

# ELDER JUSTICE

## What “No Harm” Really Means for Residents

Center for Medicare Advocacy & Long Term Care Community Coalition

Volume 2, Issue 4

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### What is a “No Harm” Deficiency?

Nursing homes that voluntarily participate in the Medicare and Medicaid programs must adhere to minimum standards of care established by the federal Nursing Home Reform Law and its implementing regulations. These standards ensure that every nursing home resident is provided services that help attain and maintain his or her “highest practicable physical, mental, and psychosocial well-being.” Under the Reform Law, nursing homes that fail to meet the federal requirements are subject to various penalties, based on the scope and severity of the violation(s).

Centers for Medicare & Medicaid Services (CMS) [data](#) indicate that the majority of health violations (more than 95%) are cited as causing “no harm” to residents. The failure to recognize resident pain, suffering, and humiliation when it occurs too often means nursing homes are not being held accountable for violations through financial penalties. In the absence of a financial penalty, nursing homes may have little incentive to correct the underlying causes of resident abuse, neglect, and other forms of harm.

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### How to Use this Newsletter

In this issue, we focus on so-called “top performing” nursing homes, those with five-star ratings on [Nursing Home Compare \(NHC\)](#). CMS is proposing to reduce the survey frequency of facilities such as these to less than annual surveys. Unfortunately, as these deficiencies indicate, high ratings do not necessarily mean high quality or safety. In fact, studies have indicated that ratings for nursing homes are much better at identifying poor quality than high quality. The reason for this (in short) is that abuse and neglect often go undetected by state surveyors. That is why we believe that the examples of violations provided in these newsletters is so important. They are taken directly from Statement of Deficiencies (SoDs) on NHC that have been classified as causing neither harm nor immediate jeopardy to resident health, safety, or well-being. Our organizations encourage residents, families,

ombudsmen, law enforcement, and others to use these cases to help identify potential instances of resident harm in their own communities. While CMS may fail to properly penalize nursing homes for health violations, **it is important that the public is aware of safety concerns in nursing homes in their communities and that every suspected case of resident harm is reported, investigated, and addressed.**

## Schofield Residence (New York)

### Five-star nursing home fails to notify physician of significant change in a resident's status.

The surveyor determined that the nursing home failed to “consult with the resident’s physician” regarding a resident’s nine-pound weight gain over a three-day period.<sup>1</sup> The significant weight fluctuation warranted a “need to alter treatment significantly” but was left unaddressed for at least three weeks. Still, the surveyor cited the violation as no-harm. The citation was based, in part, on the following facts from the [SoD](#):

- The resident gained nine pounds (171 to 180) from March 28 to March 31. While the resident’s record included instructions to call the physician for a weight gain of four or more pounds, the surveyor found no evidence that the physician was notified as of April 14.
  - In an April 12 interview, the resident stated he knew he gained nine pounds but was unsure about how it was being addressed.
  - Staff members told the surveyor that they were unaware of the weight gain, despite the care plan’s direction to monitor the resident’s weight in relation to a potential medication-related fluid deficit. The nurse practitioner stated she would have requested an assessment to “determine whether a change in medication and/or treatment was warranted” if she had known about the weight gain.
- **Note:** Facilities must have sufficient nursing staff with the appropriate competencies and skills sets to provide services to assure resident safety and achieve the highest practicable physical, mental, and psychosocial well-being of each resident. For more information, please see [LTCCC’s Requirements for Nursing Home Care Staff & Administration fact sheet](#).

→ *Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical and/or mental harm.*

→ *Neglect is the failure to provide goods and services necessary to avoid physical and/or mental harm.*

## Elm Terrace Gardens (Pennsylvania)

### Five-star nursing home fails to implement care planned provisions.

The surveyor determined that the facility “failed to implement care planned interventions” for a resident dependent on staff for bathing and hygiene.<sup>2</sup> Although staff failed to bathe the resident for 30 days, the surveyor still cited the violation as no-harm. The citation was based, in part, on the following facts from the [SoD](#):

- While observing the resident, the surveyor saw that the resident’s nails were “uncut and dirty.”
- The resident’s record indicated that the resident was “totally dependent on staff for bathing and personal hygiene.” The resident’s care plan documented that the resident needed help to “maintain an optimal quality of life.”
- The care plan also documented that the resident was to receive showers and nail care twice a week. Sadly, the resident’s record indicated that the resident “had not received a shower in the past 30 days.”

- When interviewed, the director of nursing acknowledged that resident had not received showers as indicated in the care plan.
- **Note:** Every resident has the right to a dignified existence. Nursing homes must treat each resident with respect and dignity in a manner that maintains or enhances the resident's quality of life. For more information, please see [LTCCC's Dignity & Quality of Life Standards fact sheet](#).

