Fulfilling the Promise:

Resident Rights & Resident Care Under the New Federal Standards for Nursing Homes

Presented by Richard J. Mollot, Long Term Care Community Coalition

www.nursinghome411.org

About 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;
  - Home of the Hudson Valley LTC Ombudsman Program.
- **Coalition members** include several LTC Ombudsman Programs, the Center for Independence of the Disabled, AARP NY, several Alzheimer's Association Chapters, other senior and disabled organizations. Also individuals, including ombudsmen, who join in our mission to protect residents.

What Will We Be Talking About TODAY?

- **BACKGROUND**
  - Overview of the Nursing Home System
  - The Federal Nursing Home Law & Why it is Important
- **WHAT IS HAPPENING NOW?**
  - Changes to the Federal Standards Relevant to Quality & Dignity
  - Other Changes to Improve Oversight & Transparency
  - Tools for Resident-Centered Advocacy

What?

Why?

When?

How?

The Nursing Home System in a Nutshell

- Almost 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 federal 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 Nursing Home Reform Law

- The Reform Law requires nursing homes receiving federal funding to conform to specific standards of care.
- Federal law requires that **every nursing home resident** is provided the care and quality of life sufficient to attain and maintain his or her **highest practicable physical, emotional and social well-being**.
- This is what we pay for.
- This is what providers agree to provide.
- This is what every resident deserves.

The Nursing Home Reform Law

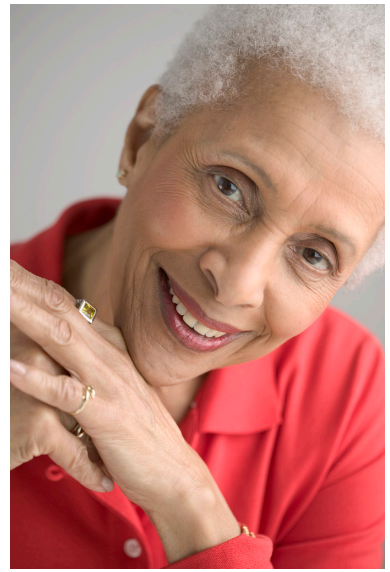
What does "**Highest Practicable Well-Being**" mean?

Two examples…

1. If I can go to the toilet with assistance, I should not be put in a diaper because it is more convenient for staff.
2. If I like being around other people for Bible study or current events discussion, bingo should not be the only social activity to which I have access.

The Nursing Home Reform Law

- The emphasis on **individualized, patient-centered care** was intended to reduce widespread problems in long-term care facilities, including abuse and neglect, and improve quality of life.
- Importantly, the law lays out **specific resident rights, from good care and monitoring to a quality of life that maximizes choice, dignity and autonomy**.
- In short: Every nursing home that takes in any Medicaid/Medicare money agrees to – and is paid to – have **sufficient staff** and **appropriate services** to ensure that all of their residents are able to attain and maintain their highest practicable well-being.



Question:

If the Nursing Home Reform Law is so GREAT, Why are so many nursing homes BAD places to live and get care?

+ Answer:

