



LONG TERM CARE COMMUNITY COALITION
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Working to improve long term care through research, education & advocacy

LONG TERM CARE (LTC) E- NEWSLETTER – May 2013: Volume 11, Number 4

Welcome to the [LTC E-NEWSLETTER](#), a monthly electronic newsletter of the [Long Term Care Community Coalition](#). Note to Readers: To go directly to an article, click on its page number in the Table of Contents. Once you are at the article, click on any underlined text for a link to more information or to send a message in “Spotlight on Advocacy.”

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[CMS Orders Changes in State Survey & Certification in Response to Federal Budget Sequestration](#)

In a memorandum issued on April 5, 2013, the federal Centers for Medicare and Medicaid Services (CMS) ordered reductions and other changes to state survey and certification operations as a result of federal budget cutbacks required under sequestration. Both the memorandum summary and text note that the agency's priority is maintenance of public protections and health care quality assurance. To that end, they are "protecting SA [state survey agency] ability to continue onsite complaint investigations and surveys of existing providers, while reducing expenses, suspending additions to the workload, reducing time spent on lower risk areas, and reducing the Centers for Medicare & Medicaid Services (CMS) Central Office (CO) services."

The memorandum notes that the Medicare S & C (survey and certification) budget is reduced by 5% in FY 2013 (from FY 2012) and that they "expect that State allocations will only be reduced by 2.5 - 3.0 percent from the FY2012 budget level on a national basis. The remaining reduction will be taken from CMS CO functions, contractual services, and one-time budget items."

Following are some of the key reductions announced in the memorandum:

- **Revisit Surveys:** When a provider has been found to fail to meet minimum safety or quality standards (such as nursing home resident neglect or abuse, poor sanitation and/or inappropriate drugging), and the provider is unable or unwilling to address these problems to a level of being in "substantial compliance" with minimum standards by the time of a follow-up revisit to the facility, the following procedures are now in effect:
 1. States must request and obtain approval from their CMS Regional Office prior to conducting a second revisit onsite .
 2. When a facility continues to fail to comply with minimum standards (i.e., following the initial survey, revisit and second revisit as per #1, above), a state must request and obtain approval from the CMS Central Office prior to conducting a third or fourth onsite revisit to determine whether problems have been rectified and substantial compliance has been achieved.
 3. States must inform affected providers that they may encounter increased wait times before revisits are conducted.
- **Special Focus Facility (SFF) Nursing Homes:** CMS (CMS) initiated the SFF Program to address the widespread problem of nursing homes that have persistent, serious problems. Often these facilities exhibit "yo-yo" compliance: they correct problems found during a survey but then are unable or unwilling to maintain standards and fall

out of compliance again, repeatedly. Once a facility is selected for inclusion in the SFF Program it receives special attention from the state, including two surveys per year. 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 participation in the Medicare and Medicaid programs.

Due to resource limitations, only 136 nursing home across the country are selected for participation in the SFF Program at any given time (though there are a considerably larger number that qualify due to their persistent, serious safety and quality problems). By constantly graduating (or eliminating) nursing homes over a two year period, and selecting new homes from the pool of those who qualify, the SFF Program may be making inroads into the longstanding and widespread problem of certain facilities that, year after year, fail to provide decent care to their residents yet are permitted to continue to take in new residents and receive public funding.

The goals of the changes announced in this memorandum are to “speed final resolution (preferably substantial improvement)” for nursing homes with persistent serious problems and continue the SFF Program during sequestration but with a “temporarily reduced number of facilities.”

Following are the changes specified in the memo:

1. If a facility has been on the list for 18 months or more and failed to improve, the state must schedule a final “last chance” onsite survey. Following consultation with the CMS Regional Office, “a Medicare termination notice may be issued if the onsite survey does not reveal appropriate improvement or unless there is a major new development that CMS concludes is very likely to eventuate in timely and enduring improvement in the quality of care or safety.”
 2. States must review the progress of all facilities that have been in the program for 12 or more months and consult with CMS staff (office not specified in the memo, but presumably the Regional Office) on further action.
 3. Unless directed otherwise by their CMS Regional Office, “until further notice” states are prohibited from selecting another facility with persistent serious problems to replace one that has left the program (i.e., graduated or been terminated).
- **Home Health Targeted Surveys:** Unless directed otherwise by CMS, states must “[d]iscontinue all further Tier II targeted surveys of home health agencies (HHAs) that CMS has identified... [as] having the lowest performance.”
 - **Life Safety Code (LSC) in Nursing Homes:** At the discretion of the states, CMS is making available a “Short Form survey” for assessment of compliance with “key life-safety code requirements” in nursing home surveys. This may only be used if the nursing home is fully sprinklered [see article below on proposed CMS policy changes regarding the

federal mandate that all nursing homes have sprinklers for fire safety] and if CMS has determined that the facility has “a consistently good track record of LSC compliance in the past.” [CMS will be providing states with a list of qualifying facilities.] CMS will also be collecting data from the states (unspecified in the memo) so that it can evaluate the results of this option. For further information, see the CMS memorandum on LSC available at <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-22.pdf>.

