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Committee on Ways and Means, House
of Representatives

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NURSING HOMES

Better Oversight Needed
to Protect Residents from
Abuse

Do You Have the Right to Expect More? A Review of Recent Federal Studies on Nursing Home Quality, Safety, and Oversight

Presented by Richard Mollot, Long Term Care Community Coalition

www.nursinghome411.org

+ What is 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 Hudson Valley LTC Ombudsman Program.
- **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.
- **Richard Molloy:** Joined LTCCC in 2002. Executive director since 2005.



+ What Will We Be Talking About TODAY?

- Brief background on the nursing home system.
- Recent federal reports on nursing home care.
- Washington response & other actions:
 - Two Congressional hearings
 - Letters from Congress
 - CMS Changes
 - Legislation
- Resident-centered concerns and advocacy.



The Nursing Home System

+ The Nursing Home System in a Nutshell

- Virtually all 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 the federal **Nursing Home Reform 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 federal agency, CMS, contracts with the state agency to ensure that residents are protected and receive the services they need and deserve.



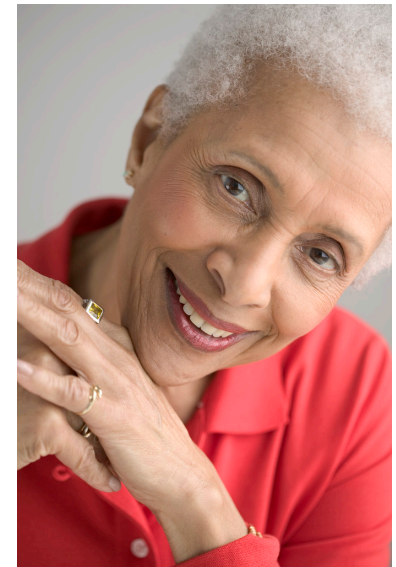
+ The Nursing Home Reform Law

- The federal law requires that every nursing home resident is provided the care and quality of life services sufficient to attain and maintain her **highest practicable physical, emotional & social well-being**.
- The law emphasizes **individualized, patient-centered care**.
- Importantly, the law lays out specific resident rights, from **good care** and monitoring to a quality of life that maximizes **choice, dignity & autonomy**.
- The law passed in 1987. Regulatory standards came out in 1991. They were revised in 2016. The Trump Administration proposed new revisions, to reduce “regulatory burdens” in 2019.



+ The Nursing Home Reform Law

- The 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.**





Recent Federal Reports on Nursing Home Quality and Safety

+ Introduction

To address longstanding concerns about the quality and safety of nursing home care in the United States, as well as the integrity of the use of the public funds that pay for most nursing home care, many entities have undertaken studies and assessments of nursing home care over the years:

- Federal accountability agencies (particularly the **Government Accountability Office (GAO)** and the **Office of the Inspector General (OIG)** of the Department of Health and Human Services)
- University researchers
- The Centers for Medicare and Medicaid Services (generally through contractors)
- Certain news media outlets (ProPublica and FairWarning)
- Non-profit organizations (such as LTCCC, Human Rights Watch, Center for Medicare Advocacy, & National Consumer Voice)

Today, we will focus on reviewing some recent federal agency reports.

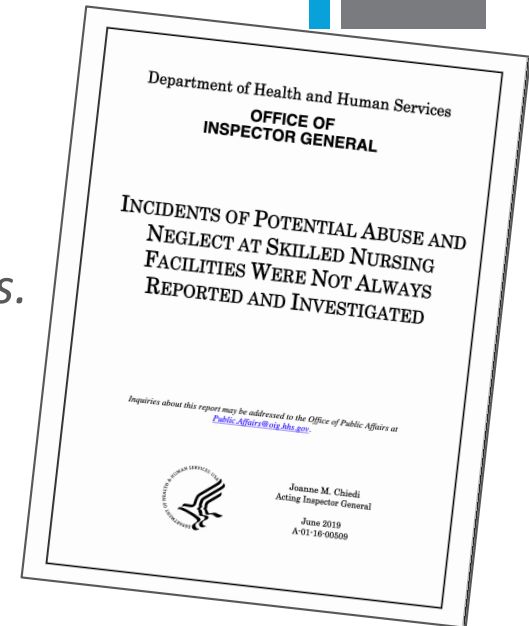
+ GAO: *Better Oversight Needed to Protect Residents from Abuse*

