



# The NEW Nursing Home Regulations

## Requirements for Nursing Home Direct Care Staff & Administration

Presented by Richard Mollot, Long Term Care Community Coalition

[www.nursinghome411.org](http://www.nursinghome411.org)

This program is made possible by the generous support of the NY State Health Foundation

## + What is the Long Term Care Community Coalition?


- **LTCCC**: Nonprofit organization dedicated to improving care & quality of life for the elderly & adult disabled in long-term care (LTC).
- **Our focus**: People who live in nursing homes & assisted living.
- **What we do**:
  - Policy analysis and systems advocacy in NYS & nationally;
  - Education of consumers and families, LTC Ombudsmen and other stakeholders.
- **Richard Molloy**: Joined LTCCC in 2002. Executive director since 2005.



+ What Will We Be Talking About TODAY?

■ **Brief Background: How the Nursing Home System Works**

■ **Focus: Requirements for Those Who Provide Care for Residents & Management of the Facility**



Who determines  
how many staff  
have to be in the  
nursing home...  
and how?

Are there any  
requirements to  
ensure that the  
care staff is  
competent to  
meet the needs  
of residents?

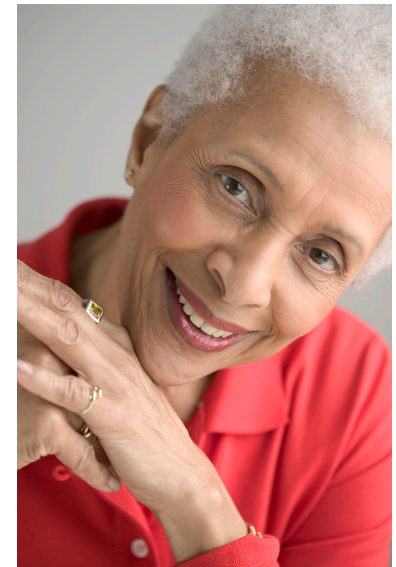
# + The Nursing Home System in a Nutshell

- Virtually all nursing homes participate in Medicaid and/or Medicare.
- In order to participate in Medicaid/Medicare, a facility agrees to meet the standards provided for in the federal **Nursing Home Reform Law**.
- States may have *additional* protections, but no state can have less protections.
- Federal *protections are for all the residents* in a facility, whether their care is paid for by Medicare, Medicaid or private pay.
- The federal agency, CMS, contracts with the state DOH to ensure that residents are protected and receive the services they need and deserve.