- **Complaint Investigations in Hospitals:** CMS is placing limits on investigations of complaints against hospitals (except long term care and psychiatric hospitals) in two significant ways:
 1. On-site investigations are limited to cases wherein the allegations, if substantiated, would result in a finding of Condition-level deficiency (generally, finding of a severe or critical health or safety breach) or Immediate Jeopardy.
 2. For hospitals that are “deemed” (accredited by a CMS-approved non-governmental organization, such as The Joint Commission), states must now “inform the complainants regarding their option to file a complaint directly with the appropriate accrediting organization, and provide the necessary contact information for them to do so.” Note: As with #1, this limitation does not apply in cases wherein the allegations, if substantiated, would result in a finding of Condition-level deficiency or Immediate Jeopardy.

[\[http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-23.pdf\]](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-23.pdf)

[CMS Proposes Delaying Enforcement of Federal Requirement that Nursing Homes Have Sprinklers for Fire Safety; Consumer Advocates Respond](#)

In February, CMS published a proposed rule in the [Federal Register](#) to “reform Medicare regulations that CMS has identified as unnecessary, obsolete, or excessively burdensome on health care providers and suppliers....” This proposal included a provision to allow long term care facilities which have not installed an automatic sprinkler system by the federally mandated deadline of August 13, 2013 to apply for a temporary deadline extension of up to two years if they meet certain requirements relating to a plan for replacement of or “major modification” to the facility.

The deadline for submitting comments on this proposal was April 8, 2013. [LTCCC](#), along with the [California Advocates for Nursing Home Reform](#), the [Legal Aid Justice Center](#) and [The National Consumer Voice for Quality Long-Term Care](#), signed on to comments submitted by

Janet Wells (an independent advocate, formerly the long time director of public policy at The Consumer Voice).

Following are excerpts from the discussion in [Ms. Wells' letter](#), which is posted in its entirety on LTCCC's website

(<http://www.ltccc.org/news/documents/JWCommentsonFeb72013ProposaltoWaiveSprinklerRulesapr2013.pdf>):

The undersigned organizations are dismayed that the Centers for Medicare & Medicaid Services chose the 10th anniversary of 31 fire deaths in Connecticut and Tennessee to propose waiving the deadline for facilities to install automatic sprinklers, as required by Sec. 483.70(a)(8). Medicare and Medicaid-certified nursing homes, whose occupants cannot evacuate themselves or be evacuated by others in time to prevent smoke inhalation and death, have operated legally for decades without this fundamental protection. Without the tragedies in Hartford and Nashville, the unconscionable delay by CMS and the National Fire Protection Association in requiring sprinklers in all nursing homes would have continued indefinitely. Even so, CMS granted providers five years to come into compliance, and it now proposes to allow those who failed to comply to plead extenuating circumstances for failing to meet the deadline.

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The Hartford and Nashville nursing home fires a decade ago underscored lessons learned from hundreds before them:

- Automatic fire suppression systems are the only means of ensuring against loss of life in a health care facility fire;
- Adequate staff with appropriate training and supervision to carry out an emergency preparedness plan are essential.
- Advanced (hard-wired) alarm systems can mitigate fire damage and loss of life.

The danger that a small fire will turn into a conflagration or result in numerous deaths from smoke inhalation is exacerbated by low staffing levels in most nursing homes, particularly on the night shift, and poor staff training.

Following are some of the recommendations provided in the letter:

1. Nursing homes that fail to meet the August 2013 deadline should be cited and sanctioned.
2. The public must be notified of any nursing home's plans to apply for a waiver, as the letter specifies:

- Before applying for a waiver, a facility should notify the state survey agency; state long-term care ombudsman; state fire marshal; local fire marshal; consumer advocacy groups; facility residents, families and other resident representatives; and the public of its intent to request a waiver; the reasons for its request; enhanced procedures it will take to ensure the safety of residents until compliance with the sprinkler requirement is achieved; its time frame for reaching compliance; and an opportunity for those receiving notification to attach comments and recommendations to the request.
 - In addition to submitting comments and recommendations, the state survey agency, state ombudsman, and state fire marshal should be required to sign off on the request and the facility's plans for the interim safety of residents until sprinklers are installed.
 - CMS should weigh all comments and recommendations in deciding whether to grant the waiver and the conditions it will apply if a waiver is granted.
3. "In instances where the provider's request for a waiver is based on its plan to substantially rehabilitate or replace the facility, CMS should take into consideration whether the physical plant as a whole is safe and whether closure or a ban on new admissions is appropriate."
 4. Facilities not in compliance with the sprinkler requirement by the August 2013 deadline should be required to post a prominent notice of this in its facility and CMS should place a notice of noncompliance with this requirement on the facility's listing in Nursing Home Compare.
 5. Strict interim measures should be required for any facility granted an extension, including: installation of hard-wired smoke alarms, "[e]nhanced staffing to ensure that the facility and all units within the facility are adequately staffed on all shifts" and enhanced survey agency monitoring.

[<http://www.gpo.gov/fdsys/pkg/FR-2013-02-07/html/2013-02421.htm> for the proposed rule and

<http://www.ltccc.org/news/documents/JWCommentsonFeb72013ProposaltoWaiveSprinklerRulesapr2013.pdf> for the consumer letter.]

