

# THE LTC JOURNAL

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The Long Term Care Community Coalition

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## IN THIS ISSUE

<b>GOVERNMENT STANDARDS &amp; QUALITY ASSURANCE .....</b>	<b>2</b>
IN RESPONSE TO SERIOUS CONCERNS ABOUT LOW NURSING HOME STAFFING, CMS ISSUES NEW GUIDANCE TO IMPROVE STATE SURVEY AGENCIES' DETECTION OF INADEQUATE STAFFING.....	2
U.S. SENATE FINANCE COMMITTEE'S MINORITY STAFF PUBLISH REPORT ON EMERGENCY PREPAREDNESS REQUIREMENTS, FINDING THE RULES "WHOLLY INADEQUATE" .....	3
<b>LTC NEWS &amp; BRIEFS .....</b>	<b>4</b>
<i>THE BUFFALO NEWS</i> REPORTS ON NEW YORK STATE'S NURSING HOME LICENSURE PROCESS, RAISING QUESTIONS ABOUT THE THOROUGHNESS OF THE DEPARTMENT OF HEALTH'S REVIEW .....	4
<i>THE WASHINGTON POST</i> REPORTS THAT A PRIVATE-EQUITY FIRM'S OWNERSHIP OF NURSING FACILITIES RESULTED IN "OVERDOSES, BEDSORES, BROKEN BONES" ...AND BANKRUPTCY.....	4
STUDY FINDS HIGHER UNEMPLOYMENT RATES ARE ASSOCIATED WITH MORE NURSE STAFFING AND BETTER NURSING HOME QUALITY .....	6
SURVEY FINDS NATIONWIDE OPPOSITION TO THE DEPARTMENT OF LABOR'S PROPOSED ROLL BACK OF RESIDENT LIFT PROTECTIONS .....	6
THE CENTER FOR MEDICARE ADVOCACY PUBLISHES NEW FACT SHEET TO EDUCATE PROVIDERS, CONTRACTORS, AND ADJUDICATORS ABOUT THE <i>JIMMO</i> SETTLEMENT AGREEMENT .....	7
<b>FREE LTCCC RESOURCES .....</b>	<b>7</b>
LTCCC FAMILY & OMBUDSMAN RESOURCE CENTER.....	7
<i>NEW!</i> HANDOUTS & RECORD-KEEPING TOOLS FOR RESIDENT-CENTERED ADVOCACY.....	7
LTCCC WEBINARS.....	8
TELL YOUR STORY .....	8
<b>PLEASE SUPPORT LTCCC'S MISSION .....</b>	<b>8</b>

## GOVERNMENT STANDARDS & QUALITY ASSURANCE

### IN RESPONSE TO SERIOUS CONCERNS ABOUT LOW NURSING HOME STAFFING, CMS ISSUES NEW GUIDANCE TO IMPROVE STATE SURVEY AGENCIES' DETECTION OF INADEQUATE STAFFING

The Centers for Medicare & Medicaid Services (CMS) acknowledges that nursing home staffing levels are directly related to the quality of resident care. However, as CMS notes in a November 2018 [memorandum](#) to state survey agency directors, some nursing homes still report having “several days in a quarter without a registered nurse (RN) onsite and/or significantly low nurse staffing levels on weekends.” As CMS explains in the memo, this failure to provide RN staffing is extremely concerning.

Under the federal Nursing Home Reform Law, every nursing home must have an RN on duty at least eight hours a day, seven days a week. In an attempt to ensure that nursing homes comply with this and other staffing requirements, CMS will start “informing state survey agencies of facilities with potential staffing issues: facilities with significantly low nurse staffing levels on weekends; and facilities with several days in a quarter without an RN onsite.” Under CMS’s new guidance, states will now be required to perform at least 50 percent of required “off-hour” surveys (e.g., weekends or weekdays before 8 a.m. and after 6 p.m.) using CMS’s list of nursing homes that have reported inadequate staffing. States will also need to investigate identified nursing homes’ compliance with RN requirements and cite any noncompliance.

Note: States may have additional requirements for minimum staffing. For example, New York State requires a licensed nurse 24/7. Most states (though not New York) now have a numerical minimum requirement for care staff.