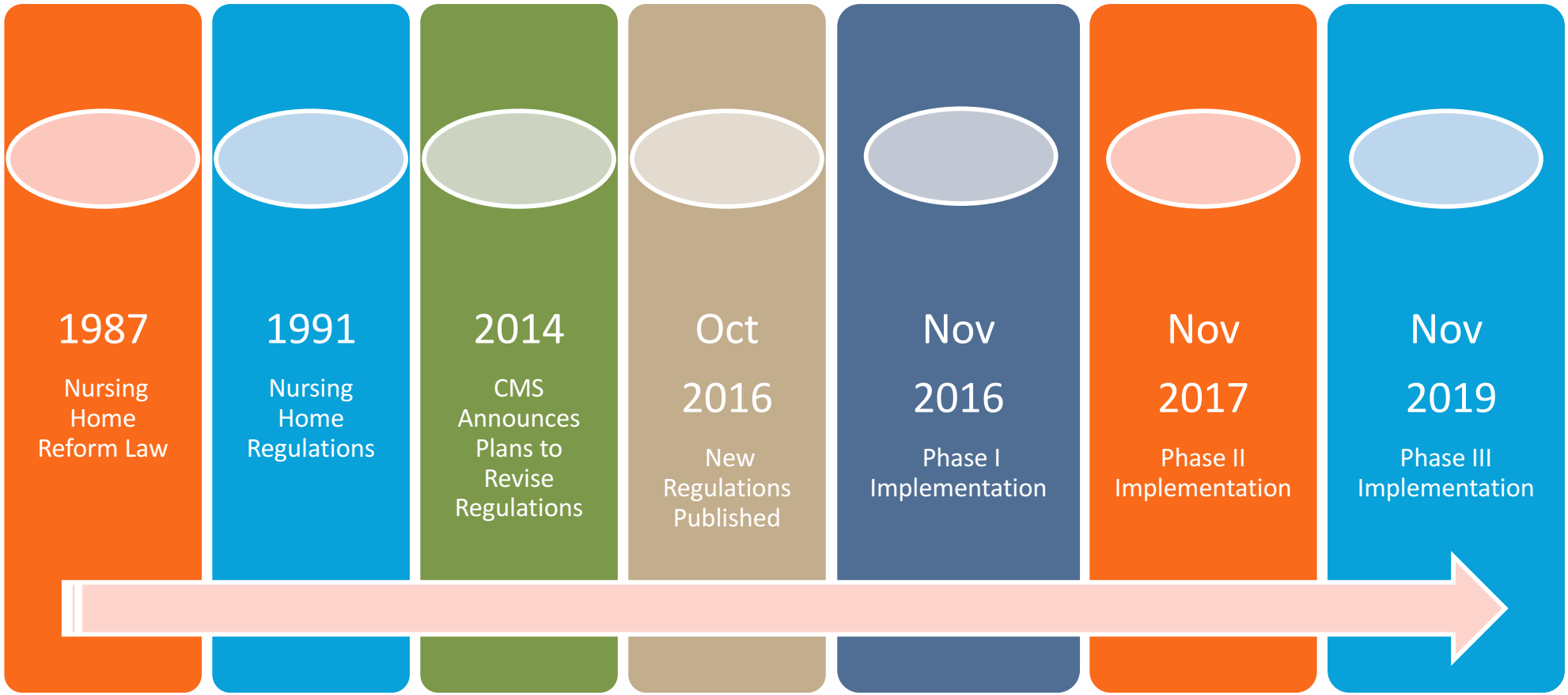
Though the laws are strong and the standards are good, they can only make a difference in the lives of residents if they are **ENFORCED**.

The Nursing Home Enforcement Agencies

- **US CMS.**
  - The federal agency, CMS, is responsible for paying for Medicare and Medicaid services in ***every*** setting nation-wide, for developing standards for provision of that care and for ensuring that those standards are met.
  - CMS contracts with the State Agencies to perform oversight functions.
- **NYS DOH.** The State Survey Agency, responsible for monitoring care and ensuring quality in NYS facilities.
- **NYS MFCU.** The Medicaid Fraud Control Unit, housed in the NYS Attorney General's office, also has an important role. By ensuring that public $$ is spent on quality services, it can hold nursing homes accountable for abuse and neglect. MFCU has its own abuse and neglect complaint line.
- **NYS Comptroller.** The Comptroller focuses on the integrity of public programs and public agencies. Because most nursing home care is paid for with public funds, they have a less direct – but still important – role in ensuring that residents receive decent care.
- **NYS OMIG.** The Office of the Medicaid Inspector General works to ensure that care in nursing homes is provided safely and appropriately by working to prevent and detect fraudulent, abusive and wasteful practices.

What's Happening Now?: New Federal Regulations

The goal of the current changes is to improve quality and reduce resident abuse & neglect by modernizing the steps to quality care.



What Does This Mean For Us?

- **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 federal government has issued extensive guidelines over the years which provide critical instructions on how nursing homes are supposed to carry out the regulatory requirements and what surveyors need to look at when they evaluate a nursing home. This is all being revised right now. The new Guidance goes into effect 11/28/17.

