



## The NEW Nursing Home Regulations

# Requirements for Nursing Homes: Freedom From Abuse, Neglect & Exploitation

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 Ensuring that Residents are Protected from Abuse & Neglect**



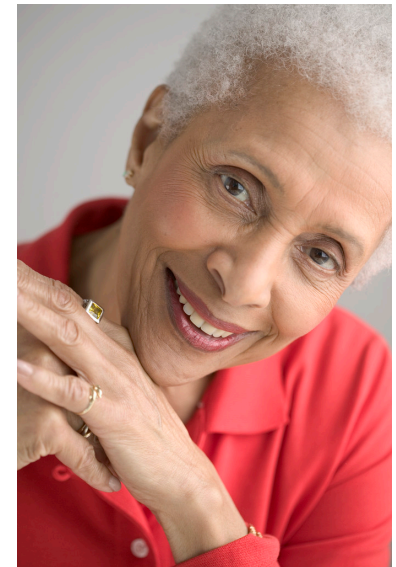
# + The Nursing Home System in a Nutshell

- 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 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.



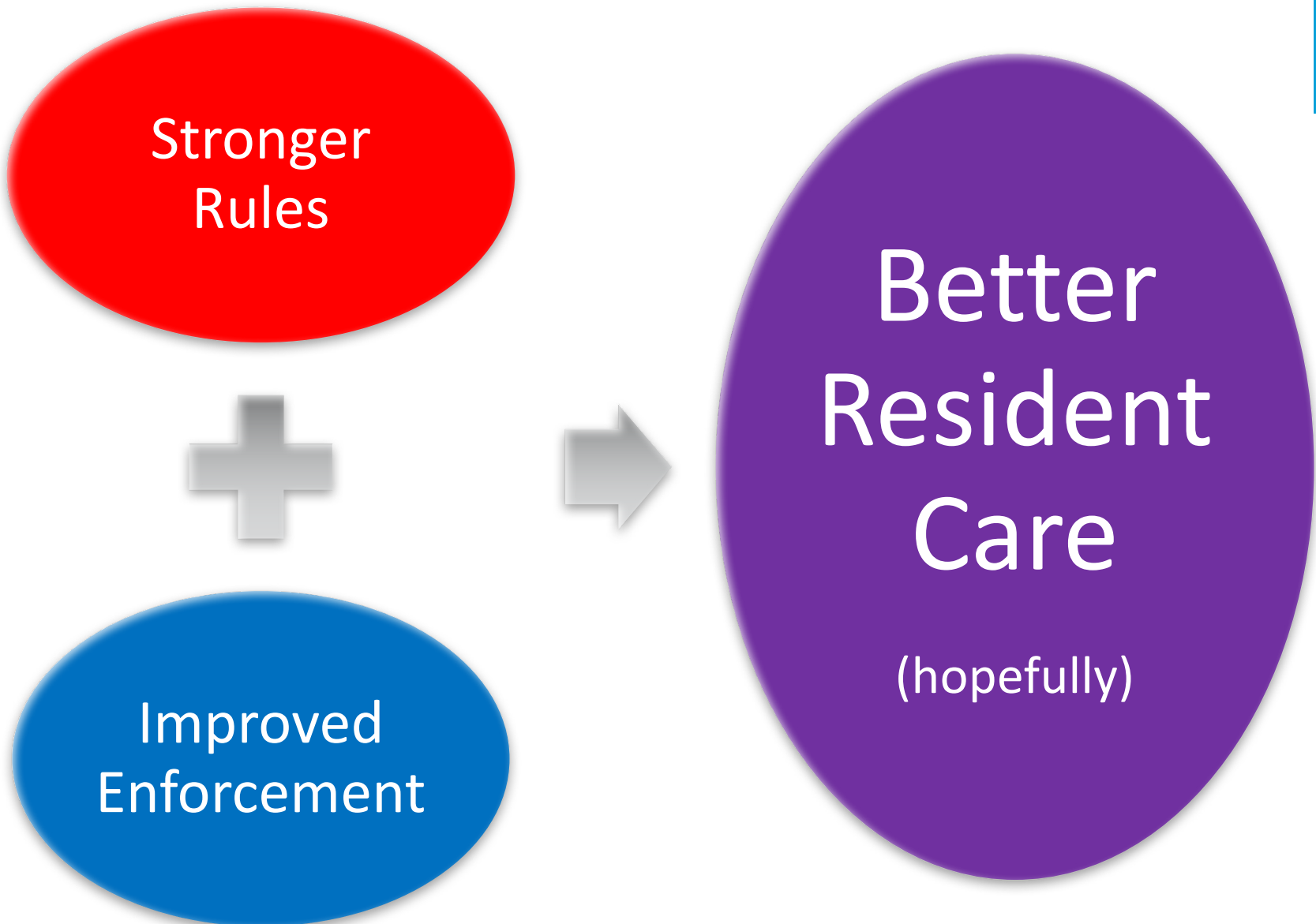
## + **What** Is Happening Now?

