

# Addressing Nursing Home Abuse, Neglect, and Crime

Richard Mollot, Long Term Care Community Coalition

Deborah Truhowsky, Elder Neglect Attorney

[www.nursinghome411.org](http://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). [Home to the LTCOP for the Hudson Valley, NY.](#)
- **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.
- **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.
- **Richard Mollot**: Joined LTCCC in 2002. Executive director since 2005.
- **Deborah Truhowsky**: Elder neglect attorney & President of the LTCCC Board.

# + What Will We Be Talking About TODAY?

## Richard

- ▶ How are abuse, neglect, and crimes against residents defined?
- ▶ What are the reporting requirements for nursing home staff?
- ▶ What are the challenges to more effective reporting?

## Deborah

- ▶ Ways to identify abuse and/or neglect.
- ▶ Assessing whether or not care standards are met.
- ▶ Examples of cases Deborah has handled.
- ▶ Tips on filing a complaint with the Department of Health.



## Richard

- ▶ Resources and tools for identifying and tracking problems.
- ▶ Resources for filing a complaint.



# The Nursing Home System in a Nutshell

- The vast majority of 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 Nursing Home Reform Law (aka OBRA 87) requires that **every** nursing home resident is provided the care and quality of life services sufficient to attain and maintain their 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.





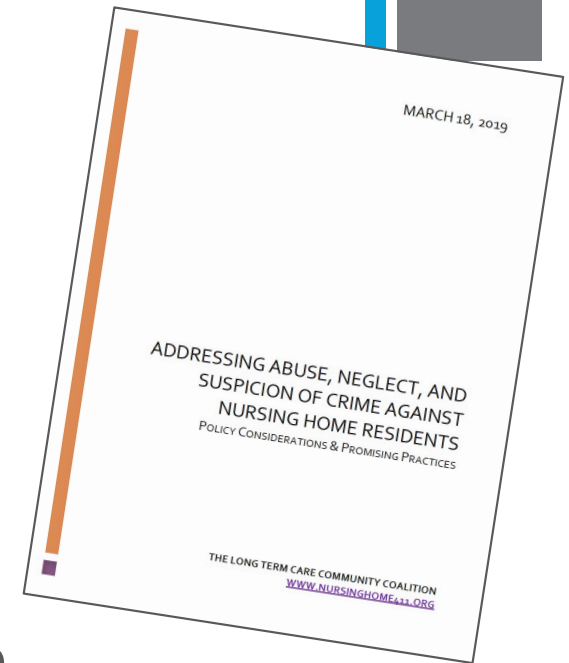
How are abuse, neglect, and crimes  
against residents defined?

## + Abuse & Neglect

### According to the Centers for Medicare & Medicaid Services (CMS)...

**ABUSE** is defined as “the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.”

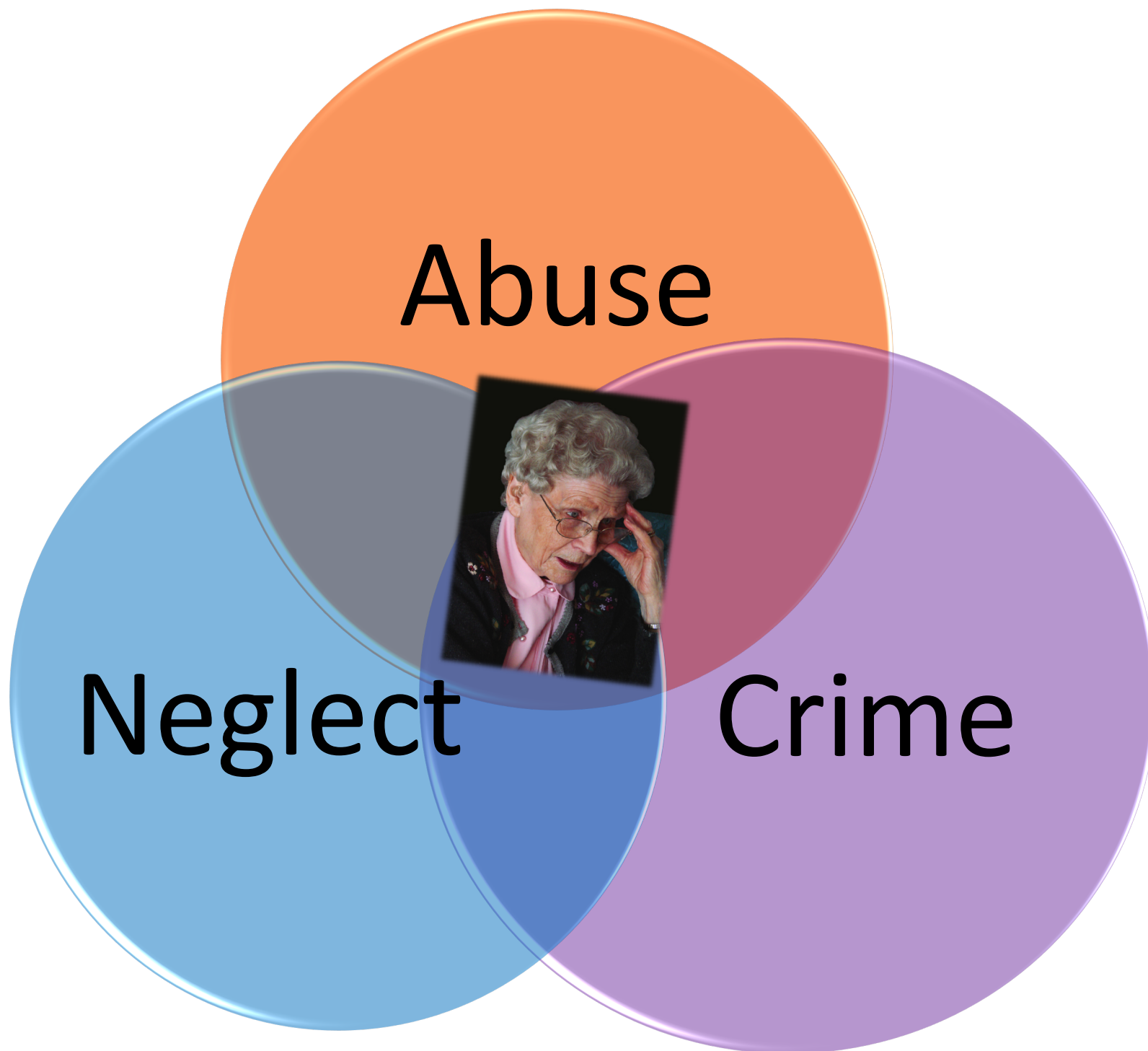
**NEGLECT** is defined as “failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.”