## + The Nursing Home Reform Law

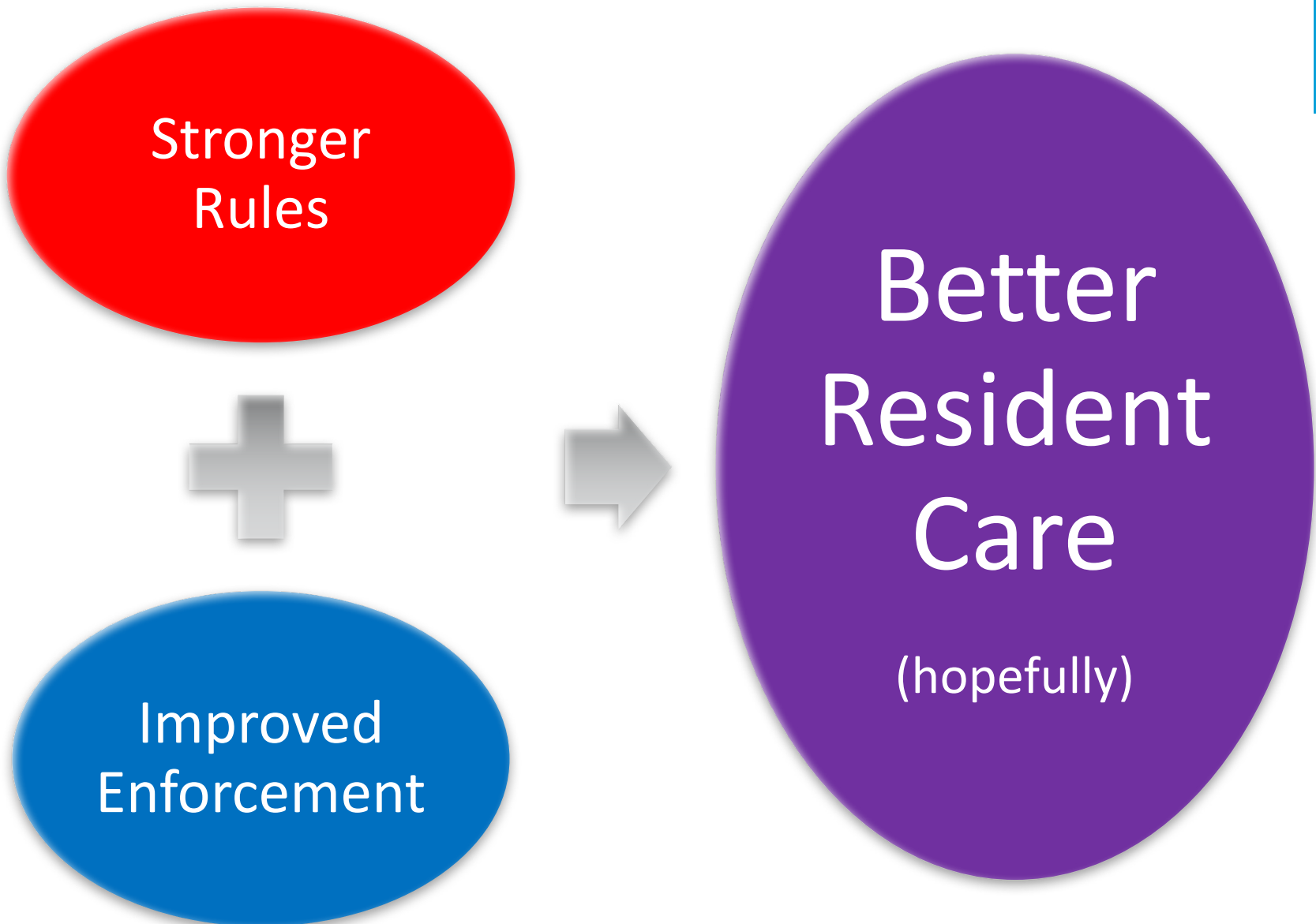
- The federal law requires that every nursing home resident is provided the care and quality of life services sufficient to attain and maintain her **highest practicable physical, emotional & social well-being**.
- The law emphasizes **individualized, patient-centered care**.
- Importantly, the law lays out specific resident rights, from **good care** and monitoring to a quality of life that maximizes **choice, dignity & autonomy**.
- The law passed in 1987. Regulatory standards came out in 1991.



## + **What** Is Happening Now?

- For the first time in 25 years, the federal regulatory system has been significantly revised and updated.
- This will affect **every aspect of care & quality of life**.
- **All of the Regulations are changing**. For 25 years everyone – nursing homes, surveyors, ombudsmen and advocates – knew what the rules were and where to find them. That entire structure has changed.
- **All of the Guidelines are changing**. The guidelines detail what is expected of nursing homes in relation to each standard – what they are supposed to do and how they are suppose to do it.
- **The F-tag system, used by nursing home inspectors, is changing**. When a surveyor identifies a problem in care or living conditions in a nursing home, she cites the nursing home using a system called “F-tags” – numbers that correlate with the regulatory requirements.

## + Why Does it Matter?



## + **WHY** Is This Information Important to Us?

We must be prepared and know our rights as the changes are implemented, and beyond!

Knowledge  
=  
Power

### Resident Rights

- Law
- Regulation
- Oversight



## + How Will This Program Help **YOU** In Your Knowledge & Advocacy?

1. **New Federal Language.** We will review together the federal requirements, so you can see exactly what nursing homes are being told they must do for their residents.
2. **Summaries of Important Points.** At the end of the program we will simplify and recap some of the important points for you.
3. **Fact Sheets.** For each program we are developing free, easy-to-use fact sheets which you can use now and in the future to support resident-centered advocacy and problem solving.