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 nation's Survey System is changing.** Starting November 2017, all state survey agencies will be utilizing a new survey process.
- **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.



# *The Federal Nursing Home Standards:*

## **Requirements for Protecting Residents from...**

- **Abuse,**
- **Neglect &**
- **Exploitation**

## + Why Are We Talking About These Requirements?

**FOX NEWS:**  
“Florida nursing home deaths a criminal investigation”

**NH1 NEWS:**  
“Government probe finds abuse in nursing homes going unreported despite law”

**CNN:** “Sick, dying and raped in America's nursing homes”

**PBS NEWSHOUR:**  
“Health care watchdog sends urgent alert on potential nursing home abuse”

**Because Too Many Nursing Home Residents Suffer Abuse & Neglect.**

# + Freedom from Abuse, Neglect, & Exploitation

FEDERAL REQUIREMENT: 42 CFR 483.12 [F600]

*The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation.... This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.*

INTENT of FEDERAL REQUIREMENT:

*Each resident has the right to be free from abuse, neglect and corporal punishment of any type by anyone.*

KEY ELEMENTS OF NONCOMPLIANCE FOR ABUSE AND NEGLECT

*The facility...*

- *Failed to protect a resident's right to be free from any type of abuse, including corporal punishment, and neglect, that results in, or has the likelihood to result in physical harm, pain, or mental anguish; or*
- *Failed to ensure that a resident was free from neglect when it failed to provide the required structures and processes in order to meet the needs of one or more residents.*

Orange  
Type  
=  
New  
Regulatory  
Language

## + Freedom from Abuse, Neglect, & Exploitation

**Abuse:** *the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.*

*Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.*

Important  
Definitions

**Neglect:** *the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress.*

**Sexual abuse:** *“non-consensual sexual contact of any type with a resident.*

**Willful:** *means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.*

# + Freedom from Abuse, Neglect, & Exploitation

Selected Excerpts from the Federal Guidelines...

**What is the Facility Responsible For?** *The facility must provide a safe resident environment and protect residents from abuse.*

## **Facility Characteristics Associated With Increased Risk of Abuse.**

*Identified facility characteristics, that could increase the risk for abuse include, but are not limited to:*

- *Unsympathetic or negative attitudes toward residents;*
- *Chronic staffing problems;*
- *Lack of administrative oversight, staff burnout, and stressful working conditions;*
- *Poor or inadequate preparation or training for care giving responsibilities;*
- *Deficiencies of the physical environment; and*
- *Facility policies operate in the interests of the institution rather than the residents.*

What should  
surveyors be  
looking for?  
What should  
WE be looking  
for?

## + Freedom from Abuse, Neglect, & Exploitation

Selected Excerpts from the Federal Guidelines...

### Staff to Resident Abuse of Any Type

*Nursing homes have diverse populations including, among others, residents with dementia, mental disorders, intellectual disabilities, ethnic/cultural differences, speech/language challenges, and generational differences. When a nursing home accepts a resident for admission, the facility assumes the responsibility of ensuring the safety and well-being of the resident.*

*It is the facility's responsibility to ensure that all staff are trained and are knowledgeable in how to react and respond appropriately to resident behavior. All staff are expected to be in control of their own behavior, are to behave professionally, and should appropriately understand how to work with the nursing home population.*

*A facility cannot disown the acts of staff....*

CMS does not consider striking a combative resident an appropriate response in any situation. *It is also not acceptable for an employee to claim his/her action was "reflexive" or a "knee-jerk reaction" and was not intended to cause harm.* Retaliation by staff is abuse, *regardless of whether harm was intended, and must be cited.*

## + Freedom from Abuse, Neglect, & Exploitation

Selected Excerpts from the Federal Guidelines...