Long-Term Care Costs Favor Home-Based Treatment

US News & World Report reported the results of an annual survey of costs for long term care service conducted by Genworth, a financial services and insurance company.

According to [U.S. News](#),

Nursing home and assisted living costs for long-term care continue to rise at rates greater than overall inflation..... However, the cost of in-home care has risen at annual rates of 1 percent or less during the past five years, and this is the place where people overwhelmingly prefer to be treated if possible.

"If you look at national private nursing home costs over the past 10 years that we've done this study, the median annual costs have gone up from \$65,200 to \$83,950, increasing at more than four percent a year," Pat Foley, Genworth's head of distribution and marketing, said in a prepared statement. "The better news is that costs for homemaker services and home health aides have remained almost flat. Since 70 percent of Genworth's first time long term care claimants choose in-home care, these costs have remained more manageable."

The survey covers over 15,000 providers and is formatted is a database that allows for easy access to information by state and regions within the states. The data can also be broken down to show annual, monthly or daily costs.

[<https://www.genworth.com/corporate/about-genworth/industry-expertise/cost-of-care.html>

(for the Genworth database and information on key findings) or

<http://money.usnews.com/money/blogs/the-best-life/2013/04/09/long-term-care-costs-favor-home-based-treatment> (for the US News and World Report article)]

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

Thousands of New Yorkers across the state face decisions about long term care services and supports every day, from knowing what questions to ask of their care provider to helping a friend or loved one navigate the system with all of its challenges and complexities. This new guide will help them manage these issues, gain a better understanding of their choices and options and how they can advocate for themselves to get the services they need and want.

A number of important topics are covered in the guide, including: What are Long Term Care Services and Supports?, What Options Do Disabled & Elderly Individuals Have?, Housing

Options and Your Rights as a Consumer and Choices in Residential Care – From Adult Homes to Nursing Homes. The guide also includes a number of useful features, such as a chapter on “Getting Started: Finding Information, Determining Needs and Obtaining Services” and special sections throughout with real consumers describing how they overcame challenges and advocated for themselves successfully to get care that meets their preferences and needs.

The guide is available for free at www.ltccc.org. In addition, a limited number of printed copies are being distributed for free through agencies across the state. The guide was developed with funding from the National Consumer Voice for Quality Long-Term Care and is based on the Consumer Voice’s national guide (available at <http://www.theconsumervoice.org/piecing-together-quality-long-term-care>).

[<http://www.ltccc.org/publications/documents/NY-LTC-Consumer-Guide-finalcolor.pdf>]

[The National Long-Term Care Ombudsman Resource Center Releases Resources on the Role and Responsibilities of Long-Term Care Ombudsmen Regarding Systems Advocacy](#)

Under the federal Older Americans Act, Long Term Care Ombudsman Programs are charged with serving as advocates for residents in nursing homes and assisted living. Ombudsmen help people with individual complaints and are also charged with advocating for the concerns of residents and need for change on a systemic level. This quick reference guide briefly defines systemic advocacy, reviews the federal mandate and support for systems advocacy work by Ombudsmen, presents several systems advocacy strategies, shares examples of Ombudsmen involved in systems advocacy and provide resources for additional information.

[<http://www.ltcombudsman.org/ombudsman-support/systemic-advocacy>]

[Spotlight on Advocacy: Speak Out to Support Safe Staffing for Quality Care Act in NY State](#)

Nursing homes in New York and across the country too often fail to provide safe care and a dignified quality of life for their residents. The problem in many facilities is lack of staffing - about 90% of the nursing homes in NY do not have enough staff to provide adequate care for their residents!

This not only hurts residents, it hurts care staff too. Nurse aides have high rates of injury. Nurses and aides get burnt out.

The [Safe Staffing for Quality Act](#), NYS Assembly Bill #6571, sets forth basic, safe minimum staffing standards for both nursing homes and hospitals. It will help us make sure that people are not harmed or neglected because there just isn't enough staff to help them when they need it!

It is about time that NY join other states that have minimum staffing standards for the nursing homes caring for our vulnerable elderly and disabled. Please send a quick message now in support of this bill – [click here](#) or go to http://capwiz.com/nhccnys/issues/alert/?alertid=62598586&MC_plugin=3202.

We're on the Web!

www.ltccc.org: Our main website, with access to all of our issues, policy briefs and research.

www.assisted-living411.org: For information on assisted living, including consumer issues and policies.

www.nursinghome411.org: For information on developments in nursing home care, regulation and policy issues.

LTCCC Links of Interest

[View](#) the latest enforcement actions against nursing homes in New York State.

[Read](#) the latest edition of LTCCC's quarterly newsletter, *The Monitor*.

LTCCC's dedicated webpage on antipsychotic drugs and dementia care: nursinghome411.org/?articleid=10042.

Long term care information booklet in [Chinese](#) and [English](#) for Chinese consumers: What You Need to Know about Long Term Care.

[SIGN-UP FOR THE LTC E-NEWSLETTER \(OR UNSUBSCRIBE\)](#)!