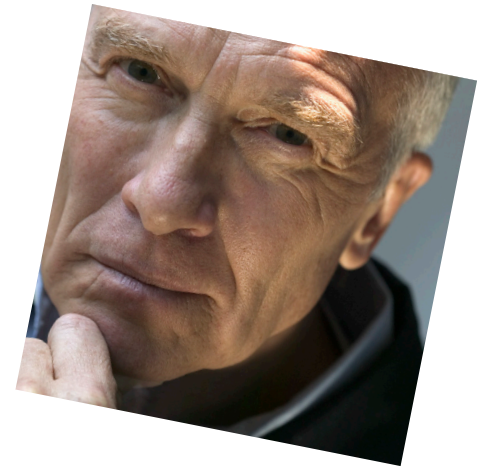
**All programs, fact sheets and other resources are available for free on our website, [www.nursinghome411.org](http://www.nursinghome411.org).**

**There is no need to worry about remembering details - when you have an issue or concern in the future you can easily find and print out the information you need.**

+ In Short...

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Now more than ever, we  
**MUST** be aware of what  
our rights are, and what  
we have a right to expect  
from our nursing homes.



# *The Federal Nursing Home Standards:* Requirements for Care Staff & Management

## Why Are These Important Issues?

Staffing is widely considered to be the most important factor when it comes to quality and safety in a nursing home. Yet too many nursing homes fail to have sufficient staff. Staff do not always have the necessary competencies to meet the needs of the residents. Too many owners and administrators do not ensure that their facilities are meeting minimum standards, including ensuring that there are sufficient staff to care for residents.

## Note About The Program

This program focuses on the federal requirements for care staff and the administration of a facility. States can provide additional standards and protections, but no state can provide less protections. Examples of possible additional state protections include:

1. Safe Staffing Ratios
2. 24/7 Registered Nurse
3. Increased Certified Nurse Aide Training Requirements

## + Fundamental Requirements for Care Staff

### Nursing Services [42 CFR 483.35 F-725]

*The facility must have sufficient nursing staff **with the appropriate competencies and skills sets** to provide nursing and related services to **assure resident safety and** attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care **and considering the number, acuity and diagnoses of the facility's resident population....***

Orange  
Type  
=  
New  
Regulatory  
Language

## + Sufficient Staff [42 CFR 483.35(a) F-725]

*The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:*

*(i) ...licensed nurses; and*

*(ii) Other nursing personnel, **including but not limited to nurse aides.***

Orange  
Type  
=  
New  
Regulatory  
Language

### Notes:

1. There are limited circumstances under which the licensed nurse requirement may be waived.
2. Many states have additional, set requirements such as a licensed nurse 24/7 or safe staffing ratios. See <http://theconsumervoice.org/uploads/files/issues/Harrington-state-staffing-table-2010.pdf> for more information.

## + Note on Posting of Staff Working in the Nursing Home

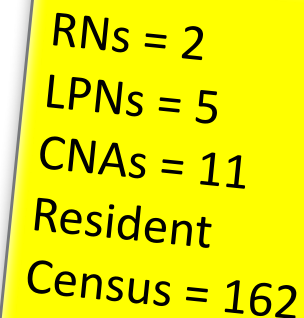
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Since January 1, 2003, all licensed nursing homes have been required to post “in a clearly visible place” the number of nursing staff on duty on each shift.

Unfortunately, too often, this information is not clearly visible or even accurate.

To help address this problem, CMS has issued the following new guidelines for facilities:

- *The facility’s “document” may be a form or spreadsheet, as long as all the required information is displayed clearly and in a visible place. The information should be displayed in a prominent place accessible to residents and visitors and presented in a clear and readable format. This information posted must be up-to-date and current.*
- *The facility is required to list the total number of staff and the actual hours worked by the staff to meet this regulatory requirement. The information should reflect staff absences on that shift due to call-outs and illness.*
- *Staffing must include all nursing staff who are paid by the facility (including contract staff). The nursing home would not include in the posting staff paid for through other sources; examples include hospice staff covered by the hospice benefit, or individuals hired by families to provide companionship or assistance to a specific resident.*



