New York .....	9
<b>LTC Ombudsman Program Seeks Volunteers in NY State .....</b>	<b>9</b>
<b>NY State Nursing Home Enforcement Actions .....</b>	<b>10</b>

## Two Reports on Nursing Home Care ID Widespread “Chronic Deficiencies” & Need to Improve Detection of Resident Harm

### Background

Forty percent of people who reach age 65 will need nursing home care at some point. Despite the significant need for both long-term and short-term nursing home services, and the billions of dollars spent on this care every year, the data show that significant problems in resident care, quality of life and dignity are pervasive across the country. Our laws and regulatory standards are strong, with the goal of ensuring that each resident is treated with dignity and receives the care and services that he or she needs to attain, and maintain, his or her highest practicable physical, emotional and social well-being. The fact that the reality often falls short of this level of care is a result of the observable failure (in fact multiple failures, every day) to adequately enforce those legal standards and protections. In short, we conclude that nursing homes often have inadequate care staff and fail to provide appropriate care with dignity because the standards themselves, absent effective enforcement, will not alter conduct.

We conclude that nursing homes often have inadequate staff and fail to provide appropriate care with dignity because the standards themselves, absent effective enforcement, will not alter conduct.

Last year we conducted a study on the effectiveness of nursing home citations across the country.<sup>1</sup> Specifically, we assessed the extent to which the State Survey Agencies (SAs, which are responsible for monitoring nursing homes and enforcing minimum standards) are fulfilling their obligation to ensure that all residents in licensed nursing homes receive appropriate and sufficient services twenty-four hours a day, seven days a week, 365 days a year.

That report provided, for the first time (to our knowledge), a review of nursing home quality assurance indicators that is centered on nursing home residents as individual people. We concluded that, even with respect to significant quality problems, the SAs generally fail to adequately identify the extent to which an individual resident is harmed. For example, pressure ulcers (also known as bed sores) are a serious problem for nursing home residents. While some pressure ulcers are unavoidable, research and experience indicate that, “[i]n the vast majority of cases, appropriate identification and mitigation of risk factors can prevent or minimize pressure ulcer (PU) formation.”<sup>2</sup> Yet our analysis of the data indicated that, though pressure ulcers are largely preventable, SAs cite nursing homes the equivalent of less than 3% of the time that a resident has a pressure ulcer. Furthermore, even in those instances when SAs do cite a facility

1 Mollot, Richard, JD, *Safeguarding NH Residents & Program Integrity: A National Review of State Survey Agency Performance*, LTCCC (April 2015). Available at [www.nursinghome411.org](http://www.nursinghome411.org).

2 Edsberg, L.; Langemo, D.; Baharestani, M.; Posthauer, M.; and Goldberg, M., “Unavoidable Pressure Injury: State of the Science and Consensus Outcomes,” *Journal of Wound, Ostomy & Continence Nursing*: July/August 2014 - Volume 41 - Issue 4 - p 313–334. Abstract accessed in March 2015 at [http://journals.lww.com/jwoconline/Abstract/2014/07000/Unavoidable\\_Pressure\\_Injury\\_State\\_of\\_the\\_Science.6.aspx](http://journals.lww.com/jwoconline/Abstract/2014/07000/Unavoidable_Pressure_Injury_State_of_the_Science.6.aspx).

for failing to provide pressure ulcer care or prevention, they only identify this as harmful to residents about 25% of the time.<sup>3</sup>

In light of these findings, we undertook the following studies to gain insights into the extent to which nursing homes have chronic problems (Report #1) and how surveyors identify harm when they cite a nursing home (Report #2). This work was supported by a generous grant from The New York Community Trust.

### **Report #1. Chronic Deficiencies in Care: The Persistence of Recurring Failures to Meet Minimum Safety & Dignity Standards in U.S. Nursing Homes**

This report accompanies publication of the names of over 6,000 U.S. nursing homes with what LTCCC identifies as “chronic deficiencies” -- three or more citations for the same health or safety standard in a three-year period. The report is based on an analysis of three years of data posted on Nursing Home Compare and collected in the fall of 2016 by Voices for Quality Care, a Maryland-based non-profit organization. The report provides insights into what it can mean when a facility has chronic deficiencies and discusses how consumers and policymakers can address this issue with facilities in their communities.