# + Crime

Crimes can be defined on a federal, state, or local level. Thus, crimes differ from place to place. However, there are some crimes that are widely recognized (and relevant to elder abuse considerations), including:

- **Assault** – “[A]ny intentional act that causes another person to fear that she is about to suffer physical harm. This definition recognizes that placing another person in fear of imminent bodily harm is itself an act deserving of punishment, even if the victim of the assault is not physically harmed.”
- **Battery** – “[A] physical act that results in harmful or offensive contact with another person without that person's consent.”
- **Criminal threat** – “A criminal threat involves one person threatening someone else with physical harm. The threat must be communicated in some way, though it doesn't necessarily have to be verbal. A person can make a threat through email, text message, or even through non-verbal body language such as gestures or movements. However, some states require written or verbal threats, and in those states gestures are not enough.”
- **Property crimes** – Property crimes occur when a perpetrator interferes with the victim's right to use and enjoy his or her property. Larceny, robbery, embezzlement, and false pretenses are all examples of property crimes.
- **Inchoate crimes** – Inchoate crimes are incomplete crimes, meaning that the perpetrator(s) took a substantial step towards completing the crime but the crime was never actually completed. Attempted murder, attempted rape, attempted robbery, and conspiracy are all examples of inchoate crimes.
- **Statutory crimes** – Statutory crimes are prohibited by statute and include both personal and property crimes. Statutory rape and public intoxication are examples of statutory crimes.



# + Types of Abuse

- **Physical abuse** – Physical abuse is the infliction of pain or injury on a person. Some examples include slapping, pinching, shoving, rough handling, or inappropriately using drugs or physical restraints. Signs of potential physical abuse include bruises, wounds, cuts, restraint or grip marks.
- **Psychological abuse** – Psychological abuse may include the inappropriate use of antipsychotic drugs, staff members not addressing resident needs in a timely/appropriate manner, and staff taking advantage of resident's cognitively impaired state.
- **Emotional abuse** – Emotional abuse may include aggressive or hostile behavior/attitude towards a resident, staff speaking to residents with disrespect or contempt, and staff ignoring residents or leaving them socially isolated.
- **Sexual abuse** – Sexual abuse may include inappropriate sexual/physical contact and staff using sexually-explicit language towards residents. Signs of sexual abuse include torn, stained, or bloody underclothing; unexplained vaginal or anal bleeding; and bruises around the breasts or genital area.

Signs of emotional, psychological, or sexual abuse can also include: Emotional distress or agitation; Being extremely withdrawn, non-communicative, or non-responsive; Acting nervous or fearful; and Unusual behaviors (such as rocking back and forth or hitting oneself).

## + How Can Abuse or Neglect Occur?

- **Inappropriate physical contact** – Staff members may inappropriately touch or make other physical contact with a resident, which could lead to emotional distress or physical injuries, such as bruises and wounds.
- **Falls** – Residents who are not provided appropriate monitoring or care services are susceptible to falls and resulting injury. Examples include: when a resident wanders a facility at night; a resident whose call bell goes unanswered and gets up herself to go to the bathroom; and a resident who is not properly secured or cared for while using a wheelchair or Hoyer lift.
- **Pressure ulcers** – Insufficient care and monitoring, including basic repositioning, can result in the development of pressure ulcers which, if not treated in a timely and effective manner, can be life-threatening.
- **Wandering** – In the absence of appropriate monitoring and safeguards, residents may wander within or outside of the facility. Injuries can result from entering a dangerous area of the facility (such as a stairwell) or being exposed to dangerous or treacherous conditions outside of the facility.
- **Chemical restraints** – Staff may use antipsychotic drugs on residents, particularly those with dementia, in order to sedate or restrain them.
- **Infections** – Residents may develop or contract infections due to staff not addressing resident wounds or utilizing standard sanitary practices.
- **Malnutrition** – Residents may not be receiving nutrition in accordance with their needs or care plans. Residents may appear to have lost weight or seem dehydrated.



Reporting & addressing abuse,  
neglect, and crimes against nursing  
home residents.

## + Why is reporting so important?

Because nursing home residents are generally very vulnerable, an important component of ensuring resident safety centers on reporting incidents of abuse and neglect.