RNs = 2  
LPNs = 5  
CNAs = 11  
Resident  
Census = 162

## + Federal Guidance for RNs

The facility **must** designate a registered nurse (RN) to serve as the DON on a full-time basis. The facility can only be waived from this requirement if it has a [limited, state-approved] waiver.... This requirement can be met when **two or more** RNs share the DON position. **The roles and responsibilities for each individual serving as the DON must be clearly defined and all facility staff must understand how these responsibilities are shared among the individuals functioning as the DON.**



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=  
New  
Regulatory  
Language

## + Nurse Aide Competency [42 CFR 483.35(d) F-728]

*General rule. A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless—*

- *That individual is competent to provide nursing and nursing related services; and*
- *That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State...; or*
- *That individual has been deemed or determined competent [based on long-term experience and other federal requirements]....*

*Non-permanent employees. A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the [above] requirements....*

**CMS Statement on Competency: “A measurable pattern of knowledge, skills, abilities, behaviors, and other characteristics that an individual needs to perform work roles or occupational functions successfully.”**

[From CMS Surveyor Training.]

# + Performance Review & Training of Nurse Aides

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## I. *Regular in-service education.* [42 CFR 483.35(d)(7) F-730]

*The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. In-service training must comply with the requirements of §483.95(g).*

## II. *Required in-service training for nurse aides.* [42 CFR 483.95(g) F-947]

*In-service training must—*

- (1)* Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year.
- (2)* Include dementia management training and resident abuse prevention training.
- (3)* Address areas of weakness as determined in nurse aides' performance reviews *and facility assessment...* [as of November 2017] and may address the special needs of residents as determined by the facility staff.
- (4)* For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

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Type  
=  
New  
Regulatory  
Language

## + Nursing Home Administration [42 CFR 483.70 F835]

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*A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.*

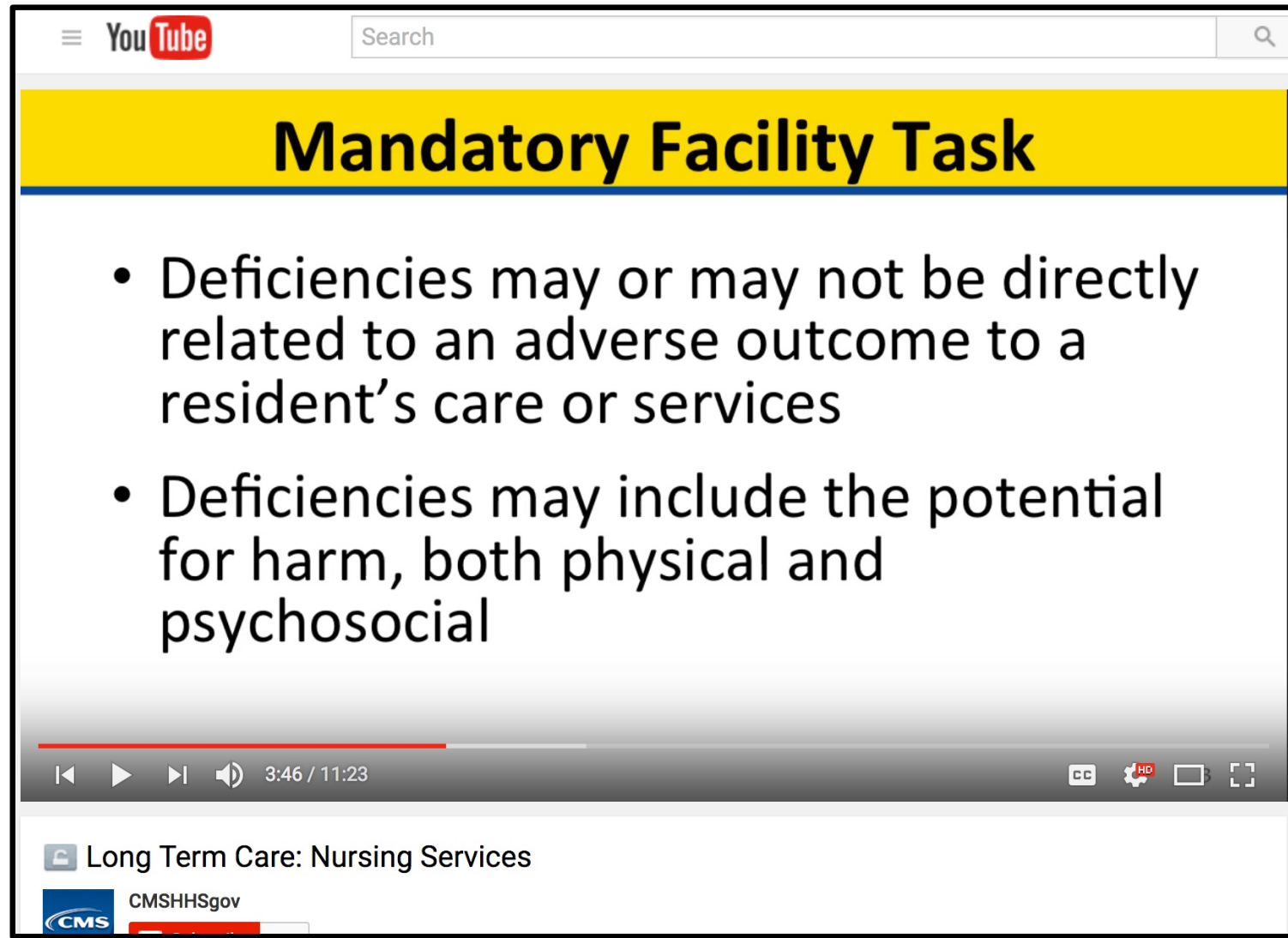
According to the federal guidelines, in order for a facility to be cited for substandard administration the surveyor's *"investigation must demonstrate how the administration knew or should have known of the deficient practice and how the lack of administration involvement contributed to the deficient practice found."*