Communities throughout the country are home to nursing homes with chronic deficiencies in care. To facilitate the usefulness of the nursing home data, LTCCC has posted it in a variety of forms. Files for individual states provide a searchable list of every nursing home that has three (or more) deficiencies for the same minimum standard on NH Compare as of September 2016. For each of these facilities, we provide a short description of the regulatory requirement, the scope and severity of the violation and other relevant information.

In addition to the report and data files, we have posted two documents to the [Chronic Deficiencies](#) page of our website which we hope will be useful:

1. [Fact Sheet: Resident-Centered Advocacy When a Nursing Home is Cited for Substandard Care, Abuse or Neglect](#) and
2. [Brief description of the information presented in each data file \(to assist those unfamiliar with CMS terminology\).](#)

### **Report #2. The Identification of Resident Harm in Nursing Home Deficiencies**

This report presents the results of an assessment of the extent to which resident harm is identified when facilities are cited for violating minimum care standards. Our findings, based on federal data derived from [Nursing Home Compare](#), indicate that resident harm is identified in less than 5% of citations for violations of minimum care standards. Even for nursing homes that had the lowest possible star rating (1-star), surveyors only identified resident harm in less than half of the facilities.

The report provides information on the identification of resident harm in respect to a variety of key indicators, including a facility’s star rating, staffing and number of substantiated complaints.

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<sup>3</sup> Data on pressure ulcer rates and other key indicators are provided in the report in charts that can be used to find out specific state information as well as compare states against each other and national averages. All of the charts are available as interactive Excel files at <http://www.nursinghome411.org/articles/?category=lawgovernment>.

## LTCCC Re-Launches Website With More News & Resources for Resident-Centered Advocacy

In February, LTCCC launched its newly redesigned website, [www.nursinghome411.org](http://www.nursinghome411.org), with a streamlined design and improved resources for resident-centered advocacy. The website features our new Learning Center, which will provide a one-stop-shop for all of LTCCC's resources for residents, families, LTC ombudsmen and those who work with them. Visitors can now search our database for information and resources on issues they are facing related to resident rights, quality of care and quality of life and download or print out whatever they need.

As always, all of LTCCC's consumer resources can be downloaded for free and we encourage stakeholders to use, share or adapt them to support their efforts to improve care.

### Coming later this spring:

1. *Dementia Care Advocacy Tool-Kit* (developed with support from the Fan Fox and Leslie R. Samuels Foundation);
2. *Resident-Centered Resources on the New Federal Nursing Home Standards* (developed with support from The New York State Health Foundation).

## Consumer Statement on Need for Stronger Protection of Nursing Home Residents

In response to recent reports highlighting abuse and neglect in nursing homes across the U.S., as well as nursing home industry lobbyists calling for less accountability, the Long Term Care Community Coalition, Center for Medicare Advocacy, National Consumer Voice for Quality Long-Term Care and California Advocates for Nursing Home Reform issued a joint statement on February 28 highlighting the abundant evidence that more - not less - accountability is needed to ensure the safety and dignity of vulnerable nursing home residents.

[Click here to read the statement.](#)

**If you believe that more needs to be done to ensure that residents are free from abuse and neglect, please contact your U.S. Senator & Representative today.** Let them know that you want more effective monitoring and enforcement of nursing home care. Call the Capitol switchboard at **202-224-3121** to reach your senators or representative. You can also find the direct number to any office by consulting the [Senate phone list](#) or [House phone list](#).

*Our nation has been conducting investigations, passing new laws and issuing new regulations relative to nursing homes at a rapid rate during the past few years. All of this activity will be of little avail unless our communities are organized in such a manner that new laws and new regulations are utilized to deal with the individual complaints of older persons who are living in nursing homes. **The individual in the nursing home is powerless. If the laws and regulations are not being applied to her or to him, they might just as well not have been passed or issued.***

[Statement of Arthur S. Flemming, U.S. Commissioner on Aging, in 1974.](#)

[Emphasis added.]

