



Trump Administration's Proposed "Burden Reduction" For Nursing Homes: The Impact on Resident Care & Dignity

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The Long Term Care Community Coalition

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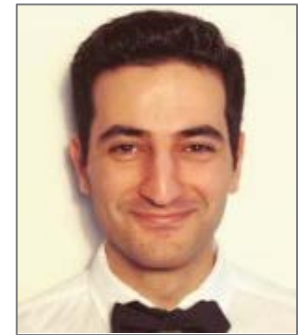
LTCCC & The Center for Medicare Advocacy

www.nursinghome411.org

Support for this program provided by the NYS Health Foundation.

+ Today's Presenters & Organizations

- **Long Term Care Community Coalition:** LTCCC is a nonprofit organization dedicated to improving care & quality of life for the elderly & adult disabled in nursing homes and assisted living through policy analysis and advocacy as well as public education.
- **Center for Medicare Advocacy:** The Center is a national nonprofit, nonpartisan law organization that provides education, advocacy, and legal assistance to help older people and people with disabilities obtain access to Medicare and quality health care.
- **Dara Valanejad:** Dara is a Policy Attorney at LTCCC and the Center. His work focuses on advocating for the rights and protections of nursing home residents.
- **Richard Mollot:** Richard is the executive director of LTCCC.
- **Websites:** www.nursinghome411.org & www.medicareadvocacy.org.



Dara



Richard

+ Today's Program:

■ Background on the law and the standards

- Brief history of the federal law & regulatory standards
- Recent updates to the law and standards

■ Proposed changes to federal nursing home requirements

- The current standard
- The proposed changes
- LTCCC's concerns

■ Resident-centered policy advocacy

■ Time for discussion & questions





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Background on the Laws & Standards



The Nursing Home System in a Nutshell

- The vast majority of nursing homes are licensed to participate in Medicaid and/or Medicare.
- In order to participate in Medicaid/Medicare, a facility agrees to meet the standards provided for in the federal 1987 Nursing Home Reform Law (and other federal laws, like the 2010 Affordable Care Act).
- 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.



+ Federal Requirements: **The Nursing Home Reform Law**

- The Nursing Home Reform Law (aka OBRA 87) requires that **every resident** is provided the care and quality of life services 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.
- Federal regulations and guidelines lay out the expectations for how the law is to be implemented in the lives of residents.



+ Federal Requirements

- 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.**



+ Federal Requirements: **A Few Highlights**

- **Care & Services:** Every resident, including those with dementia, has the right to receive the care and services needed to attain and maintain highest possible well-being and functioning. **Services provided must be based on an individualized assessment and care plan.**
- **Prevention/Treatment of Pressure Ulcers:** Based on a comprehensive assessment, the facility must ensure that each 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.”
- **Freedom from Chemical Restraints:** It is against the law to give antipsychotic drugs or other medications unless they benefit the resident. Drugs cannot be given to make things more convenient for staff, or because the facility has not hired sufficient staff to meet the medical, dignity, and quality of life needs of residents.

+ The Nursing Home Standards: **Past, Present, & Future**

- **1987**: Following a federal study that found widespread neglect and abuse in U.S. nursing homes, the Nursing Home Reform Law was passed.
- **1991**: Regulations came out specifying that residents are to receive the care and services they need to attain, and maintain, their highest practicable physical, emotional, and psycho-social well-being.
- **2010**: The Affordable Care Act was passed including important provisions of the Elder Justice Act & Nursing Home Transparency Act.
- **2016**: For the 1st time in 25 years, the federal nursing home standards were revised to reflect current understanding of care, dignity, and rights of people who are aging and people with disabilities.
- **2017-2019**: The Trump Administration proposes sweeping changes to federal nursing home standards, with the primary goal of reducing “burdens” on the nursing home industry.