### **How Does This Relate to Resident Care? A Few Examples From the Federal Guidelines:**

- The administrator must be notified of ***"all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider..."*** This includes allegations of sexual abuse.
- ***"The administrator is responsible for the overall implementation of the facility policies/procedures, including to prohibit involuntary seclusion."***
- Any **reasonable suspicion of a crime against a resident** must be reported to the administrator.
- ***"As appropriate, the administrator, nursing director, medical director, and pharmacist, and the QAA committee should review the nursing home's dialysis care and services on an ongoing basis..."***

## + What Does CMS Tell Surveyors About Citing for Insufficient Staff?

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The image shows a YouTube video player interface. At the top, there is a yellow banner with the title "Mandatory Facility Task" in bold black text. Below the banner, the video content area displays two bullet points:

- Deficiencies may or may not be directly related to an adverse outcome to a resident's care or services
- Deficiencies may include the potential for harm, both physical and psychosocial

Below the video content, there is a progress bar and playback controls. The progress bar shows the video is at 3:46 out of 11:23. To the right of the progress bar are icons for closed captions (CC), settings (gear), HD quality, and full screen. Below the video player, the video title "Long Term Care: Nursing Services" is displayed, followed by the CMS logo and the text "CMSHHSgov".



# Resources @ [www.nursinghome411.org](http://www.nursinghome411.org)

## LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

### CONSUMER FACT SHEET:

#### REQUIREMENTS FOR NURSING HOME CARE STAFF & ADMINISTRATION

Staffing is widely considered to be the most important factor in the quality of care provided in a nursing home. Too often, facilities fail to have sufficient staff or the staff does not have the appropriate knowledge and competencies to provide the care residents need. Thus, federal requirements for sufficient and competent staff are critical to support resident-centered advocacy to ensure that residents are safe and that they receive appropriate services. This is what we pay for and what every facility agrees to provide for all of its residents when it participates in Medicaid/Medicare.

Below are relevant standards with descriptions excerpted from the federal regulations, followed by some points for you to consider when you advocate on these issues. [Note: The brackets below provide, for reference, the applicable federal regulation (42 CFR) and the F-tag number used when a facility is cited for failing to meet the standard.]

