

LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

NURSING HOME RESIDENTS AT RISK: PROPOSALS TO REDUCE SURVEY FREQUENCY FOR “TOP-PERFORMING” NURSING HOMES ARE DANGEROUS

Background. Nursing homes that voluntarily participate in the Medicare and Medicaid programs must adhere to the standards of care established by the federal Nursing Home Reform Law and its implementing regulations. The Centers for Medicare & Medicaid Services (CMS) and state survey agencies work together to ensure that nursing homes profiting from taxpayer dollars are meeting these minimum standards. Thus, nursing homes are inspected annually (on a 9 to 15-month cycle) and when a complaint has been filed against a facility.

Proposed Change. In the [Budget of the U.S. Government for Fiscal Year 2020](#), the Trump Administration suggested “tailor[ing] the frequency of skilled nursing facility surveys to more efficiently use resources and alleviate burden for top-performing nursing homes.” In a recently released [CMS Podcast](#), Administrator Seema Verma indicated that the agency is interested in the idea, stating that “we want to have a little bit more flexibility because there could be providers that are doing a really good job, and we're not getting complaints surveys, so it's possible that those don't need to be done as frequently.” Dr. Kate Goodrich (Chief Medical Officer and Director of the Center for Clinical Standards and Quality) added that CMS has “asked Congress for the authority to transition . . . to a risk-based survey model”

The Problem. While some nursing homes provide good care, as required under federal law, numerous reports indicate that even high-rated nursing homes continue to violate residents’ rights and protections. For instance, a July 2019 Government Accountability Office report, [Improved Oversight Needed to Better Protect Residents from Abuse](#), noted that 3.6 percent of Five-Star (“much above average” rated) nursing homes had an abuse deficiency in two or more years, and 6.8 percent of Five-Star nursing homes had at least one abuse deficiency in a single year. When factoring in Four-Star (“above average”) nursing homes, those figures jump to approximately 16 and 26.6 percent, respectively. **As the GAO’s report suggests, more than 1 in 5 nursing homes considered “above average” and “much above average” by CMS have been cited for abuse in a single year.**

Unfortunately, previous reports also indicate that even more violations are never identified or improperly identified as causing “no-harm” to residents. A [2008 GAO report](#) noted that, since 1998, GAO reports “have demonstrated that state surveyors, who evaluate the quality of nursing home care on behalf of CMS, sometimes understate the extent of serious care problems in homes because they miss deficiencies.” These no-harm violations include the [sexual assault of residents](#), [broken bones](#), and [maggots on a resident’s scrotum](#). So, while any nursing home’s favorable ranking or rating might indicate its residents are more likely to receive quality care, have a decent life, and be treated with dignity than poorly rated facilities, they do not guarantee such outcomes. As a [2007 study](#) explains, **“performance measurement models are better at identifying problem facilities than potentially good**

homes.” U.S. Senator Ron Wyden, Ranking Member of the Senate Committee on Finance, echoed this point in his [written testimony](#) for the July 2019 hearing, “Promoting Elder Justice: A Call for Reform,” stating that “[t]he GAO study found abuse happened in homes of all ratings, top and bottom. A good rating did not indicate that a nursing home prevented abuse.”

Decreasing the frequency of nursing home surveys based on a facility’s “top-performing” status is dangerous. The Trump Administration, Congress, and CMS should not ignore years of reporting showing that too many “top-performing” nursing homes have care violations. Residents and families should not be burdened with having to file complaints, or depend on complaint inspections, in order to get surveyors into nursing homes more than once every two or three years.

The Solution. Do not decrease the frequency of nursing home inspections! The Reform Law already provides for a more flexible survey process by allowing state survey agencies to adjust the timeframe of nursing home inspections by six months as long as the statewide average is 12 months. If a nursing home has a poor record of care, then surveyors can inspect that facility annually on a nine-month cycle. Likewise, if a nursing home has a good record of care, then surveyors can inspect that facility annually on a 15-month cycle.

Additional Information Relevant to Resident Abuse and Neglect:

- A June 2019 [report](#) by the Office of the Inspector General (OIG) for the U.S. Department of Health and Human Services found that one in five high-risk Medicare claims for hospital emergency room services in 2016 indicated potential nursing home resident abuse or neglect. Based on a sample of the claims, the OIG determined that nursing homes failed to report 84 percent of potential abuse or neglect incidents to state survey agencies.
- A February 2014 OIG [report](#) found that, on average, one-third of Medicare beneficiaries experienced harm within 15.5 days of entering a nursing home. The OIG’s report concluded that 59 percent of these events were “clearly or likely preventable.”
- A February 2018 [report](#) by Human Rights Watch found that nursing homes “administer antipsychotic drugs to over 179,000 people who do not have diagnoses for which the drugs are approved.” Human Rights Watch’s report noted, “[s]tudies find that on average, antipsychotic drugs almost double the risk of death in older people with dementia.”
- A September 2017 OIG [report](#) found that states “received one-third more nursing home complaints in 2015 than in 2011.” The report also found that “[a]lmost one-quarter of States did not meet CMS’s performance threshold for timely onsite investigations of high priority complaints in all 5 years.”

For more information about nursing home care, please visit:
www.NursingHome411.org.