- LTCCC publishes the latest data on staffing for all U.S. nursing homes on a quarterly basis on our website at <https://nursinghome411.org/nursing-home-data-information/staffing/>.
- For a discussion of nursing home staffing concerns, please see LTCCC’s statement: <https://nursinghome411.org/the-new-york-times-shows-nursing-homes-are-not-meeting-staffing-requirements/>.
- To learn about safe staffing and federal nursing home staffing requirements, please see LTCCC’s [Nursing Home Staffing Handout](https://nursinghome411.org/wp-content/uploads/2018/12/LTCCC-Staffing-Handout.pdf) (<https://nursinghome411.org/wp-content/uploads/2018/12/LTCCC-Staffing-Handout.pdf>), [Issue Alert](https://nursinghome411.org/ltccc-issue-alert-nursing-home-staffing-requirements/) (<https://nursinghome411.org/ltccc-issue-alert-nursing-home-staffing-requirements/>), and [Fact Sheet](https://nursinghome411.org/fact-sheet-requirements-for-nursing-home-care-staff-administration/) (<https://nursinghome411.org/fact-sheet-requirements-for-nursing-home-care-staff-administration/>).

*“Staffing is perhaps the most important factor in a nursing home resident’s quality of care and ability to live with dignity. Unfortunately, inadequate nursing home staffing is a widespread and persistent problem.”*

- [LTCCC News Alert: New Data on Nursing Home Staffing \(Dec. 2018\)](#).

## U.S. SENATE FINANCE COMMITTEE'S MINORITY STAFF PUBLISH REPORT ON EMERGENCY PREPAREDNESS REQUIREMENTS, FINDING THE RULES "WHOLLY INADEQUATE"

On November 2, 2018, Senate Finance Committee Ranking Member Ron Wyden published a comprehensive report on the nursing home emergency preparedness requirements. Specifically, the report examined regulatory failures that resulted in the deaths of nursing home residents in Florida and residents sheltering-in-place at a flooded facility in Texas during Hurricane Irma and Harvey, respectively.

The Minority Staff [found](#) that temperature control is a fundamental safety concern for residents and that "inadequate regulatory review allow for non-functional emergency plans." The Minority Staff provided 18 recommendations for improving nursing home safety during emergencies. Among the recommendations, the Minority Staff suggested CMS and states ensure that emergency plans address identified hazards and "ensure that emergency managers have proper training and qualifications to carry out their roles and responsibilities."

Despite such recent Congressional oversight, CMS issued a notice of proposed rulemaking (NPRM) on September 20, 2018, which roll backs the emergency preparedness requirements. Most notably, the proposed rule would allow nursing homes to review their emergency preparedness programs and train staff to carry out those plans every two years rather than annually. LTCCC and other resident advocacy organizations have submitted comments opposing the proposed rule.

***"The objective of this rollback is to reduce the so-called "burden" on nursing homes . . . Ensuring that nursing home residents are protected during increasing cases of natural and human-made disasters must not be viewed as a burden."***

- [LTCCC & CMA \(Nov. 16, 2018\)](#)

- To access "Sheltering in Danger: How Poor Emergency Planning and Response Put Nursing Home Residents at Risk During Hurricanes," please visit: [https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20\(2%20Nov%202018\).pdf](https://www.finance.senate.gov/imo/media/doc/Sheltering%20in%20Danger%20Report%20(2%20Nov%202018).pdf).
- To read LTCCC's comments opposing the proposed roll back of the emergency preparedness comments, please see [https://nursinghome411.org/wp-content/uploads/2018/11/LTCCC-CMA\\_CMS-3346-P-Comments.pdf](https://nursinghome411.org/wp-content/uploads/2018/11/LTCCC-CMA_CMS-3346-P-Comments.pdf).