#### I. Fundamental Requirements for Nursing Services [42 CFR 483.35 F-725]

The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population....

#### II. Sufficient Staffing Levels [42 CFR 483.35(a) F-725]

The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

- (i) ...licensed nurses; and (ii) Other nursing personnel, including but not limited to nurse aides.

#### III. Nurse Aide Competency [42 CFR 483.35(d) F-728]

**General rule.** A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless—

That individual is competent to provide nursing and nursing related services; and

That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State...; or

That individual has been deemed or determined competent [based on long-term experience and other federal requirements]....

**Non-permanent employees.** A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the [above] requirements....

#### Considerations for Resident-Centered Advocacy – Staffing Competency & Quantity:

1. Note the reference to the 1987 Nursing Home Reform Law's requirement that nursing home services **must** be sufficient to assure that residents attain and maintain their "highest practicable physical, mental and psychosocial well-being." This means that services must be tailored to what residents need, not what the facility wishes to provide based on its profit margins and financial goals.
2. Nursing services must be both sufficient and competent to fulfill the needs identified in each and every resident's assessment and care plan.
3. When a facility accepts a resident it is affirming that it has both enough staff to meet the care and service needs of that individual and that the staff it hires and retains are appropriately trained to carry out this promise. When a facility lacks sufficient staff to meet the needs of its residents it is breaking that promise and violating its agreement with the federal government.

#### IV. Nursing Home Administration [42 CFR 483.70 F835]

*A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.*

#### Considerations for Resident-Centered Advocacy – Administration:

Federal guidelines state that, to order for a facility to be cited for substandard administration the surveyor's "investigation must demonstrate how the administration knew or should have known of the deficient practice and how the lack of administration involvement contributed to the deficient practice found."

This is important in two ways:

1. Is the administrator aware of the specific problem or concerned about which you are advocating? Depending on the nature of the problem, and how long it has continued, it may be worth bringing it to the attention of the administrator and/or senior staff.
2. Even if you do not know if the administrator has direct knowledge, there are numerous situations for which it is expected that an administrator is aware and accountable, including:
  - a. "all alleged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider...."
  - b. overall implementation of the facility policies/procedures, including to prohibit involuntary seclusion...." and
  - c. any reasonable suspicion of a crime against a resident.

#### RESOURCES

[WWW.NURSINGHOME411.ORG](http://WWW.NURSINGHOME411.ORG). LTCCC's website includes materials on the relevant standards for nursing home care and a variety of resources on specific issues, such as dementia care, resident assessment and care planning, dignity and quality of life.





# Thank You For Joining Us Today!

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- Sign up for our newsletter and alerts.

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- Follow us on **Twitter** at [www.twitter.com/LTCconsumer](http://www.twitter.com/LTCconsumer)
- Visit us on the **Web** at [www.nursinghome411.org](http://www.nursinghome411.org).

## For LTC Ombudsmen in NY State

If you would like us to let your supervisor know that you attended this training program, please take the quick survey at:

<https://www.surveymonkey.com/r/ltccc-ltccop1>

## For Family Members in NY State

connect with the Alliance of NY Family Councils at [www.anyfc.org](http://www.anyfc.org) (or email [info@anyfc.org](mailto:info@anyfc.org)).

+ Coming Up

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**Next Program:** August 15<sup>th</sup> at 1pm.

**Topic:** Requirements for Nursing Home Physician, Dental and Rehab Services.





# Thank You For Joining Us Today!

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Email [info@ltccc.org](mailto:info@ltccc.org) or call **212-385-0355** if you would like to...

- Receive the advocacy fact sheet for this program;
- Receive alerts for future programs;
- Sign up for our newsletter and action alerts; or
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You can also...

- Join us on **Facebook** at [www.facebook.com/ltccc](http://www.facebook.com/ltccc)
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- Visit us on the **Web** at [www.nursinghome411.org](http://www.nursinghome411.org).

**We encourage family members to connect with the Alliance of NY Family Councils at [www.anyfc.org](http://www.anyfc.org) (or email [info@anyfc.org](mailto:info@anyfc.org)).**



**Thank you to the New York State Health Foundation for supporting these programs!**