In Addition:

- **Nursing Home Survey Protocols are Changing.** A new survey system is going into effect across the country 11/28/17.

- **Nursing Home Compare is Undergoing Significant Changes.** Improvements are being made to the quality of information provided to the public on nursing home care.

What Can We Do?

Be as Informed as Possible.

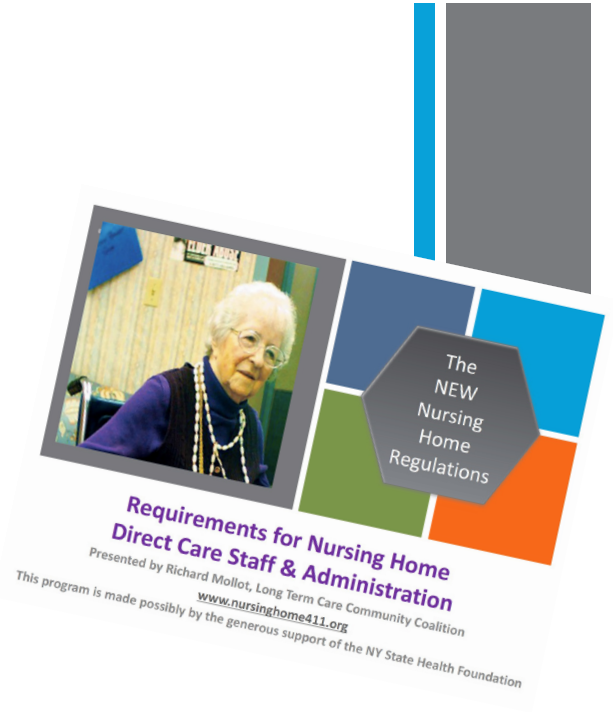
- Now, and for the next several years, we expect that there will be a great deal of confusion and lack of awareness among nursing home staff, administration and surveyors.
- It will be up to **US** to know our rights about quality of care, quality of life and dignity.
- **WE** will need to strengthen our ability to provide a strong voice for quality care and dignity at every level:
  - **Residents & Resident Councils**
  - **Family & Family Councils**
  - **LTC Ombudsmen Staff & Volunteers**
  - **Attorneys, Advocates & Organizations that work with Residents & Families**

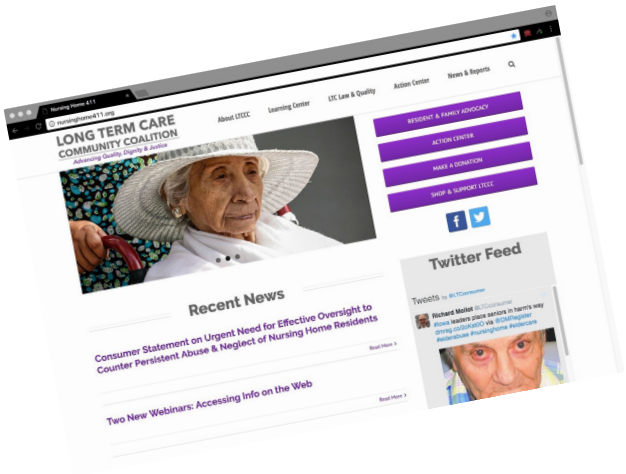
How?

The rest of this program will…

1. Highlight some important nursing home standards & protections.

2. Introduce you to LTCCC's easy-to-use resources for resident-centered advocacy, developed with support from The New York State Health Foundation.





Nursing Home Standards

Resident Rights

Resident rights include, but aren't limited to:

- The right to be treated with **dignity** and **respect**.
- The right to **privacy**, and to keep and use your personal belongings and property.
- The right to **manage your own money** or to choose someone else you trust to do this for you.
- The right to be **informed** about your medical condition, medications, and to see your own doctor. You also have the **right to refuse** medications and treatments.
- The right to have a **choice** over your schedule (for example, when you get up and go to sleep), your activities and other preferences that are important to you.
- The right to an **environment more like a home** that maximizes your comfort and provides you with assistance to be as independent as possible.