## LTC News & Briefs

### [Study: Home Beats Nursing Home Rehab for Knee, Hip Replacement Recovery](#)

[HealthDay News reported](#) (March 16) on three separate studies indicating that “[p]atients who go straight home from the hospital following hip or knee replacement surgery recover as well as, or better than, those who first go to a rehabilitation center.” One doctor quoted in the article stated that “Considerable evidence has now shown that most patients do just as well at home.” According to the findings in another of the studies discussed, “patients who are discharged directly home following a total knee replacement face a lower risk for complications and hospital readmission than those who first go to an inpatient rehab facility.”

### [Federal Judge Admonishes NY State on Warehousing of Mentally Ill](#)

According to a [WNYC News report](#) (March 23),

A federal judge is demanding to know whether the state colluded with adult home operators to undermine a legal settlement that took more than a decade to come to fruition.

Under the settlement, which protects 5,000 seriously mentally ill [sic] adults, the state agreed to prohibit psychiatric hospitals from discharging people into what are called adult homes, which have come under scrutiny in the past.

As WNYC reporter Cindy Rodriguez discusses in [the interview](#), Jota Borgmann, one of the attorneys representing the adult home residents, stated that email records show “the attorney for adult homes potentially colluding with health department lawyers on the lawsuit.”

Borgmann’s organization, [MFY Legal Services](#), has [posted a transcript](#) of the March 22, 2017 U.S. District Court hearing on its website.<sup>4</sup>

The transcript provides details of the case and what led to the settlement. As District Judge Nicholas G. Garaufis noted,

In 2002, the New York Times featured a series of articles on the deplorable condition in many New York City adult homes. The articles documented the dangerously poor care afforded residents, the vermin and squalor present in the facilities and the mismanagement of residents’ funds entrusted to administrators. The investigative journalist who wrote these stories, Clifford J. Levy, was awarded a Pulitzer Prize in 2003 for reporting on this subject.

In 2003, Disability Advocates, Inc. brought a suit to vindicate the rights of individuals with mental illness residing in or at risk of entry into New York City adult homes. The lawsuit named as defendants the governor of New York, the New York Department

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<sup>4</sup> *United States v. New York*, Civil Action Number No. 13-4165, Transcript of Civil Hearing (March 22, 2017).

of Health and the New York Office of Mental Health, and the commissioners of DOH and OMH...

...

Following years of litigation... [t]he The Court found that the state had violated the Americans With Disabilities Act of 1990 and the Rehabilitation Act by failing to serve adult home residents in the most integrated setting appropriate for their needs.

...

The settlement contains certain milestones that the state must meet. By the end of the fourth year of the agreement, the state must have assessed at least 2500 adult home residents and if appropriate, have transitioned those who desire into supported housing. By the end of year five, the state must provide all class members the opportunity to move into supported housing. The deadline for the four-year milestone is fast approaching in July 2017, and the state is far from hitting its numbers.<sup>5</sup>

The [Coalition of Institutionalized Aged and Disabled](#) (CIAD, a leading advocate for adult home residents on this and other issues) summarizes the present situation on its website as follows:

Recent actions by New York raise serious concerns about its commitment and promise to 5,000 adult home residents' and their opportunity to move out of institutional settings and into apartments in the community with supports. In three and one half years only 475 residents have moved, and the state now claims that residents do not want to move, even though there are 1,750 additional residents who have said they want to move. A severe backlog in assessments is delaying the moves of more than 800 residents and over 300 more residents are being delayed by other parts of the process.

New York State has made legal decisions that seem designed to rescind the Federal Court Housing Settlement it agreed to in 2014. These actions will further undermine an already flawed process and create mistrust and uncertainty among residents who are still making up their minds on whether to move or not. It is imperative that New York State renews its commitment to the settlement and agree to improve the process.<sup>6</sup>

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<sup>5</sup> *Id.* at pp.7.

<sup>6</sup> Accessed on March 29, 2017 from Coalition of Institutionalized Aged and Disabled's website (home page), [www.ciadny.org](http://www.ciadny.org).

### Antipsychotic Drugs Found Ineffective for Patients with Delirium in Palliative Care

*Neurology Today* (February 16) reported that two commonly prescribed antipsychotic drugs “were found ineffective for treating behavioral, communication, and perceptual symptoms of delirium for patients in palliative care, according to the results of a randomized controlled trial published online on December 5 in *JAMA Internal Medicine*. **The two drugs performed no better than placebo, and they worsened both distress-related delirium symptoms and patient survival.**” [Emphasis added.]

