

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

Issue Alert: Resident and Family Councils

I. Why are Resident and Family Councils Important to Resident Care and Quality of Life?

Resident and family councils can be an effective means by which to improve care and quality of life both on an individual resident basis and throughout an entire facility. They enable members to have a unified voice in addressing issues concerning resident care and quality of life. In addition, resident and family councils provide members with an opportunity to seek support from one another and to exchange knowledge about residents' rights and protections.

II. What are the Requirements for Nursing Homes in Respect to Resident and Family Councils?

The federal Nursing Home Reform Law states that nursing homes "must protect and promote the rights of each resident," including a resident's right to "organize and participate in resident groups" and a family's right to "meet in the facility with the families of other residents"¹ In implementing the law, the nursing home standards of care provide residents and families the following protections:

- 1. Every facility must provide a private space to resident and family councils, as well as notify them of upcoming meetings.**
 - *The facility must provide a resident or family group, if one exists, with private space; and take reasonable steps, with the approval of the group, to make residents and family members aware of upcoming meetings in a timely manner.*
- 2. Only invited guests, including staff, are allowed to attend resident or family council meetings.**
 - *Staff, visitors, or other guests may attend resident group or family group meetings only at the respective group's invitation.*
- 3. With the approval of resident and family councils, each facility must designate a staff member to assist councils and respond to requests.**
 - *The facility must provide a designated staff person who is approved by the resident or family group and the facility and who is responsible for providing assistance and responding to written requests that result from group meetings.*

Note to Readers:

LTCCC Issue Alerts provide basic information about an issue of concern to nursing home residents.

For further information, please see the Resources and references at the end of the Alert, as well as our website, www.nursinghome411.org.

4. Each facility must promptly act upon the grievances and recommendations of resident and family councils on issues of resident care and quality of life.

- *The facility must consider the views of a resident or family group and act promptly upon the grievances and recommendations of such groups concerning issues of resident care and life in the facility.*
 - *The facility must be able to demonstrate their response and rationale for such response.*
 - *This should not be construed to mean that the facility must implement as recommended every request of the resident or family group.*

5. Every resident has the right to participate in family councils, as well as have their representatives meet with other family or resident representatives.

- *The resident has a right to participate in family groups.*
- *The resident has a right to have family member(s) or other resident representative(s) meet in the facility with the families or resident representative(s) of other residents in the facility.²*

CMS's Interpretative Guidance defines resident and family councils as groups meeting to "discuss and offer suggestions about facility policies and procedures affecting residents' care, treatment, and quality of life."³ According to the Interpretative Guidance, **facility staff must consider the recommendations of resident and family councils and attempt to meet their needs "to the extent practicable."** CMS provides that this could entail developing or revising policies that affect quality of care and quality of life. Furthermore, CMS's guidance provides that **facilities must "discuss its decisions with the resident and/or family group and document in writing its response and rationale as required under . . ."** the requirements for grievances.

III. A Note on Best Practices for Resident Councils

The Connecticut Long Term Care Ombudsman Program (LTCOP) has identified some best practices for resident councils.⁴ According to the report, one facility has a resident council representative on every floor who speaks with other residents and relays information back to the council. The council representatives also inform residents of meetings. A resident council at another facility writes up concerns addressed during meetings and provides that information to all department heads. Another resident council provides opportunities for residents to voice concerns or grievances anonymously. Additionally, one resident council regularly invites a nurse to speak about important health issues, such as dehydration and incontinence. To see Connecticut's LTCOP's full list, please visit:

<http://www.ct.gov/ltcop/lib/ltcop/pdf/bestpractices0906.pdf>. To access the [Coalition of](#)

"Resident councils may be large or small, formal or informal, completely self-governing or largely dependent on staff — whatever form they take, they offer a unique space for residents to come together and discuss their own concerns."

- [Adult Home Resident Council Tool Kit](#), Coalition of Institutionalized Aged and Disabled (CIAD) & NYS LTC Ombudsman Program (2014).

[Institutionalized Aged & Disabled](#) and New York State LTCOP's resident council tool kit, please see <http://www.ciadny.org/documents/AdultHomeResidentCouncilToolkit.pdf>.

IV. A Note on Best Practices for Family Councils

[The National Consumer Voice for Quality Long-Term Care's](#) (Consumer Voice) Family Council Center identifies several key components of family councils. Consumer Voice recommends continuously conducting recruitment of new members, including assigning new families to the facility to council members who can answer questions and welcome them to the family council. Consumer Voice also recommends developing council structures, such as by-laws, maintaining relationships with the facility's staff and long-term care ombudsman, as well as staying informed of nursing home laws and regulations. For additional information on family council best practices, please visit <http://theconsumervoice.org/issues/family/family-council-center>.

V. Citations for Resident and Family Council Deficiencies

Resident and family council deficiency rates vary from nursing home to nursing home. Nursing Home Compare (<http://www.medicare.gov/nursinghomecompare>) provides information on individual certified nursing homes across the country. For each nursing home, resident and family council deficiencies are listed in Statement of Deficiencies (SoDs) found under the "health inspection" tab.

A revised numbering system (F-tags), which correlate with the regulatory requirements and that are used by surveyors when citing deficiencies, was recently implemented on November 28, 2017. However, please note that resident and family council deficiencies were previously cited under failing to "[p]rovide resident groups or resident family groups with private space to meet" (F-243) and failing to "[l]isten to the resident groups and act on their complaints and suggestions that affect resident care and life" (F-244).

Despite strong resident protections, the requirements on resident and family councils are all too often undermined by a lack of substantial enforcement. In the absence of substantial enforcement, residents and their families must be vigilant in ensuring their rights are not violated.