Highlights of the Proposed Changes



Proposed Rule: **Remain Informed about Primary Care Professionals**

ONLY FOR PRIMARY CARE PHYSICIANS

- **Current Rule.** Facilities are required to ensure that residents “remain informed” of the name, specialty, and contact information of the physician and primary care professionals responsible for their care.
- **Proposed Rule.** Facilities would only be required to inform residents about their **primary care physician** at admission, upon request, and when there has been a change.
- **LTCCC’s Position.** Residents have the right to be informed of and participate in their care. CMS’s proposed rule would place the burden of coordinating care on residents and families, despite the fact that facilities are paid to take responsibility over virtually all aspects of a resident’s health care.

Proposed Rule: **Grievances**

FEEDBACK & COMPLAINTS ≠ GRIEVANCE

- **Current Rule.** Includes an expanded grievances process and requires facilities to designate a staff member to serve as the grievance officer and to oversee the grievance process.
- **Proposed Rule.** CMS wants to create a distinction between “feedback” or “complaints” and grievances. Feedback/complaints would be dealt with by staff as they arise. Grievances would be more serious allegations that require investigation. **Facilities would be responsible for determining what is “feedback” and what is a grievance.** Additionally, CMS wants to remove the specific duties of grievance officers, remove content of the grievance decisions, and require facilities to maintain documents for 18 months instead of three years.
- **LTCCC’s Position.** The proposal completely waters down the grievance process. Too many facilities are not properly staffed to address resident concerns as they come up. Reports indicate that resident abuse and neglect are on the rise but still underreported. Allowing facilities to determine whether a resident’s concern is just “feedback” or a grievance puts residents at risk.



Proposed Rule: Transfer and Discharge Notices to Ombudsmen

ONLY FOR “FACILITY-INITIATED” TRANSFERS AND DISCHARGES

- **Current Rule.** The 2016 Final Rule required facilities to send a copy of transfer and discharge notices to the Office of the State Long-Term Care Ombudsman. In 2017, CMS modified this requirement by making it applicable only in cases of “facility-initiated transfers and discharges.”
- **Proposed Rule.** CMS is proposing to formally incorporate the 2017 roll back into the federal regulations, with a further roll back allowing a facility to forgo sending a notice in the case of a temporary emergency transfer to the hospital.
- **LTCCC’s Position.** Unwanted and illegal transfers and discharges continue to be an ongoing and widespread national problem. Despite these challenges, the proposed rule opens up residents to even more risk of experiencing unwanted transfers and discharges.

+ Proposed Rule: Behavioral Health Services

REMOVES REFERENCES TO SUFFICIENT STAFFING AND STAFF COMPETENCY

- **Current Rule.** Facilities are required to have sufficient staff who provide direct services to residents with the appropriate competencies and skill sets to provide nursing and related services. The regulation also addresses rehabilitative services for mental disorders and intellectual disabilities.
- **Proposed Rule.** CMS wants to remove these requirements because they duplicate the “Nursing Services” and “Specialized Rehabilitation Services” standards. CMS believes that removing the requirements will “improve clarity and ensure that our regulations clearly reflect what we require from facilities.”
- **LTCCC’S Position.** CMS should retain the language relating to sufficient staff and staff skills. In the 2016 Final Rule, CMS acknowledged that the behavioral health requirements were implemented in a separate section because facilities were not adhering to the requirements. **The “requirements were meant to emphasize the importance of behavioral health and ensure that LTC facilities address these issues.”**



Proposed Rule: **PRN Antipsychotic Drugging**

DIRECT EXAMINATIONS FOR EXTENSIONS ARE NO LONGER NECESSARY

- **Current Rule.** Current regulations limit PRN (“as needed”) prescriptions for antipsychotic drugs to 14 days. PRN orders for these drugs can be extended if “the attending physician or prescribing practitioner evaluates the resident for the appropriateness of that medication.”
- **Proposed Rule.** Facilities would be allowed to extend PRN antipsychotic orders beyond 14 days without a direct examination and assessment of the resident to determine whether the drug is still necessary.
- **LTCCC’s Position.** Nursing homes administer these potentially deadly drugs to approximately 20 percent of residents nationwide. Antipsychotic drugs are often prescribed off-label and are too often used as a form of chemical restraint. CMS should not be making it easier for facilities to drug residents.