### U.S. Supreme Court Sides With Nursing Home, Allowing Facility to Force Arbitration in Wrongful Death Claim

#### **Background:**

The right of a resident (or, if the resident has died, his or her family) to go to court when there are allegations of abuse or neglect has been the subject of much controversy, as nursing homes and other LTC providers have increasingly been inserting “pre-dispute arbitration” clauses in their residency agreements. LTCCC and other consumer representatives have long objected to these clauses. Fundamentally, we believe it is patently unfair – and un-American – to ask someone to give up their future legal rights when they enter a nursing home or assisted living. Simply put, it can be difficult or impossible for a prospective resident or family to make a reasoned, informed decision about arbitration under those circumstances. Residents and their families select a nursing home because they are expecting that its services will be good and that the resident will be safe. Furthermore, the conditions under which people generally enter a nursing home are stressful and can feel overwhelming for both the prospective resident and family.

“Fundamentally, we believe it is patently unfair – and un-American – to ask someone to give up their legal rights when they enter a nursing home or assisted living.”

Nevertheless, nursing home and assisted living providers have increasingly used these provisions to protect themselves against being called into court to address allegations of neglect or abuse – even when the alleged neglect or abuse resulted in the resident’s death.

#### **The Supreme Court Decision:**

As reported in *McKnight’s LTC News* (March 29), the U.S. Supreme Court declined to review a Pennsylvania Supreme Court decision which “...allows nursing homes to force survival claims into arbitration.” The state court had held, in essence, that though state law requires a wrongful death claim to be tried in court, that law is preempted by the Federal Arbitration Act (which favors arbitration). By declining to review the case, the U.S. Supreme Court validated the state court’s finding that the family members of the deceased nursing home resident must use arbitration to resolve their claim and are prohibited from suing for the alleged wrongful death of their loved one.

### Study: Facial Injuries in Nursing Homes a Serious Yet Underappreciated Problem

McKnight's LTC News (March 23) reported on a new study from Wayne State University in Michigan on facial trauma in the nursing home setting. According to the *McKnight's* article, the

...analysis of data from the National Electronic Injury Surveillance System found that nearly 110,000 residents required emergency department care for facial trauma between 2011 and 2015.

...

The analysis also showed that the most common facial injury among nursing home residents were lacerations and other soft-tissue injuries, such as contusions or hematomas. The team estimated that nearly 3,000 facial fractures occurred in skilled nursing residents each year.

...

The analysis also found that 22.7% of facial fractures occurred as a resident was transferring in and out of bed....

The study results are published in *JAMA Otolaryngol Head Neck Surg*. Published online March 16, 2017. doi:10.1001/jamaoto.2016.4275. Accessed at <http://jamanetwork.com/journals/jamaotolaryngology/fullarticle/2611962?resultClick=1>.

### Study: Hospital Care Better During Facility Inspections

This study assessed whether the presence of hospital survey inspectors had an effect on the quality and safety of patient care in hospitals. The results, published in [JAMA Internal Medicine](#) (March 20), found that “patients admitted during the week of a survey had significantly lower 30-day mortality than did patients admitted in the 3 weeks before or after the survey.”

According to the authors, this indicates that “[c]hanges in practice occurring during periods of surveyor observation may meaningfully improve quality of care.”

## LTCCC Resources For Residents, Families, Ombudsmen & Advocates

### Free Programs for Residents, Families, LTC Ombudsmen & Advocates

LTCCC is pleased to announce that, with a generous grant from the NY Health Foundation, we are now providing free monthly programs on the new nursing home standards for residents and families and those who work with them.

**Background:** In November 2016 the federal government made comprehensive changes to the basic standards of care and dignity for all U.S. nursing home residents.

**Why Attend?:** It will be crucial for residents, families and those who work with them to (1) know what their rights are and (2) be equipped to advocate for good care as the new standards are implemented. There will be a lot of confusion as to what nursing homes are required to do to ensure that residents receive good care and are treated with dignity. Each month, participants will learn about a specific standard relevant to good care.



**To Attend:** Email [sara@ltccc.org](mailto:sara@ltccc.org) or call 212-385-0355 for information on the program schedule and how you can access via your phone or computer.