### 1987 Federal Nursing Home Reform Law:

- Every state must have a process for “the receipt and timely review and investigation of allegations of neglect and abuse . . . by a nurse aide of a resident . . . or by another individual used by the facility in providing services to such a resident.”
- All alleged violations of abuse and neglect standards must be reported to the nursing home administrator and to state officials, including the state survey agency (health department).

### 2010 Affordable Care Act:

- Requires that everyone who works in a nursing home reports any suspicion of a crime to the state survey agency and law enforcement.

# Reporting Requirements

## Crime

## Abuse, Neglect, Injuries of Unknown Source

Regulation	42 CFR 483.12(b)(5) [And §1150B of the Act]	42 CFR 483.12(c)
F-tag	F608	F609
<b>What</b>	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
<b>Who is required to report?</b>	Any covered individual, including the owner, operator, employee, manager, agent or contractor of the facility	The facility
<b>To whom</b>	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
<b>When</b>	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.

## + Challenges to Reporting and Addressing Abuse and Neglect

- **Lack of proper communication** – Staff that witness an incident involving abuse and neglect may not communicate with other staff members, other residents, or families about it. The facility and staff may also not report instances of abuse and neglect to appropriate agencies.
- **Lack of awareness of an event** – Individuals may be unaware that an incident of abuse and neglect has occurred in the facility, or may not immediately categorize an incident as one of abuse and neglect.
- **Lack of education on abuse and neglect** – Due to a lack of awareness or training, individuals may not be equipped to identify an abusive or neglectful situation or, even when they do understand that something is wrong, do not believe or understand that it is something that merits—if not requires—action.
- **Self-protection** – Staff may cover up abuse or neglect to protect themselves from punishment.
- **Lack of understanding of rights** – There may be a lack of understanding among residents, families, and advocates of their right to be free from abuse & neglect.
- **Fear of retaliation** – Residents, families, and staff may choose not to report cases of abuse or neglect because they are afraid of retaliation.

## + Additional Challenges to Implementing the Affordable Care Act's Crime Reporting Requirements

- Because crimes are defined under local, state, and federal law, there aren't clear and concise national requirements for what does or does not have to be reported.
- "It does not include a criminal justice response which would address the prevention, detection, and prosecution of elder abuse crimes under various Department of Justice (DOJ) authorities and administration." - Congressional Research Service
- Expected training for surveyors on how to enforce the requirement never occurred.



# **Elder Care Neglect & Abuse**

Deborah F. Truhowsky, Esq.  
The Law Firm of D.F. Truhowsky

## Ways to ID Abuse and/or Neglect:

### Look -

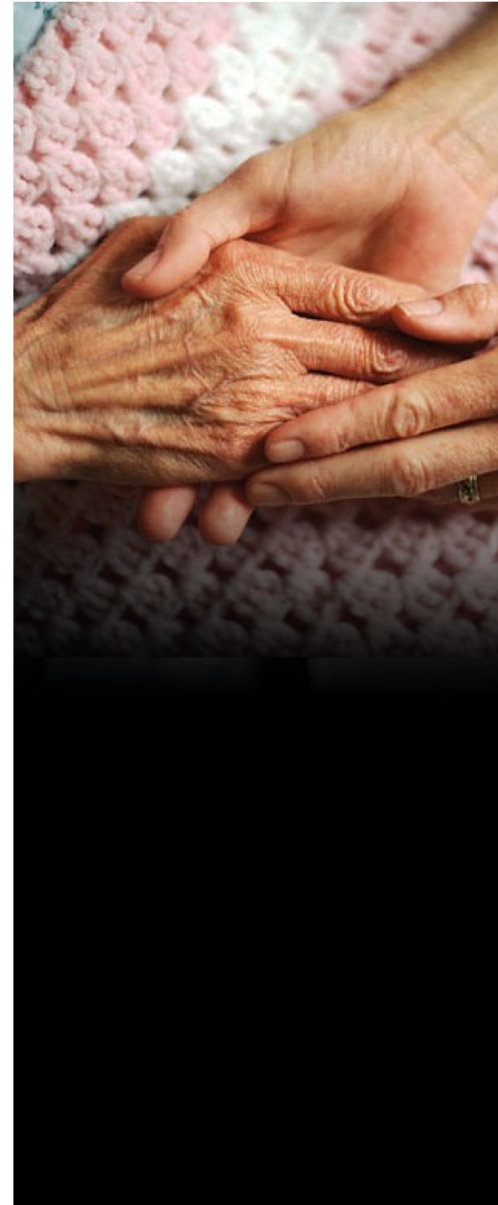
- Is resident well cared for?
- Has resident lost weight?
- Does resident have bruises or bed sores?

### Listen –

- What is the resident saying? Complaints?
- Do you hear staff engaging in verbal abuse?
- Is the resident no longer interested in pursuing activities he/she used to participate in?

### Smell -

- Is there a urine odor in the resident's room?
- Are there foul smells in the resident's room?