Proposed Rule: **Dietician**

DROPS HIGHER CREDENTIALING REQUIREMENTS

- **Current Rule.** Facilities are required to designate an individual to serve as the director of food and nutrition services if there is no qualified dietitian or other clinically qualified nutrition professional working full-time. The designee must be a certified dietary or food service manager, or have a similar national certification or at least an associate's degree in food service management or hospitality. The designee has five years to obtain the necessary credential (if she or he served in that role before Nov. 28, 2016) or one year.
- **Proposed Rule.** Facilities would be allowed to designate someone who has two or more years of experience or has completed a minimum course of study in food safety to serve as the director of food and nutrition.
- **LTCCC's Position.** Poor management of food and nutrition services is dangerous, especially to an already vulnerable population. Too many residents already suffer from malnourishment, which is associated with depression, cognitive impairment, functional impairment, and increased mortality. In addition, the palatability and safety of resident food services are a longstanding concern.

+ Proposed Rule: **Facility-Wide Assessments**

FREQUENCY REDUCED & CONTENT DIMINISHED

- **Background.** Nursing home residents are among the most vulnerable individuals in our country. People enter a facility because they need 24-hour a day care and assistance. Unfortunately, the majority of nursing homes do not have sufficient staffing to meet the basic needs of their residents (based on federal studies of minimum staffing needs) and facilities have, on average, seven (7) health violations per year. The assessment requirement was developed to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies.
- **Current Rule.** Nursing homes are required to conduct a facility-wide assessment as necessary but, at a minimum, every year to determine “what resources are necessary to care for its residents competently during both day-to-day operations and emergencies.” The facility assessment must address factors such as the number of residents, the care needs of residents, and staff competencies.
- **Proposed Rule.** Assessments can be done every two years.
- **LTCCC Position.** Given widespread understaffing and the persistence of serious health deficiencies, the public has the right to expect that facilities will undertake, at a minimum, an annual assessment to review the care needs of its residents and staff competencies to meet those needs.

+ Proposed Rule: QAPI

RESIDENT-CENTERED FOCUS ELIMINATED

- **Background.** The Quality Assurance and Performance Improvement (QAPI) requirement is one of the standards incorporated in the 2010 Affordable Care Act.
- **Current Rule.** The **governing body** (including owners & operators) of the facility “responsible and accountable” for the QAPI program. The **committee** must include at least the director of nursing, medical director (or designee), infection control and prevention officer, and “[a]t least three other members of the facility's staff, at least one of who must be the administrator, owner, a board member or other individual in a leadership role.” According to CMS, **the QAPI program must:**
 1. *Address all systems of care and management practices;*
 2. *Include clinical care, quality of life, and resident choice;*
 3. *Utilize the best available evidence to define and measure indicators of quality and facility goals that reflect processes of care and facility operations that have been shown to be predictive of desired outcomes for residents*
 4. *Reflect the complexities, unique care, and services that the facility provides*
- **Proposed Rule.** CMS is proposing to keep the general requirements that facilities have a QAPI but eliminate 1-4, above.
- **LTCCC Position.** In the face of persistent substandard care, abuse, and neglect in too many facilities, CMS should retain these important directions. They are not “burdensome” (as the industry argues), since they merely point to important areas and general components that will ensure that the QAPI makes a meaningful difference in the lives of residents.