**Get the Info:** All of the fact sheets, PowerPoints and program recordings will be posted each month on our website's Learning Center: [www.nursinghome411.org/learning-center](http://www.nursinghome411.org/learning-center).

### [Fact Sheet: Medicare Coverage of Skilled Nursing & Skilled Therapy Services](#)

Accessing physical therapy and other skilled services can be a challenge for nursing home residents and the families, LTC Ombudsmen and advocates who work with them. Too often, we have been told, therapy services are denied or terminated because a determination has been made that the individual is no longer improving or has “plateaued.” In fact, **improvement is not required** to obtain Medicare coverage for skilled nursing and skilled therapy services, including physical therapy. This Fact Sheet provides information that can be useful in understanding an individual's right to receive therapy services and accessing those services.

### [Fact Sheet: Admission & Discharge Rights in NY State Nursing Homes](#)

LTCCC has heard that some nursing homes are telling people that the facility only provides short-term rehab services and does not provide long-term care. LTCCC has also heard that some people who go into a facility for short-term care and wind up needing long-term care are even being told that they will need to go to another facility. The reason for this apparent bias against long-term care presumably is that short-term rehab services tend to pay much more than long-term care services. However, there are important standards to protect residents from unfair discharge or transfer. This Fact Sheet provides information on the important state and federal rights that residents can use to protect themselves.

### [Piecing Together Quality Long-Term Care: A Consumer's Guide to Choice and Advocacy in New York](#)

In 2013, with funding from the National Consumer Voice, LTCCC adopted a national guide for consumers and those that work with them on accessing long-term care. The purpose of the guide is to help individuals facing LTC decisions gain a better understanding of their choices and options and how they can advocate for themselves to get the services they need and want. In 2016 we updated this guide to provide current information and links to outside resources.

## **LTC Ombudsman Program Seeks Volunteers in NY State**

The LTC Ombudsman Program (LTCOP) is dedicated to ensuring that residents in long term care facilities have good care and are treated with dignity. Being an Ombudsman volunteer is both challenging and rewarding. Volunteers receive extensive training to advocate for, educate and empower family members and residents living in nursing homes, assisted living, and family type homes. They can make a big difference in the lives of some of the most vulnerable people in our communities.

The LTCOP is seeking volunteers who can contribute a minimum of two hours a week to help residents in facilities in their communities. The Hudson Valley LTCOP currently has volunteer opportunities in Dutchess, Ulster, Orange, Sullivan, Columbia and Greene counties. To

volunteer in the Hudson Valley, please call 845-229-4680 or email [Gloria@hudsonvalleyltcop.org](mailto:Gloria@hudsonvalleyltcop.org). To volunteer in another area of New York State, please go to the “Who is My Ombudsman” page on the NYS LTC Ombudsman Program’s website: <http://www.ltcombudsman.ny.gov/whois/index.cfm>.

## NY State Nursing Home Enforcement Actions

LTCCC is now posting all available enforcement actions from the state and federal governments on our dedicated website page, [NY State Nursing Home Enforcements](http://www.ltccc.org/enforcements/archives.shtml) (<http://www.ltccc.org/enforcements/archives.shtml>).

While in the past we have posted quarterly data on our website and in our newsletter, these data will now be provided in files that cover each calendar year in its entirety. This way, visitors can look in one file to see any recent citations, rather than having to view separate files for individual quarters.

In addition, we are now posting on the [Enforcements page](#), on an annual basis, all of the NY State nursing home deficiencies that are currently on the federal website, [Nursing Home Compare](#). Nursing Home Compare provides information on nursing home staffing, inspections and quality for the last three years. We believe that this information will be useful to consumers, families and LTC Ombudsmen now and in the future, since it will enable them to access current and historical information on nursing homes in their communities.

For information on all U.S. nursing homes, our [www.nursinghome411.org](http://www.nursinghome411.org) website has user-friendly information, including rates of antipsychotic drugging, staffing levels, star ratings and more. This information is provided in Excel files which we have formatted to make them as easy-to-use as possible. The files can be searched for an individual facility’s name, a listing of facilities by city or state, etc... LTCCC offers trainings for LTC ombudsmen and other groups on how to use this and other publicly available information effectively, to understand the quality of care nursing homes are providing and to support advocacy for better care. Email [info@ltccc.org](mailto:info@ltccc.org) for more information.



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