## **Statutes and Regulations Protecting NH Residents:**

- Federal Law – The Nursing Home Reform Act (OBRA 1987) – (42 USC§1395i-3, 1396 r) – Congress passed and President Reagan signed new law. (1987)
- Federal Regulations – Department of Health and Human Services – 42 CFR Part 483 – established specific standards and regulations governing nursing home care.
- New York State Statutes – Public Health Law Article 28 (PHL§2801-d – private right of action for violation of rights).
- New York State Regulations:
  - 10 NYCRR Part 415 – Nursing Homes
  - 18 NYCRR Parts 487 – 490 – Adult Homes
  - Regulations Governing Home Care

## **New York State Public Health Law §2801-d(1):**

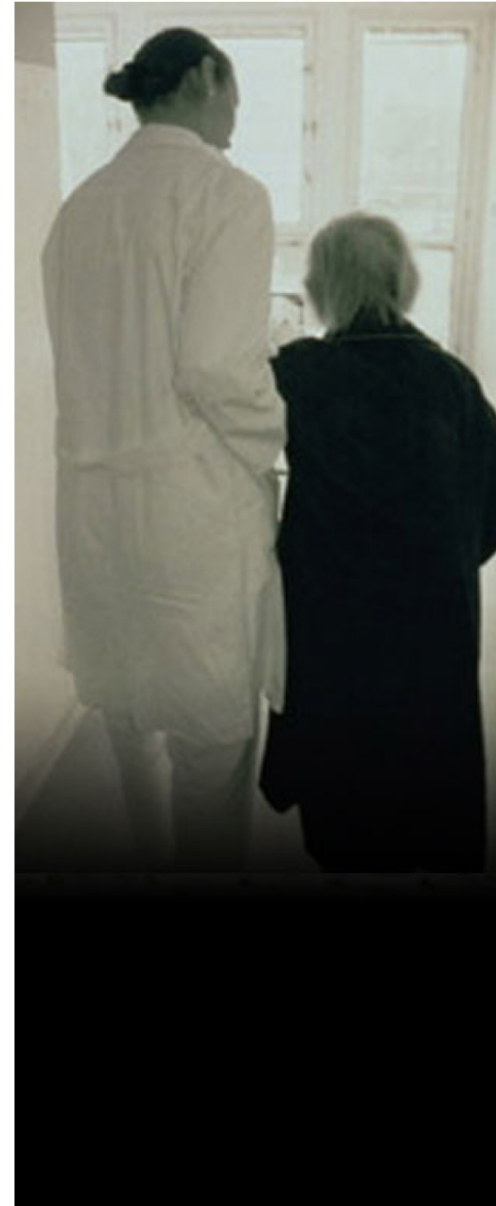
- Any residential health care facility that deprives any patient of said facility of *any right or benefit, ..., shall be liable* to said patient *for injuries suffered* as a result of said deprivation, except as hereinafter provided.
- For purposes of this section a “right or benefit” of a patient of a residential health care facility shall mean any right or benefit created or established for the well-being of the patient by the terms of any contract, by any *state* statute, code, *rule or regulation* or by any applicable federal statute, code, rule or regulation.
- “THE INSTITUTION IS LIABLE FOR ALL INJURIES SUFFERED WHERE THERE IS A VIOLATION OF A *NEW YORK STATE RULE* or *REGULATION* or *VIOLATION OF FEDERAL REGULATIONS* (OBRA regs)

## **Analysis:**

- The standard of good and accepted nursing home care, under the Federal and New York State regulations, involves a repetitive analysis:
  - Did the home fulfill its duty to properly assess the resident and the resident's risks for certain injuries?
  - After assessment, was a proper plan of care (or care plan) designed?
  - Did the "care plan" call for appropriate interventions to avoid or lessen the specific risk of injury?
  - Was the "care plan" actually implemented?
  - Was the "care plan" appropriately updated and kept current?
    - After a passage of time; or
    - Due to intervening changes of condition; or
    - Due to incidents of injuries to the resident.

## WHAT types of cases do we handle?

- “We just found out that mom developed these terrible **bed sores** at the nursing home”
- “We never saw them”
- “The nurse at the hospital just told us about them”



## Federal Regulations

Treatment/Services to Prevent/Heal Pressure Ulcers [42  
CFR 483.25(b)(1), F-686]

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

- *A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and*
- *A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.*

## WHAT types of cases do we handle?

- “Dad just **fell and fractured his hip**”
- “They called us three times in the past month about dad falling”
- “Dad had bruises on his legs”
- “Dad had bruises on his face”



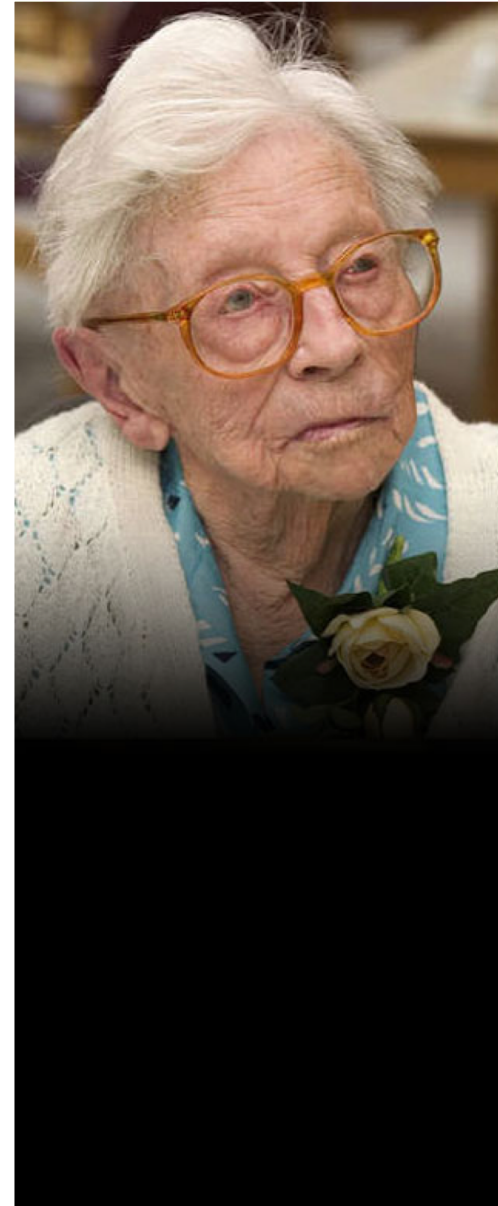
## Federal Regulations

Free of Accidents Hazards/Supervision/Devices [42 CFR 483.25(d), F-689]

- Accidents. The facility must ensure that—
  - (1) The resident environment remains as free of accident hazards as is possible; and
  - (2) Each resident receives adequate supervision and assistance devices to prevent accidents.