## Good Samaritan Society – Manson (Iowa)

### Five-star nursing home fails to provide complete assistance with toilet use.

The surveyor determined that the facility failed to provide proper incontinence care for two residents.<sup>3</sup> While the incomplete care left both residents uncleaned after contact with soiled briefs, the surveyor still cited the violation as no-harm. The citation was based, in part, on the following facts from the [SoD](#):

- The surveyor observed that two residents requiring extensive assistance were not fully cleaned after staff changed their urine-soiled briefs.
- Observation of one resident showed staff wiping between a resident's buttocks then rolling him onto his back and replacing the brief without cleaning the resident's lateral buttocks and hips.
- Observation of the second resident similarly showed staff failing to clean the resident's buttocks, genitals, and hips. A certified nursing assistant removed the resident's urine-soiled brief and helped the resident pull up a new brief without cleaning all areas.
- In an interview, the director of nursing stated that staff must wash front to back after each incontinence episode and clean all surfaces in contact with the urine.

→ **Note:** Facilities must ensure that residents are given appropriate treatment and services to maintain or improve their ability to carry out the activities of daily living, such as toileting and hygiene. For more information, please see [LTCCC's Standards of Care for Resident Well-Being fact sheet](#).

→ **Abuse and/or neglect can include instances of inappropriate physical contact, inappropriate antipsychotic drugging, entrapment in a bed rail, falls, pressure ulcers, wandering, infections, malnutrition, isolation, crimes against residents, and other forms of resident harm.**

## Good Samaritan Society – Curry Village (Oregon)

### Five-star nursing home fails to provide timely care for resident's fractured shoulder.

The surveyor determined that the nursing home failed to "ensure timely notification to a physician" of a resident's fractured shoulder after a fall.<sup>4</sup> The resident was not given an x-ray until eight days after the incident and six days after the facility faxed the physician about the upper arm swelling. Still, the surveyor cited the violation as no-harm. The citation was based, in part, on the following facts from the [SoD](#):

- A resident was found face-down on the floor after falling from his wheelchair.
- The facility notified the physician the day of the fall and two days later sent a fax to the physician that noted that the resident's right upper arm was swollen. The x-ray, which indicated a fractured shoulder, was not completed until six days later.
- According to a certified nursing assistant, staff attempted to treat the injury by placing a pillow under the resident's right arm and repositioning the resident to protect his shoulder.
- The administrator stated that the facility did not ensure the physician was not notified in a timely manner and acknowledged that there was no attempted follow-up after the facility did not receive an immediate response.

→ **Note:** Facilities must ensure that each resident's medical care is supervised by a physician. Further, physicians should monitor changes in a resident's medical status and provide consultation or treatment when contacted by the facility. For more information, please see [LTCCC's Requirements for Nursing Home Physician, Rehab & Dental Services fact sheet](#).

## Can I Report Resident Harm?

**YES!** Federal laws and regulations require nursing homes and certain individuals (such as owners, staff, and contractors) to report suspected cases of resident abuse, neglect, and/or crime within a specified amount of time. Nevertheless, residents and families should not wait to report harm when it occurs. Anyone can report suspected cases of resident harm to the state survey agency, local law enforcement, and other appropriate agencies. **For more information about the federal reporting requirements and to access free resources, please visit LTCCC's [Abuse, Neglect, and Crime Reporting Center](#).**



### *Elder Justice* Volume 2, Issue 4

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To learn more about nursing home and assisted living care, visit us online at  
[MedicareAdvocacy.org](#) & [NursingHome411.org](#).

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.

<sup>1</sup> Statement of Deficiencies for Schofield Residence (April 16, 2019). Available at <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=335603&SURVEYDATE=04/16/2019&INSPTYPE=STD>.

<sup>2</sup> Statement of Deficiencies for Elm Terrace Gardens (Jan. 4, 2019). Available at <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=395507&SURVEYDATE=01/04/2019&INSPTYPE=STD>.

<sup>3</sup> Statement of Deficiencies for Good Samaritan Society – Manson (Feb. 14, 2019). Available at <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=165236&SURVEYDATE=02/14/2019&INSPTYPE=STD>.

<sup>4</sup> Statement of Deficiencies for Good Samaritan Society – Curry Village (Feb. 22, 2019). Available at <https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=385165&SURVEYDATE=02/22/2019&INSPTYPE=STD>. The resident's sex is not identified in the inspection report. To make the summary more user-friendly, we refer to the resident as a male.