+ Proposed Rule: **Compliance & Ethics**

ELIMINATES MAJORITY OF REQUIREMENTS INCLUDING COMPLIANCE OFFICER

- **Background.** Though there are strong standards to protect nursing home residents, far too often they face serious violations of residents' rights, civil rights, and, even, protections against crime. To address this, compliance and ethics rules require nursing homes to have "a program of the operating organization that... [is] **designed, implemented, and enforced so that it is likely to be effective in preventing and detecting criminal, civil, and administrative violations... and in promoting quality of care.**" [Emphasis added.]
- **Current Rule.** A facility's **written standards, policies, and procedures must** "include, but are not limited to, the **designation of an appropriate compliance and ethics program contact to which individuals may report suspected violations**, as well as an alternate method of reporting suspected violations anonymously without fear of retribution; and **disciplinary standards** that set out the consequences for committing violations for the operating organization's entire staff; individuals providing services under a contractual arrangement; and volunteers...." The program must be **overseen by "specific individuals** within the high-level personnel of the operating organization." Facilities must "**effectively communicate** the standards, policies, and procedures in the operating organization's compliance and ethics program to the operating organization's entire staff...."
- **Proposed Rule.** CMS is "proposing to reduce a majority of the burden currently required" by eliminating the designated compliance officer, removing the annual review requirement, eliminating "the requirement for a 'compliance and ethics program contact person' to which individuals may report suspected violations," and other language which CMS describes as "prescriptive."
- **LTCCC Position.** The existing compliance and ethics program rules should be maintained. Given the numerous news, government, and other reports indicating ongoing (and, in some cases, increasing) resident abuse and poor care, CMS must ensure that nursing homes implement a vigorous and effective compliance and ethics program.

+ Proposed Rule: Civil Money Penalties (CMPs)

AUTOMATIC DISCOUNT OF FINES

- **Background.** There are a number of ways in which a nursing home can be penalized for failing to meet minimum standards of care and dignity. Short of taking away a facility's license, fines, known as civil money penalties, are the most important penalty. Unfortunately, from a consumer perspective, fines are rarely imposed (relative to the number of health deficiencies that facilities have). Since coming into power, the Trump Administration has taken steps to significantly decrease the amount of fines imposed on facilities for substandard care, abuse, and neglect.
- **Current Rule.** When a nursing home faces a fine for a violation of minimum standards, it has several options, including informal dispute resolution, appeal, or pay the fine. If a facility chooses to waive its right to appeal, it receives a 35% discount.
- **Proposed Rule.** CMS is proposing to do away with the right to waive an appeal and automatically give facilities a 35% discount on the fine.
- **LTCCC Position.** We are troubled by CMS's inclination to reduce both administrative "burden" and costs for facilities that have violated minimum standards of care for the residents whose well-being CMS is responsible for protecting. Facilities rarely face a fine of any amount even though the average facility has seven (7) health deficiencies per year.

Note: When the state fails to identify substandard care or neglect, or does not substantiate a resident's complaint, residents do not have *any* right to appeal that determination.



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Plans & Resources for Resident-
Centered *Policy* Advocacy

+ WWW.REGULATIONS.GOV

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- **Anyone** can comment!
- **Everyone** who is concerned about reducing nursing home care standards *should* comment – it's easy and only takes a few minutes!
- Go to www.regulations.gov and enter "CMS-2019-0105" into search bar.
- A comment can be any length, from a single sentence about a single issue to a discussion of concerns about all of the proposed changes.
- Feel free to use anything written in these slides or on our website. On September 1 we will be posting our draft comments and fact sheets on www.nursinghome411.org.
- **Comments are due September 16, 2019.**

The screenshot shows the regulations.gov website interface. At the top, the logo "regulations.gov" is displayed with the tagline "Your Voice In Federal Decision-Making". Navigation links for Home, Help, Resources, and Contact are visible. A search bar contains the text "nursing homes". The main content area features a proposed rule titled "Medicare and Medicaid Programs: Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency". Below the title, it states the rule was issued by the Centers for Medicare Medicaid Services (CMS). A red arrow points to a "Comment Now!" button, which is circled in red. To the right of the button, the date "Due Sep 16 2019, at 11:59 PM EDT" is shown. Below the button, there are links for "View original printed format" (PDF), "Tweet", "Share", and "Email". A "Document Information" section on the right provides details: ID: CMS-2019-0105-0001, Date Posted: Jul 18, 2019, RIN: 0938-AT36, and CFR: 42 CFR Parts 410, 482, 483, 485 and 488.