## WHAT types of cases do we handle?

- “My aunt has **lost 30 pounds** and has no energy”
- “She can barely move now”



## Federal Regulations

### Maintain Nutrition Status Unless Unavoidable [42 CFR 483.25(g), F-692]

*Based on a resident's comprehensive assessment, the facility must ensure that a resident:*

- (1) Maintains acceptable parameters of nutritional status, such as usual body weight or desirable body weight range and electrolyte balance, unless the resident's clinical condition demonstrates that this is not possible or resident preferences indicate otherwise;*
- (2) Is offered sufficient fluid intake to maintain proper hydration and health; and*
- (3) Is offered a therapeutic diet when there is a nutritional problem and the health care provider orders a therapeutic diet.*

## New York State Public Health Law §2801-d(5)

Will a recovery in the case impact future Medicaid eligibility?

### Medicaid

- ❑ The amount of any damages recovered by a patient, in an action brought pursuant to this section shall be *exempt for purposes of determining initial or continuing eligibility for medical assistance* under title eleven of article five of the social services law; and
- ❑ Shall neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available under said title eleven.

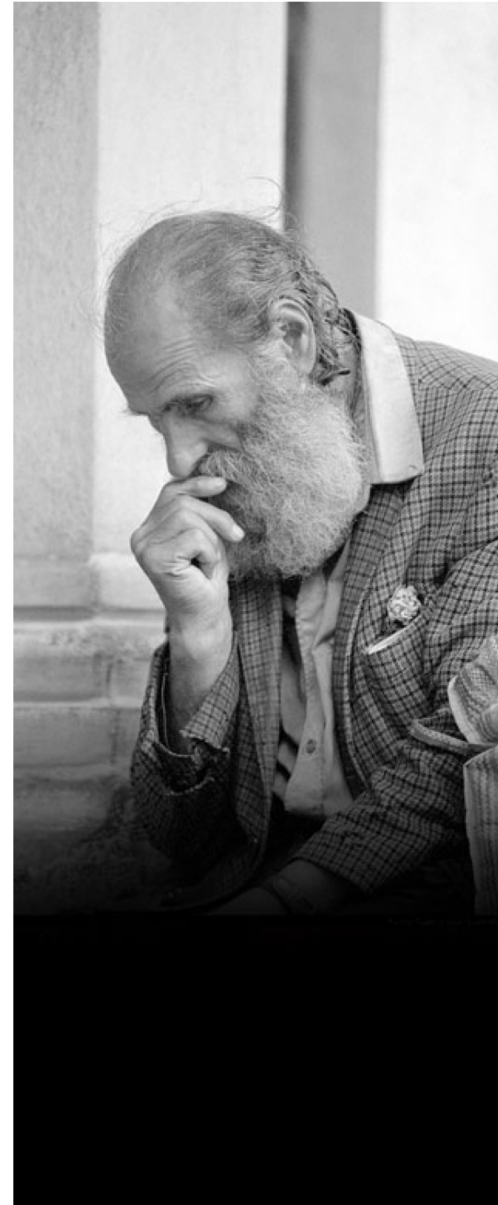
## **New York State Public Health Law §2801-d(10)**

- No person shall discriminate against any *patient* of a residential health care facility because such patient has brought or caused to be brought any action pursuant to this section
- Or against any patient or *employee* of a residential health care facility because such patient or employee has given or provided or is to give or provide testimony or other evidence for purposes of said action
- This is the “Whistle blower protection”

## Ways to prevent Abuse and Neglect

What we advise families of residents to do:

- Be involved in the resident's care; ask questions.
- Don't leave the room when the resident is being changed.
- Find out about the resident's diet, activities and medications.
- Ask for meetings with the Director of Nursing if you don't feel the resident is being properly cared for.
- Visit resident as often as possible.
- Review [www.Medicare.gov](http://www.Medicare.gov) and [www.profiles.health.ny.gov](http://www.profiles.health.ny.gov) to find out the history of complaints/inspections involving a facility and quality indicators before a loved one is admitted.



## **How can we work together to improve the quality of care in nursing homes?**

- Residents and their families need to be empowered and to know the rights and services available to them;  
  
i.e. Ombudsman Program, Family Councils, Filing Complaints with the DOH, and pursuing PHL §2801-d claims.
- The more PHL §2801-d and all of the rights and services available to families are utilized, the greater the likelihood that facilities will improve their quality of care.

## Our Goals:

- Equitable changes at facilities so the abuse or neglect does not happen to someone else (our clients specifically ask for this).
- To improve the overall quality of care for residents.
- Maximize compensation for residents or their families.
- We also welcome residents and their families to contact us, and for you to view our website: [www.yournyadvocate.com](http://www.yournyadvocate.com) where we have many frequently asked questions regarding Neglect and Abuse and other topics.
- By empowering residents and their families to hold nursing homes accountable, this will increase the likelihood that the quality of care will improve.