## LTC NEWS & BRIEFS

### [THE BUFFALO NEWS REPORTS ON NEW YORK STATE’S NURSING HOME LICENSURE PROCESS, RAISING QUESTIONS ABOUT THE THOROUGHNESS OF THE DEPARTMENT OF HEALTH’S REVIEW](#)

In [“N.Y. fails to weed out nursing home owners with records of poor care,”](#) reporter Lou Michel notes that, in the last decade, New York State has approved at least 10 licenses to operate Buffalo nursing homes to operators who have been previously fined for providing poor care to residents. While the New York State Department of Health reviews applications to operate nursing homes, questionable approvals have raised concerns about the thoroughness of these reviews. For example, the state approved three New York City investors even though the state “knew when it had approved the change that the new investors owned other nursing homes that had been fined \$86,884 in the prior two years for providing poor care.” The article adds that the state “also knew the federal government was considering an additional \$173,110 penalty against one of the homes for failing to protect a disabled resident from abuse.”

***“If they have a bad record running other nursing homes, that has to be a factor, just like having a bad enough driving record can mean you lose your driver’s license.”***

- Assemblyman Richard N. Gottfried, [The Buffalo News](#) (Dec. 2018).

LTCCC and other resident advocates believe the state must do more to ensure nursing home operators do not have a history of providing poor care to residents. As Toby Edelman, a senior policy attorney at the Center for Medicare Advocacy states in the article, “the biggest predictor of how a person will do is, how that person did in other facilities the person already owns?”

- To read more articles from this series, please visit: <https://buffalonews.com/topic/nursing-homes/>.
- For additional information about New York State nursing homes, please see LTCCC’s LTC in NY State webpage: <https://nursinghome411.org/ltc-in-ny-state/>.

### [THE WASHINGTON POST REPORTS THAT A PRIVATE-EQUITY FIRM’S OWNERSHIP OF NURSING FACILITIES RESULTED IN “OVERDOSES, BEDSORES, BROKEN BONES” ...AND BANKRUPTCY](#)

[“Overdoses, bedsores, broken bones: What happened when a private-equity firm sought to care for society’s most vulnerable,”](#) looks into the impact of the Carlyle Group’s purchase of nursing home chain HCR ManorCare on resident care and safety. When Carlyle, a private equity investment firm, purchased ManorCare in 2007, it paid \$6.3 billion and [stated](#) that it supported the operation’s “commitment to quality patient care.” Three years later, it sold the real estate underlying the ManorCare facilities for \$6.1 billion (i.e., approximately 97% of the purchase price). As a result of the deal, the nursing homes were then required to pay rent to the new owner.

***The increasing corporatization of nursing home care in New York and nationwide is a matter of great concern to LTCCC.***

According to the *Washington Post* article, the number of health deficiencies found at the nursing home chain “each year rose 26 percent between 2013 and 2017 . . .” The article states that, shortly after the deal was complete, the “company announced hundreds of layoffs . . . [and] some nursing homes were not making enough to pay rent.” The nursing home chain was ultimately forced into bankruptcy in 2018.

The increasing corporatization of nursing home care in New York and nation-wide is a matter of great concern to LTCCC. While there are good and bad nursing homes among both not-for-profit and for-profit facilities, news reports are increasingly indicating the often tragic impact of current financing and quality assurance methodologies on residents and their families.

Following are some of the recommendations that LTCCC is making to address this serious and growing problem.

- **Limit profits and administrative costs.** Currently, there are no limits on how much money nursing homes can pull out for profits or administrative expenses. At the same time, there are virtually no requirements for allocating a certain amount of funds received to provide care to actually providing the care and services residents need. As a result, too many residents suffer needlessly. To address this problem, LTCCC is calling for implementing a medical loss ratio to ensure that resident care and safety are not completely sacrificed for the sake of profits. A medical loss ratio would provide commonsense limitations on profits and administrative costs. For more information about medical loss ratios, please see LTCCC’s statement: <https://nursinghome411.org/joint-statement-medical-loss-ratios-for-nursing-homes-protecting-residents-and-public-funds/>.
- **Improve accountability for meeting minimum standards.** Though many nursing homes are committed to meeting the needs of their residents and fulfilling the promise they make to their communities when they (voluntarily) accept Medicare or Medicaid funding, in the absence of meaningful enforcement of safety standards, too many facilities flout even the most basic safety requirements.
- **Implement safe staffing requirements.** Staffing is widely considered to be the most important indicator of a nursing home’s safety and quality. Yet, according to federal reports and data, most nursing homes do not have sufficient staffing to meet the basic clinical needs of typical nursing home residents (nevermind the important quality of life and dignity standards which facilities are paid to achieve).