Source: https://www.medicare.gov/NursingHomeCompare/Resources/Resident-Rights.html.

Nursing Home Standards

Minimum Staffing Requirements

*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.

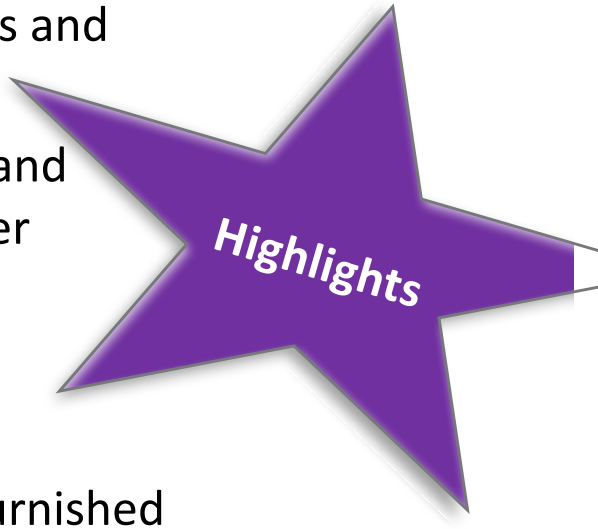
Basic Requirements for Nursing Services

The facility **must** have sufficient nursing staff *with the appropriate competencies and skills* 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….*

Nursing Home Standards

Resident Assessment

- A facility **must** make an assessment of the resident's capacity, needs and preferences.
- The assessment **must** include a wide range of resident needs and abilities.
- A facility is expected to primarily rely on direct observation and communication with the resident in order to assess his or her functional capacity.



Planning a Resident's Care

- A resident's care plan **must** describe "…the services to be furnished to attain or maintain the resident's highest practicable physical, mental and psychosocial well-being…."
- **The care plan must be based on the assessment**. In other words, it must come from the resident's needs and abilities, not the services or staffing levels which the nursing home decides to provide based on its financial (or other) priorities.

Fact Sheet: Resident Assessment & Care Planning

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

CONSUMER FACTSHEET: RESIDENT ASSESSMENT & CARE PLANNING

There are many standards which nursing homes are required to follow in order to ensure that residents receive appropriate care, have a good quality of life and are treated with dignity. YOU can use these standards as a basis for advocating in your nursing home.
Following are two important standards for residents assessment and care planning with information that can help you understand and use them to advocate for your resident. [Note: The brackets provide the relevant federal regulation (CFR) and F-tag (category of deficiency).]

I. RESIDENT ASSESSMENT [42 CFR 483.20 F-636]

- *The facility must conduct initially and periodically a comprehensive, accurate, standardized reproducible assessment of each resident's functional capacity.*
- *A facility must make a comprehensive assessment of a resident's needs, strengths, goals, life history and preferences, using the resident assessment instrument (RAI) specified by CMS.*
- *The assessment must include at least the following:*
  - ✓ Identification and demographic information.
  - ✓ *Customary routine.*
  - ✓ *Cognitive patterns.*
  - ✓ *Communication.*
  - ✓ *Vision.*
  - ✓ *Mood and behavior patterns.*
  - ✓ *Psychosocial well-being.*
  - ✓ *Physical functioning and structural problems.*
  - ✓ *Continence.*
  - ✓ *Disease diagnoses and health conditions.*
  - ✓ *Dental and nutritional status.*
  - ✓ *Skin condition.*
  - ✓ *Activity pursuit.*
  - ✓ *Medications.*
  - ✓ *Special treatments and procedures.*
  - ✓ *Discharge planning.*
  - ✓ *Documentation of summary information regarding the additional assessment performed through the resident assessment protocols.*
- *Documentation of participation in assessment. The assessment process must include direct observation and communication with the resident, as well as communication with licensed and nonlicensed direct care staff members on all shifts.*

Use this checklist to identify what is important to YOU when you have a resident assessment!