**For further information:**

Deborah F. Truhowsky, Esq.  
The Law Firm of D.F. Truhowsky

212.880.6496

**dt@yournyadvocate.com**

Thank you for your time and attention!



Resources & Tools for Tracking  
Concerns and Filing a Report or  
Complaint.

## + In this Section We'll Discuss...

### ■ How to File a Complaint With the Department of Health

- Who? How? When? Where?

### ■ LTCCC's New Report & Tools

- *Addressing Abuse, Neglect, and Suspicion of Crime Against Nursing Home Residents: Policy Considerations & Promising Practices*
- Abuse, Neglect, and Crime Reporting Center

### ■ Forms & Tools to Track Concerns & Support Substantiation of a Complaint



## + Filing a Complaint with the State Health Department

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### Who should I file a complaint?

- Anyone with knowledge or concerns about the care of a resident in a nursing home may file a complaint with their State Survey Agency.

According to the  
Federal Government

### How do I file a complaint?

- You may file a complaint with your State Survey Agency by any means available to you, including mail, telephone, fax, on-line, or in person.

### When should I file a complaint?

- You should file a complaint if you're concerned about the health care, treatment, or services that you or another person got or didn't get in the nursing home. Some reasons for filing a complaint would be abuse, neglect, poor care, not enough staff, unsafe or unsanitary conditions, dietary problems, or mistreatment.

## + Filing a Complaint with the State Health Department

Visit the [Medicare.gov](https://www.medicare.gov/NursingHomeCompare/Resources/infoforresidents.html#fileacomplaint) website for links to...

<https://www.medicare.gov/NursingHomeCompare/Resources/infoforresidents.html#fileacomplaint>

- State websites with nursing home information
- State phone and fax numbers
- Links to file a complaint electronically

Visit the state's Health Department Website directly for information on how to make a complaint by phone or in writing.

<https://www.health.ny.gov/facilities/nursing/complaints.htm>

You do not have to use a specific form when filing a complaint. You may file a complaint with your State Survey Agency by any means available to you, including mail, telephone, fax, on-line, or in person.

In addition to filing a complaint with the state health department, we strongly recommend filing a complaint with the state Medicaid Fraud Control Unit (MFCU). The MFCU is also considered a law enforcement entity for reporting suspicion of a crime against a nursing home resident. Visit

<https://nursinghome411.org/learning-center/abuse-neglect-crime/>

For links to all state Health Departments & MFCUs.

# + Useful Forms & Resources

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Today's Date: \_\_\_\_\_

**Record-Keeping Form For Resident Concerns**

This form can be used to keep records of a problem or concern and how it is addressed by the facility. Keeping track of who you spoke to and when, what the response was, and what actions were taken to resolve the problem can strengthen your advocacy, both in the facility and beyond. This form can be used to facilitate conversations and follow-up with staff and administration, raise issues at resident or family council meetings, or support a complaint to a government agency.

**Date When Issue Occurred or Was Discovered:** \_\_\_\_\_

**Issue:**

**People Involved or Witnesses (if any):**

**Staff Person(s) Spoken To:**

**Response/Plan of Action from Staff:**

**Actions Taken:**

Today's Date: \_\_\_\_\_

*--- Make as Many Copies of This Page as Necessary to Track Your Concern ---*

**Issue (Update):**

**Staff Person(s) Spoken To:**

**Response/Plan of Action from Staff:**

**Actions Taken:**

Today's Date: \_\_\_\_\_

**Issue (Update):**

**Staff Person(s) Spoken To:**

**Response/Plan of Action from Staff:**

**Actions Taken:**

For additional information and resources, please visit  
[www.nursinghome411.org](http://www.nursinghome411.org).

This and other *Forms & Tools For Resident-Centered Advocacy* are available @ [www.nursinghome411.org](http://www.nursinghome411.org).

# + Useful Forms & Resources

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## LONG TERM CARE COMMUNITY COALITION

[WWW.NURSINGHOME411.ORG](http://WWW.NURSINGHOME411.ORG)

### FAMILY COUNCIL MEETING AGENDA

*[This agenda serves as a template. Add or subtract items to customize it for your meetings.]*

Meeting Date: \_\_\_\_\_

1. President: Call to Order and Roll Call
2. Welcome and Introduction of New Members
3. Invited Speaker (if any)
4. Secretary: Read Minutes from Last Meeting; Member Vote to Approve
5. Council Old Business (if any)

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6. Committee Reports and Updates

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- Over Please -

#### FAMILY COUNCIL MEETING AGENDA – Page 2

7. Discussion of New Business, Including any Care and Quality of Life Concerns

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8. Action Items (if any)

- Issues to Raise Within Facility (Such as with Administrator or Quality Assurance Committee):

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- Issues to Raise Outside of Facility (Such as with Health Department, Medicaid Fraud Control Unit, or legislators):

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9. Confirmation of Next Meeting and Adjournment