What can you do?

- **Speak out to your state and federal representatives.** The [Action Center](http://www.nursinghome411.org) at [www.nursinghome411.org](http://www.nursinghome411.org) has quick and easy alerts on safe staffing, wasteful spending, and more.
- **Tell your story.** Your story about nursing home or assisted living – good or bad – can make an enormous difference in our advocacy for better care and life with dignity. Visit [www.nursinghome411.org](http://www.nursinghome411.org) for the [Tell Your Story](#) form, which can be filled out on a computer, phone, or print out.

## STUDY FINDS HIGHER UNEMPLOYMENT RATES ARE ASSOCIATED WITH MORE NURSE STAFFING AND BETTER NURSING HOME QUALITY

New research from the Georgetown University Medical Center suggests that higher unemployment rates result in better nursing home quality. *“Is the Quality of Nursing Homes Countercyclical? Evidence From 2001 Through 2005,”* finds that “higher unemployment rates are associated with higher nurse staffing levels, with most increases occurring among for-profit NHs.” The study explains that a 5.6 percentage point increase in unemployment is accompanied by a .23 hour per resident per day increase in direct nursing care for for-profit nursing homes. The study also concludes that both non-profit and for-profit nursing homes are better able to retain staff during periods of high unemployment. The study adds that these findings are associated with “a statistically significant” improvement in a nursing home’s quality.

***“It is clear from our data that as unemployment rates increased, nursing home quality was higher as fewer residents would develop pressure ulcers, be restrained and experience weight loss.”***

- Sean Shenghsiu Huang,  
[GUMC News](#) (Dec. 7, 2018).

- For more information about the role of staffing in nursing home quality, please see LTCCC’s safe staffing infographic: <https://nursinghome411.org/ltccc-infographic-nursing-home-safe-staffing/>.

## SURVEY FINDS NATIONWIDE OPPOSITION TO THE DEPARTMENT OF LABOR’S PROPOSED ROLL BACK OF RESIDENT LIFT PROTECTIONS

On September 27, 2018, the Department of Labor issued a notice of proposed rulemaking (NPRM) to exempt power-driven patient lifts from Hazardous Occupations Order No. 7 and allow trained 16 and 17-year olds to operate lifts without supervision. In a 2011 report, the National Institute for Occupational Safety and Health (NIOSH) warned that many 16 and 17-years old “cannot safely operate power-driven hoists to lift and transfer patients *by themselves* . . .” Based on this and other findings, current policy only allows trained teenagers to provide assistance to a qualified adult caregiver under certain limitations.

***“[A]llowing sixteen and seventeen year olds to independently operate resident lifts or hoists would place residents at an even greater risk of harm during an already dangerous process.”***

- [LTCCC & CMA](#) (Nov. 2, 2018).

The [National Employment Law Project](#) (NELP) conducted a nationwide survey in which 78 percent of respondents expressed opposition to the proposed roll back. The survey found that only eight percent of respondents strongly supported the rule change. The survey also showed that opposition to the proposed roll back crossed party lines as 69 percent of Republicans and 87 percent of Democrats expressed disapproval. Debbie Berkowitz, a program director at NELP, stated that “[t]his poll is proof positive that if the Labor Department were true to its mission to advance the welfare of workers, it would withdraw this proposal . . .”

- To read LTCCC's comments opposing the Department of Labor's proposed roll back, please see: <https://nursinghome411.org/wp-content/uploads/2018/11/LTCCC-CMA-Statement-Proposed-Labor-Rule-November2018.pdf>.