II. COMPREHENSIVE PERSON-CENTERED CARE PLANNING [42 CFR 483.21]

The facility must develop and implement a comprehensive person-centered care plan for each resident, consistent with… resident rights…, that includes measurable objectives and timeframes to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The comprehensive care plan must describe the following:

- *The services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being…*
- *Any services that would otherwise be required… but are not provided due to the resident's exercise of rights…, including the right to refuse treatment…*
- *In consultation with the resident and the resident's representative(s)—*
  - *The resident's goals for admission and desired outcomes.*
  - *The resident's preference and potential for future discharge. Facilities must document whether the resident's desire to return to the community was assessed and any referrals to local contact agencies and/or other appropriate entities, for this purpose.*
  - *Discharge plans in the comprehensive care plan, as appropriate…*

A comprehensive care plan must be…Developed within 7 days after completion of the comprehensive assessment.

IMPORTANT NOTE: The new federal nursing home standards greatly expanded expectations for care planning. See the "LTCCC Factsheet Care Planning Requirements" for important details on how care plans must be developed and carried out.

BASIC CONSIDERATION TO KEEP IN MIND

- A facility must make an assessment of the resident's capacity, needs and preferences.
- The assessment must include a wide range of resident needs and abilities, including customary routine, cognitive patterns, mood, ability to and methods of communication, physical, dental and nutritional status.
- A facility is expected to primarily rely on direct observation and communication with the resident in order to assess his or her functional capacity.
- In addition to direct observation and communication with the resident, the facility must use a variety of other sources, including communication with care staff on all shifts.
- A resident's care plan "must describe… the services to be furnished to attain or maintain the resident's highest practicable physical, mental and psychosocial well-being…."
- The care plan must be based on the assessment. In other words, it must come from the resident's needs and abilities, not the services or staffing levels which the nursing home decides to provide based on its financial (or other) priorities.

RESOURCES

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care, training materials and other resources.

Nursing Home Standards

Freedom from Abuse, Neglect & Exploitation

*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.*

Fact Sheet: Freedom From Abuse & Neglect

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.

[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*.

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.

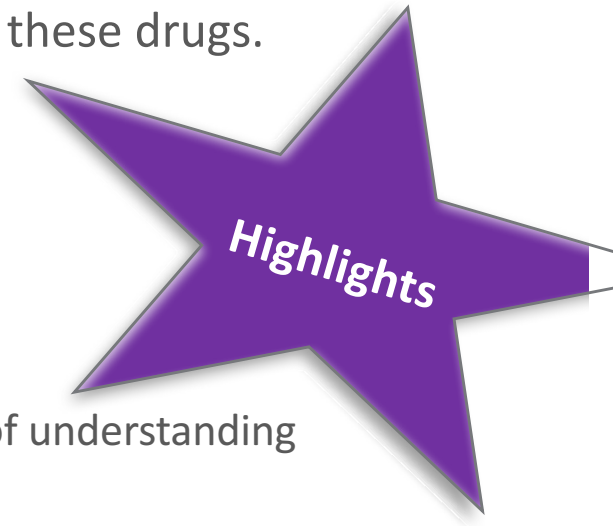
RESOURCES

WWW.NURSINGHOME411.ORG. 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.

Nursing Home Standards

Freedom from Inappropriate Drugging & Chemical Restraints

- The inappropriate use of antipsychotic drugs and other psychotropics is a persistent problem in nursing homes.
- Far too often, residents with dementia are given dangerous antipsychotic drugs, instead of appropriate care, when they exhibit “behavioral symptoms” of dementia.
- 20% of U.S. nursing home residents are administered antipsychotics.
- Less than 2% of the population will ever have a diagnosis recognized by CMS when it risk-adjusts for potentially appropriate clinical uses of these drugs.
- To address this problem, federal regulations prohibit:
  - Drugs that are not necessary to treat a clinical condition;
  - Drugs that are given for the convenience of staff;
  - Drugs given without appropriate monitoring; and
  - Chemical restraints: the use of drugs to sedate residents, in place of understanding and meeting their needs.