### Resident to Resident Abuse of Any Type

*A resident to resident altercation should be reviewed as a potential situation of abuse. When investigating an allegation of abuse between residents, the surveyor should not automatically assume that abuse did not occur, especially in cases where either or both residents have a cognitive impairment or mental disorder. **Having a mental disorder or cognitive impairment does not automatically preclude a resident from engaging in deliberate or non-accidental actions.***

*In determining whether F600-Free from Abuse and Neglect should be cited in these situations, **it is important to remember that abuse includes the term “willful”.** The word “willful” means that the individual’s action was deliberate (not inadvertent or accidental), regardless of whether the individual intended to inflict injury or harm. An example of a deliberate (“willful”) action would be a cognitively impaired resident who strikes out at a resident within his/her reach, as opposed to a resident with a neurological disease who has involuntary movements (e.g., muscle spasms, twitching, jerking, writhing movements) and his/her body movements impact a resident who is nearby.*

Nursing homes are responsible for protecting residents from all forms of abuse, including resident to resident abuse and including when one or both resident has dementia.



## + Freedom from Abuse, Neglect, & Exploitation

Selected Excerpts from the Federal Guidelines...

### **Resident to Resident Abuse of Any Type** (continued)

*If it is determined that the action was not willful (a deliberate action), the surveyor must investigate whether the facility is in compliance with the requirement to maintain an environment as free of accident hazards as possible, and that each resident receives adequate supervision.*

*The facility may provide evidence that it completed a resident assessment and provided care planning interventions to address a resident's distressed behaviors such as physical, sexual or verbal aggression. However, based on the presence of resident to resident altercations, if the facility did not evaluate the effectiveness of the interventions and staff did not provide immediate interventions to assure the safety of residents, then the facility did not provide sufficient protection to prevent resident to resident abuse.*



Expectations  
of  
Facilities

## + Cracking Down on Crimes Against Nursing Home Residents

For too many nursing home residents, the rights we all have as residents of the United States go out the door the moment they enter the door of a nursing home.

The Affordable Care Act includes important provisions to change this:

- **Duty:** Must report any "reasonable suspicion" that a crime has been committed against a resident of the facility.
- **For Whom?:** Any and all of a nursing home's employees, owners, operators, managers, agents and contract workers.
- **When?** Immediately! Must be within 2-hours if the act or incident suspected to be a crime resulted in physical injury to a resident; otherwise, within 24-hours.
- **To Whom?:** Local law enforcement and the state agency (Dept. of Health).
- **Penalty:** Failure to report carries a fine of up to \$221,048; if the failure results in increased harm to the original victim, or harm to another resident, the fine can be up to \$331,752.



## + Requirements for Reporting Abuse, Neglect & Suspicion of a Crime Against a Resident

Regulation	42 CFR 483.12(b)(5) [And §1150B of the Act]	42 CFR 483.12(c)
F-tag	F608	F609
What	Any reasonable suspicion of a crime against a resident	1) All alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property 2) The results of all investigations of alleged violations
Who is required to report?	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
To whom	State Survey Agency (SA) and one or more law enforcement entities for the political subdivision in which the facility is located (i.e., police, sheriffs, detectives, public safety officers; corrections personnel; prosecutors; medical examiners; investigators; and coroners)	The facility administrator and to other officials in accordance with State law, including to the SA and the adult protective services where state law provides for jurisdiction in long-term care facilities
When	Serious bodily injury- Immediately but not later than 2 hours after forming the suspicion. No serious bodily injury- not later than 24 hours. [Note: "Reporting requirements under this regulation are based on real (clock) time, not business hours"]	All alleged violations-Immediately but not later than (1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury or (2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.