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ADDITIONAL  
RESOURCES

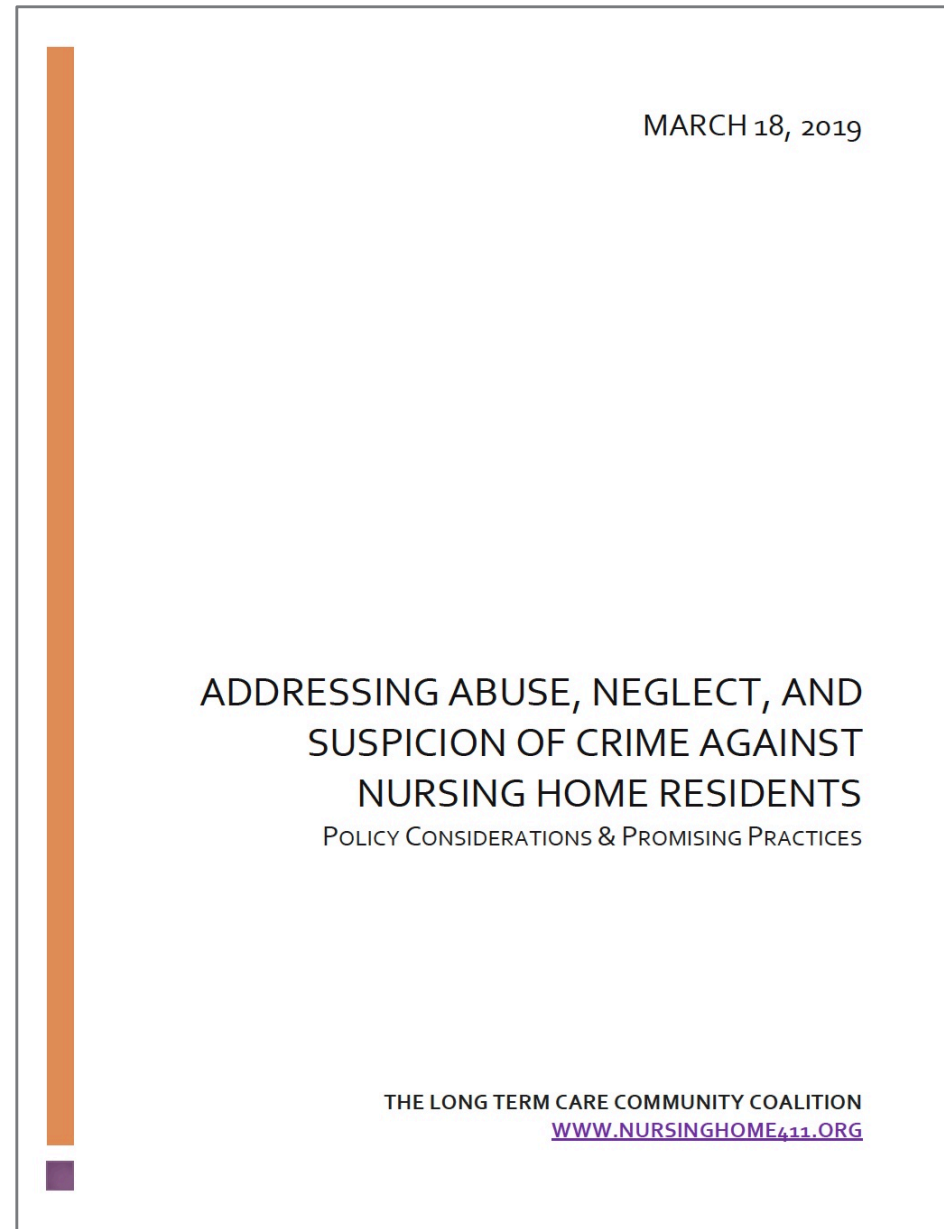
Visit [www.nursinghome411.com](http://www.nursinghome411.com) for free resources on residents' rights and tools that you can use to support your resident-centered advocacy.

## + LTCCC's New Report

The report provides an overview of the federal requirements in place to protect residents from abuse, neglect, and crimes. To address the persistence of these problems in the lives of nursing home residents, it identifies promising policies and practices to improve reporting and/or address ongoing abuse, neglect, and crime.

The report includes:

- **Definitions** of abuse and neglect, including ways in which abuse and neglect may occur;
- **Federal laws and regulations** that address nursing home abuse, neglect, and suspicion of crimes against residents; and
- **Promising practices and initiatives** that address resident abuse and neglect.



# + **NEW!** Abuse, Neglect, and Crime Reporting Center

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The screenshot shows a web browser window with the URL <https://nursinghome411.org/learning-center/abuse-neglect-crime/>. The page features the Long Term Care Community Coalition logo on the left, which includes the text "LONG TERM CARE COMMUNITY COALITION" and the tagline "Advancing Quality, Dignity & Justice". Below the logo is a vertical navigation menu with the following items: "Learning Center", "Nursing Home Info & Data", "Action Center", "News & Reports", "Assisted Living", "LTC in NY State", "HV Ombudsman Program", "About LTCCC", "Support Our Mission", and a search icon. The main content area is titled "Abuse, Neglect, and Crime Reporting Center" and includes a breadcrumb trail: "Home / Learning Center / Abuse, Neglect, and Crime Reporting Center". The text on the page states: "Residents in nursing homes are typically frail. The majority are senior citizens, and many have dementia. By definition, they all need 24-hour a day skilled nursing services. Nevertheless, though they live in an institutional setting, it is crucial to keep in mind that residents retain all of the rights of people who live outside of a facility. This includes the right to live free of physical, emotional, verbal, and sexual abuse and the right to be treated with dignity. It also includes the right to have the same access to criminal justice as anyone living in the outside community." It then continues: "Unfortunately, too often, when individuals go into a nursing home, society views them as having entered a separate world, where different rules apply. This is not true. To strengthen realization of vital protections for seniors in nursing homes, LTCCC undertook a study to identify promising practices that have been employed in different communities to address elder abuse, neglect, and crime in residential settings. The report, as well as a selection of resources, are available on this page. They are free to use, share, and adapt." Below this text is a large empty box with the date "MARCH 18, 2019" centered in it. To the right of this box is a vertical list of six purple buttons: "LIST OF STATE AGENCY CONTACTS & COMPLAINT FORMS", "DEFINITIONS OF NURSING HOME ABUSE, NEGLECT, & CRIME", "FORM FOR INVESTIGATING RESIDENT INJURIES OR SUSPICION OF CRIME", "FORMS & TOOLS FOR RESIDENT-CENTERED ADVOCACY", and "MEMO FOR LAW ENFORCEMENT ON NURSING HOME ABUSE & NEGLECT".