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PR Medicare and Medicaid Programs: Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Efficiency, and Transparency

This Proposed Rule document was issued by the Centers for Medicare Medicaid Services (CMS)

For related information, [Open Docket Folder](#)

Action

Proposed rule.

Summary

This proposed rule would reform the Medicare and Medicaid long-term care requirements that the Centers for Medicare & Medicaid Services has identified as unnecessary, obsolete, or excessively burdensome. This rule would increase the ability of health care professionals to apportion resources to improving resident care by eliminating or reducing requirements that impede quality care or that divert resources away from providing high quality care.

Dates

To be assured consideration, comments must be received at one of the addresses provided, no later than 5 p.m. on September 16, 2019.

Addresses

Comment Now!

Due Sep 16 2019, at 11:59 PM EDT

ID: CMS-2019-0105-0001

View original printed format: [PDF](#)

[Tweet](#) [Share](#) [Email](#)

Document Information

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42 CFR Parts 410, 482, 483, 485 and 488

The screenshot shows the 'Action Center' page of the Nursing Home 411 website. The browser address bar displays 'https://nursinghome411.org/action-center/'. The page features a purple sidebar on the left with the 'LONG TERM CARE COMMUNITY COALITION' logo and a navigation menu. The main content area is titled 'Action Center' and contains three columns of action items. Three orange arrows point to the 'TELL YOUR STORY' button in the 'New York State Action Alerts' column, the 'TELL YOUR STORY' button in the 'National Action Alerts' column, and the 'SIGN-UP FOR LTC NEWS & UPDATES' button in the 'Advocacy News & Resources' column.


LONG TERM CARE COMMUNITY COALITION
Advancing Quality, Dignity & Justice

- Learning Center >
- Nursing Home Info & Data
- Action Center**
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Action Center


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New York State Action Alerts




- TELL YOUR STORY
- SAFE STAFFING FOR QUALITY CARE IN NYS
- PROTECT ASSISTED LIVING RESIDENTS IN NYS
- ENSURE INFORMED CONSENT IN NURSING HOMES AND ADULT CARE FACILITIES IN NYS

National Action Alerts



- TELL YOUR STORY
- SPEAK OUT IN SUPPORT OF ASSISTED LIVING RESIDENTS
- SPEAK OUT AGAINST WASTEFUL SPENDING IN NURSING HOMES
- STAND UP FOR SAFE STAFFING
- SPEAK OUT IN SUPPORT OF NURSING HOME RESIDENTS

Advocacy News & Resources



- SIGN-UP FOR LTC NEWS & UPDATES
- VISIT THE FAMILY & OMBUDSMAN RESOURCE CENTER
- DEMENTIA CARE ADVOCACY TOOLKIT

+ Coming Up

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The Impacts of Staffing & Ownership on the Quality of Care in NY State Nursing Homes

This webinar will discuss the results of two recent studies and information published on New York nursing homes, available at <https://nursinghome411.org/nys-nursing-homes-2019/>.

September 17 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, call (712) 770-4010. When prompted, enter the Access Code, 878277#. Press *6 to mute or unmute your phone line.

Watch past programs on our YouTube channel or listen/download the podcast via our website, www.nursinghome411.org.



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- Sign up for our newsletter and alerts.

You can also...

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- Follow us on **Twitter** at www.twitter.com/LTCconsumer
- Visit us on the **Web** at 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 (or email info@anyfc.org).



Questions?

Comments?