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

## LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

### FACT SHEET: REQUIREMENTS FOR NURSING HOMES TO PROTECT RESIDENTS FROM ABUSE, NEGLECT & EXPLOITATION

Following are several standards and guidelines that we have identified as important when it comes to protecting residents from abuse, neglect and exploitation. The descriptions are taken directly from the federal regulations and guidelines (as indicated by text in italics). The excerpts are formatted into bulleted lists to make it easier to identify the points that we believe are most relevant. For more detailed information, see the webinar program & other resources on our website, [www.nursinghome411.org](http://www.nursinghome411.org).

[Notes: (1) The brackets below provide the citation to the federal regulation. (42 CFR 483.xx) and the F-tag used when a facility is cited for failing to meet the requirement. (2) All emphases added.]

#### I. Freedom From Abuse, Neglect & Exploitation [42 CFR 483.30(A) F-710]

*The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation.... This includes but is not limited to freedom from corporal punishment, involuntary seclusion and any physical or chemical restraint not required to treat the resident's medical symptoms.*

#### II. Key Elements Of Noncompliance With This Standard

*The facility...*

- Failed to protect a resident's right to be free from any type of abuse, including corporal punishment, and neglect, that results in, or has the likelihood to result in physical harm, pain, or mental anguish; or
- Failed to ensure that a resident was free from neglect when it failed to provide the required structures and processes in order to meet the needs of one or more residents.

#### III. Key Definitions

- **Abuse:** the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. **Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.**

*Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.*

- **Neglect:** the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish or emotional distress.
- **Sexual abuse:** non-consensual sexual contact of any type with a resident.
- **Willful:** means the individual must have acted deliberately, **not** that the individual must have intended to inflict injury or harm.

LTCCC Fact Sheet: Protection from Abuse, Neglect & Exploitation

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#### IV. Federal Guidelines - Facility Characteristics Associated With Increased Risk of Abuse.

*Identified facility characteristics, that could increase the risk for abuse include, but are not limited to:*

- *Unsympathetic or negative attitudes toward residents;*
- *Chronic staffing problems;*
- *Lack of administrative oversight, staff burnout, and stressful working conditions;*
- *Poor or inadequate preparation or training for care giving responsibilities;*
- *Deficiencies of the physical environment; and*
- *Facility policies operate in the interests of the institution rather than the residents.*

#### V. Reporting Requirements for Abuse, Neglect & Suspicion of a Crime Against a Nursing Home Resident

There are both state and federal requirements for reporting abuse or neglect. Nevertheless, far too much resident abuse, neglect, theft of personal property, etc... goes unreported. To help address this problem, **the Affordable Care Act established important requirements for reporting any reasonable suspicion of a crime against a nursing home resident.**

Requirements for reporting all alleged abuse, neglect, exploitation or mistreatment:

- **Duty:** Must report *all alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.*
- **For Whom?:** The nursing home.
- **When?** *All alleged violations-immediately but not later than (1) 2 hours- if the alleged violation involves abuse or results in serious bodily injury (2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.*
- **To Whom?:** *The facility administrator and to other officials in accordance with State law, including to the SA [survey agency, i.e., Department of Health] and the adult protective services where state law provides for jurisdiction in long-term care facilities.*

Requirements for reporting suspicion of a crime against a nursing home resident include:

- **Duty:** Must report any "reasonable suspicion" that a crime has been committed against a resident of the facility.
- **For Whom?:** Any and all of a nursing home's employees, owners, operators, managers, agents and contract workers.
- **When?** Immediately! Must be within 2-hours if the act or incident suspected to be a crime resulted in physical injury to a resident; otherwise, within 24-hours.
- **To Whom?:** Local law enforcement and the state survey agency (Dept. of Health).
- **Penalty:** Failure to report carries a fine of up to \$221,048; if the failure results in increased harm to the original victim, or harm to another resident, the fine can be up to \$331,752.

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

Receive alerts for future programs or sign up for our newsletters.

**Next Program:** October 17<sup>th</sup> at 1pm.

**Topic:** Nursing Home Compare – Finding & Using Information About Nursing Homes in Your State & Community.

You can also...

- Join us on **Facebook** at [www.facebook.com/ltccc](http://www.facebook.com/ltccc)
- 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)).



Questions?

Comments?