**LONG TERM CARE COMMUNITY COALITION**  
*Advancing Quality, Dignity & Justice*

**Abuse, Neglect, and Crime Reporting Center**  
Home / Learning Center / Abuse, Neglect, and Crime Reporting Center

Residents in nursing homes are typically frail. The majority are senior citizens, and many have dementia. By definition, they all need 24-hour a day skilled nursing services. Nevertheless, though they live in an institutional setting, it is crucial to keep in mind that residents retain all of the rights of people who live outside of a facility. This includes the right to live free of physical, emotional, verbal, and sexual abuse and the right to be treated with dignity. It also includes the right to have the same access to criminal justice as anyone living in the outside community.

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MARCH 18, 2019

- LIST OF STATE AGENCY CONTACTS & COMPLAINT FORMS
- DEFINITIONS OF NURSING HOME ABUSE, NEGLECT, & CRIME
- FORM FOR INVESTIGATING RESIDENT INJURIES OR SUSPICION OF CRIME
- FORMS & TOOLS FOR RESIDENT-CENTERED ADVOCACY
- MEMO FOR LAW ENFORCEMENT ON NURSING HOME ABUSE & NEGLECT

# + Useful Forms & Resources

## LONG TERM CARE COMMUNITY COALITION

*Advancing Quality, Dignity & Justice*

### FORM FOR INVESTIGATION OF RESIDENT INJURIES OR SUSPICION OF A CRIME AGAINST A RESIDENT

While strong protections exist to protect nursing home residents from abuse, neglect, and crime, these continue to be persistent problems. To address this, federal law now requires that everyone who works in a nursing home – referred to as “covered individuals” under the law and including all facility staff, owners, and contractors – report any reasonable suspicion of a crime to both the state health department and law enforcement. If the crime involves serious bodily injury to any resident, they are required to make the report to both entities immediately, but not later than two hours after forming the suspicion. In the absence of serious bodily injury, the report must be made within 24-hours. Failure to report can result in fines of up to \$300,000 or more if it results in further harm to a resident.

The purpose of this form is to help assist in the investigation of a situation in which a resident has suffered an injury or is suspected to have been the victim of a crime (such as an assault). The form can be used by law enforcement, facility staff, or other stakeholders.

Note: This form is adapted from an excellent [document](#) published by the South Dakota Department of Health (SDDH), *Reporting of Injuries of Unknown Source and Reasonable Suspicion of a Crime*. As noted by the SDDH,

*When an injury of unknown source or an allegation of a reasonable suspicion of a crime has been reported or discovered by staff or another individual, a reasonable suspicion does not have to be firsthand knowledge. Attorneys define reasonable suspicion as: a legal standard of proof that is more than a hunch but less than probable cause. A reasonable suspicion would include observation, previous experience, and reports by residents and family members.*

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**WHO:** Identify resident(s) involved (please use names not initials or numbers), staff observers or staff who may be involved or implicated, family or other visitors. If possible, review staff schedules to ascertain that all possible individuals that may have knowledge of the event are interviewed.

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**WHAT:** Describe the event. Use all senses and be objective.

- **See/Sight** – pallor, sweating, deformities, bruises, edema, redness, body fluid color, pupil reaction.
- **Feel** – dampness, localized heat, localized coldness, pulses.
- **Hear** – complaints of pain, moaning, breathing pattern, heart sounds, blood pressure.
- **Smell** – fruity odors, fecal or urine odors, foul smelling drainage, alcohol breath.

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**WHEN:** Document the time and date. Accuracy is critical.

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**WHERE:** Document the location, be as specific as possible.

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**HOW:** Describe how the event may have occurred based on observation and acquired information.

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**WHY:** Other particulars such as care plan not followed, staff not available, lack of training, etc....

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**CONCLUSION:** Was the allegation or suspicion of abuse/neglect substantiated? Is more information/investigation needed?

For additional information and resources, please visit  
[www.nursinghome411.org](http://www.nursinghome411.org).

## + Coming Up

### Focus on Care & Outcomes:

1. Pressure Ulcers and
2. Infection Control & Prevention

**April 16 at 1pm Eastern**

#### Attend Any LTCCC Program in Two Easy Ways:

1) To join the online meeting, about five minutes before the scheduled time of the meeting, go to the link below and follow the prompts to join the meeting.

Online Meeting Link: <https://join.freeconferencecall.com/richardmollot>.

2) To participate by phone, at the scheduled time of the meeting call (712) 770-4010. When prompted, enter the Access Code, 878277, followed by the pound (#) key. Press \*6 to mute or unmute your phone line.

If you would like to receive a copy of the webinar handouts, please email [sara@ltccc.org](mailto:sara@ltccc.org) (noting the date of the program).



# Thank You For Joining Us Today!

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Visit [nursinghome411.org/join/](http://nursinghome411.org/join/) if you would like to...

- Receive alerts for future programs or
- Sign up for our newsletter and alerts.

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-ltcop1>

## 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?