VI. Case Study of a Resident Council's Unaddressed Grievances

When a state surveyor identifies substandard care, those findings are described in what is called a Statement of Deficiencies (SoD). All nursing home SoDs are published on Nursing Home Compare. An August 2017 inspection of The Brightonian in Rochester, New York, illustrates one such instance where surveyors cited a nursing home for violating resident requirements.⁵ When the state surveyor inspected the nursing home, the surveyor found that the facility was deficient in acting "upon grievances of residents affecting resident care and life in the facility."

A representative of the resident council told the surveyor that the facility had not reported back to the resident council about "issues including nurses who come in and turn off the call light and then forget to tell the Certified Nursing Assistant (CNA) what the resident wants, call bell response times, and late trays." As the representative noted, these were ongoing problems.

When the surveyor reviewed the resident council's meeting minutes, the surveyor saw that the council expressed concerns about call lights every month between January and July. The meeting minutes did not indicate that there had been documented resolutions. For instance, records from February showed that the council discussed nurses passing off work to CNAs that they could do themselves. Unfortunately for residents, the surveyor's review of the facility's grievance log revealed only grievances stemming from missing clothes.

The facility's activity director acknowledged that the resident council frequently complained about call bell response times. She told the surveyor that she passed the "residents' concerns to the appropriate departments and that department is supposed to resolve the concern and notify her of the resolution." As the activity director noted, the departments had not been reporting resolutions. The administrator later told the surveyor that she did "not consider complaints from RC [resident council] as complaints or grievances."

The surveyor cited the facility for the deficiency. According to the surveyor, the facility "did not address grievances brought up by the residents in Resident Council Meetings in a timely and effective manner." Despite the facility's violation of residents' rights, the surveyor only cited the deficiency at the "no harm" level.

VII. A Note on Enforcement

The accurate identification of substandard nursing home care is a longstanding issue of public concern. Too often, even when resident abuse or neglect are cited, the problems are not identified by surveyors as having caused harm to the nursing home's residents. A report by the Government Accountability Office (GAO) found that a "substantial proportion of federal comparative surveys identify missed deficiencies at the potential for more than minimal harm level or above."⁶

Recent studies by LTCCC have indicated that states only identify resident harm about 5% of the time that they cite a facility for substandard care, abuse, or neglect.⁷ This means that 95 percent of nursing home deficiencies are cited as causing "no harm" to the resident. For more information on the meaning and impact of so-called "no harm" deficiencies, please see our newsletter series [Elder Justice: What "No Harm" Really Means for Residents](#).

VIII. References for More Information & Help

1. **LTCCC Fact Sheets.** The [Learning Center](#) on LTCCC's website, www.nursinghome411.org, contains easy-to-use fact sheets on many of the nursing home standards of care most relevant to residents. LTCCC's resident and family councils fact sheet can be found here: <https://nursinghome411.org/fact-sheet-resident-family-councils/>.

"When the state surveyors come for an inspection they should be interviewing representatives from Resident and Family Councils to determine if these requirements are being fulfilled. For example, they should ask:

- **How are views, grievances or recommendations from the Council considered, addressed and acted upon? and**
- **How do facility staff provide responses, actions, and rationales to the Council?"**

- [LTCCC's Consumer Fact Sheet: Resident & Family Councils](#)

2. **LTCCC Webinars.** [LTCCC's YouTube](#) page contains previously recorded webinars on a host of nursing home resident issues, including the resident and family council requirements. See <https://www.youtube.com/watch?v=5GQTE5m6SRo>.
3. **Additional Consumer Resources.** [Consumer Voice](#) has numerous materials and resources for residents, family members, and LTC Ombudsmen, including substantial resources on developing and empowering a resident and family councils. See <http://theconsumervoice.org/issues/recipients/nursing-home-residents/resident-council-center>.
4. **Federal Requirements & Guidance.** The CMS State Operations Manual provides, in an appendix, the Interpretative Guidance, which specifies expectations for this and other nursing home services, as well as for state enforcement. See https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf.

Visit the **Family & Ombudsman Resource Center** at www.nursinghome411.org/families-ombudsmen for resources and tools that **you** can use to support your resident-centered advocacy.

Visit www.nursinghome411.org for additional resources & information on nursing home quality and accountability.

Email sara@ltccc.org to sign up for alerts & notices of upcoming educational programs.

¹ 42 U.S.C. § 1395i-3(c)(1)(A)(vii).

² 42 C.F.R. § 484.10(f)(5)-(7). This regulation is cited as F-565.

³ CMS's Interpretative Guidance can be found in Appendix PP of the State Operations Manual. The guidance for each requirement follows the specific regulatory text. In this case, the Interpretative Guidance can be found following 42 C.F.R. § 484.10(f)(5)-(7).

⁴ *Resident Council Best Practices*, Conn. LTCOP (2006), <http://www.ct.gov/ltcop/lib/ltcop/pdf/bestpractices0906.pdf>.

⁵ Statement of Deficiencies for The Brightonian, CMS (Aug. 31, 2017), <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=335554&SURVEYDATE=08/31/2017&INSPTYPE=STD&profTab=1&state=NY&lat=0&lng=0&name=THE%2520BRIGHTONIAN&Distn=0.0>.

⁶ *Federal Monitoring Surveys Demonstrate Continued Understatement of Serious Care Problems and CMS Oversight Weaknesses*, GAO (May 2008), <https://www.gao.gov/assets/280/275154.pdf>.

⁷ Richard J. Mollot & Rediet Demissie, *The Identification of Resident Harm in Nursing Home Deficiencies: Observation & Insights*, LTCCC (2017), <https://nursinghome411.org/identification-of-resident-harm-in-nursing-home-citations/>.