Fact Sheet: Dementia Care & Drugging Standards

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

LTCCC FACTSHEET DEMENTIA CARE & DRUGGING STANDARDS

There are many standards which nursing homes are required to follow in order to ensure that residents receive appropriate care, have a good quality of life and are treated with dignity. **YOU** can use these standards to support better care in your nursing home.

Below are standards important to dementia care and the use of psychotropic drugs with information that can be used to support resident-centered advocacy. [Notes: The brackets provide the relevant federal regulation (CFR) and F-tag (category of deficiency). Emphases added.]

THE LAW

I. Drug Regimen Review [42 CFR 483.45(c) F-756]

*The drug regimen of each resident **must** be reviewed at least once a month by a licensed pharmacist.*

This review must include a review of the resident's medical chart.

*The pharmacist **must** report any irregularities to the attending physician and the facility's medical director and director of nursing, and these reports must be acted upon.*

- *Irregularities include, but are not limited to, any drug that meets the criteria set forth in paragraph (d)…* [see "Free from Unnecessary Drugs" below] *for an unnecessary drug.*
- ***Any irregularities noted by the pharmacist during this review must be documented on a separate, written report** that is sent to the attending physician and the facility's medical director and director of nursing and lists, at a minimum, the resident's name, the relevant drug, and the irregularity the pharmacist identified. The attending physician **must** document in the resident's medical record that the identified irregularity has been reviewed and what, if any, action has been taken to address it. If there is to be no change in the medication, the attending physician should document his or her rationale in the resident's medical record.*

II. Free from Unnecessary Drugs [42 CFR 483.45(d) F-757]

*Each resident's drug regimen **must** be free from unnecessary drugs. An unnecessary drug is any drug when used-*

- In excessive dose (including duplicate drug therapy); or
- For excessive duration; or
- Without adequate monitoring; or
- Without adequate indications for its use; or
- In the presence of adverse consequences which indicate the dose should be reduced or discontinued….

III. Psychotropic Drugs [42 CFR 483.45(e) F-758]

*Based on a comprehensive assessment of a resident, the facility **must** ensure that-*

- *Residents who have not used psychotropic drugs are not given these drugs unless the medication is necessary to treat a specific condition as diagnosed and documented in the clinical record;*
- *Residents who use psychotropic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs;*
- *Residents do not receive psychotropic drugs pursuant to a PRN order unless that medication is necessary to treat a diagnosed specific condition that is documented in the clinical record; and*
- *PRN orders for psychotropic drugs are limited to 14 days.*[1]

BASIC DEMENTIA CARE REQUIREMENTS & EXPECTATIONS

1. **Obtain details about the person's behaviors** (nature, frequency, severity, and duration) and risks of those behaviors, and discuss potential underlying causes with the care team and (to the extent possible) resident, family or representative;

2. **Exclude potentially remediable causes of behaviors** (such as medical, medication-related, psychiatric, physical, functional, psychosocial, emotional, environmental) and determined if symptoms were severe, distressing or risky enough to adversely affect the safety of residents;

3. **Implement non-pharmacological approaches to care** to understand and address behavior as a form of communication and modify the environment and daily routines to meet the person's needs;

4. **Implement the care plan consistently** and communicated across shifts and among caregivers and with the resident or family/representative (to the extent possible); and

5. **Assess the effects of the approaches**, identify benefits and complications in a timely fashion, involve the attending physician and medical director (as appropriate for the resident's well-being) **and adjust treatment accordingly**.

RESOURCES

- **WWW.NURSINGHOME411.ORG.** LTCCC's website includes materials on the relevant standards for nursing home care, including our Tool-Kit for a listing of antipsychotic drug names and other resources.
- **WWW.THECONSUMERVOICE.ORG.** The Consumer Voice has numerous materials and resources for residents, family members and LTC Ombudsmen.

[1] There is a limited exception "if the attending physician or prescribing practitioner believes that it is appropriate for the PRN order to be extended beyond 14 days, he or she should document their rationale in the resident's medical record and indicate the duration for the PRN order." PRN orders for anti-psychotic drugs are limited to 14 days and cannot be renewed unless the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication.

Questions?

Comments?

All Fact Sheets are Available in the Learning Center @ www.nursinghome411.org