### **THE CENTER FOR MEDICARE ADVOCACY PUBLISHES NEW FACT SHEET TO EDUCATE PROVIDERS, CONTRACTORS, AND ADJUDICATORS ABOUT THE JIMMO SETTLEMENT AGREEMENT**

*The following alert about the [Jimmo Fact Sheet](#) is reprinted, with permission, from the Center for Medicare Advocacy.*

With support from The John A. Hartford Foundation, the Center for Medicare Advocacy has produced a new Fact Sheet to help Medicare providers, contractors, and adjudicators apply the correct legal standard to Medicare coverage and payment determinations – as required by the *Jimmo v. Sebelius* Settlement Agreement.

**The *Jimmo* Settlement means that Medicare coverage and payment are available for care provided in a skilled nursing facility, home health or outpatient therapy setting when skilled nursing or therapy is required to maintain or slow decline of an individual's condition.** The determination of whether Medicare is available turns on whether skilled personnel must provide or supervise the care for it to be safe and effective, not on whether the care is intended to improve the individual's condition. Medicare-covered skilled care includes care that improves, or maintains, or slows the decline of a patient's condition.

The *Jimmo* Fact Sheet includes links to materials written by CMS and approved by the *Jimmo* Court; these materials represent official Medicare policy. The Center for Medicare Advocacy urges providers, contractors, and adjudicators to utilize these resources whenever Medicare coverage and payment decisions are made.

### **FREE LTCCC RESOURCES**

LTCCC's resources are free to use and share. To access all of our materials, please visit our homepage [www.nursinghome411.org](http://www.nursinghome411.org). We thank the [Fan Fox & Leslie R. Samuels Foundation](#) and [The New York State Health Foundation](#) for supporting the development of these resources.

***To sign-up for our updates and alerts, please email [sara@ltccc.org](mailto:sara@ltccc.org) or call 212-385-0355.***

### **LTCCC FAMILY & OMBUDSMAN RESOURCE CENTER**

[LTCCC's Family & Ombudsman Resource Center](#) offers resources and tools designed for resident-focused advocacy. The Resource Center displays LTCCC's most recent and most relevant materials, including easy-to-use [record-keeping forms](#), [handouts](#), and [fact sheets](#).

### **NEW! HANDOUTS & RECORD-KEEPING TOOLS FOR RESIDENT-CENTERED ADVOCACY**

As noted above, LTCCC is adding resources to help stakeholders improve resident care, dignity, and quality of life. New [handouts](#) – which can also be used as posters – cover topics like: the use of bedrails, resident care planning, pressure ulcers, and more. [Forms](#) include: a residents preferences form, resident assessment worksheet, and a useful record-keeping form.

## LTCCC WEBINARS

LTCCC conducts [free monthly webinars](#) on a variety of timely nursing home topics, ranging from the survey process to resident rights. Recordings of past webinars are available on [LTCCC's YouTube](#) page.

## TELL YOUR STORY

Your story about your experience in a nursing home or assisted living – good or bad – is important and valuable to our advocacy for better care and life with dignity. The experiences of residents and families help us to provide a strong voice when we meet with state and federal leaders. Please help us by telling YOUR story! Visit <https://nursinghome411.org/tell-your-story/> for the easy-to-use form or contact us at 212-385-0355 or [info@ltccc.org](mailto:info@ltccc.org) for a hard copy.

## PLEASE SUPPORT LTCCC'S MISSION

Your generous donations enable us to be a strong voice for vulnerable people in nursing homes and assisted living, and their families. While we are a small organization, we endeavor to have as big of an impact as possible in improving care, quality of life and dignity.

Your support, in any amount, would be helpful and appreciated. To make a tax-deductible donation, please visit our website, [www.nursinghome411.org](http://www.nursinghome411.org), and click on the purple “[Make a Donation](#)” button on the right-hand side of the page. It will take you to our secure, Network for Good donation page.

You can also support LTCCC at no cost by shopping online via our secure [iGive](#) page. iGive provides access to over 1,800 stores, from JC Penney to Neiman-Marcus for shopping to Expedia and Orbitz for travel. LTCCC is also an Amazon affiliate. Simply go to [smile.amazon.com](http://smile.amazon.com) and choose Long Term Care Community Coalition to support LTCCC when making a purchase.

## *The LTC Journal*

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**Note:** This document is the work of the LTCCC. It does not necessarily reflect the views of the Department of Health, nor has the Department verified the accuracy of its content.