- Nursing home residents often have physical or cognitive limitations that can leave them particularly vulnerable to abuse.
- Abuse of nursing home residents can occur in many forms—including physical, mental, verbal, and sexual—and can be committed by staff, residents, or others in the nursing home.
- Any incident of abuse is a serious occurrence and can result in potentially devastating consequences for residents, including lasting mental anguish, serious injury, or death.
- GAO Identified “Oversight Gaps”:
 - Information on abuse and perpetrator types is not readily available.
 - Facility-reported incidents lack key information.
 - Gaps exist in the CMS process for state survey agency referrals to law enforcement.



+ **OIG: *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated***

- *[A]n estimated one in five high-risk hospital ER Medicare claims for treatment provided in calendar year 2016 were the result of potential abuse or neglect, including injury of unknown source, of beneficiaries residing in a SNF [skilled nursing facility].*
- *SNFs failed to report many of these incidents to the Survey Agencies in accordance with applicable Federal requirements.*
- *[S]everal Survey Agencies failed to report some findings of substantiated abuse to local law enforcement.*
- **OIG Recommendations:**
 - Action is needed “to ensure that incidents of potential abuse or neglect... are identified and reported.”
 - Recommended actions include: (1) training of nursing home staff to i.d. abuse and neglect and (2) “requiring the Survey Agencies to record and track all incidents of potential abuse or neglect in SNFs and referrals made to local law enforcement and other agencies.”

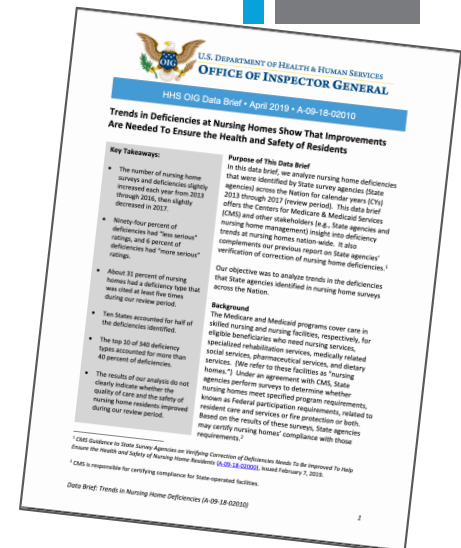


+ **OIG: Trends in Deficiencies at Nursing Homes Show That Improvements Are Needed To Ensure the Health & Safety of Residents**

- **OIG analyzed nursing home deficiencies that were identified by State survey agencies (State agencies) across the Nation for calendar years 2013 through 2017.**

■ OIG Findings:

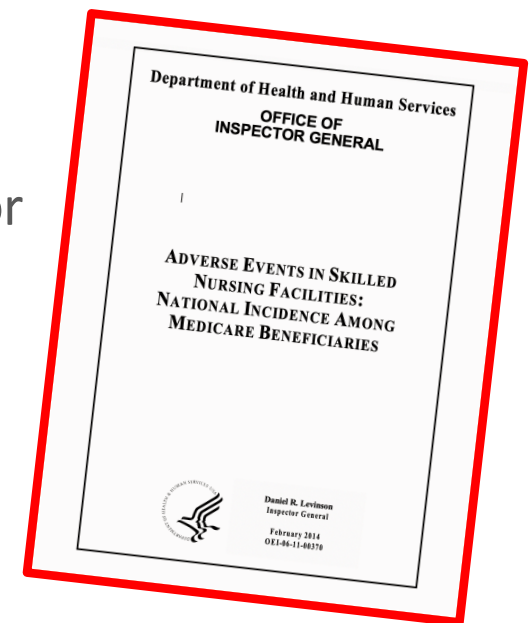
- The number of nursing home surveys and deficiencies slightly increased each year from 2013 through 2016, then slightly decreased in 2017.
- Ninety-four percent of deficiencies had less serious ratings, and six percent of deficiencies had more serious ratings.
- **About 31 percent of nursing homes had a repeat deficiency** (i.e., a deficiency type that was cited at least 5 times in separate surveys). Most of these (71%) were for:
 - 1) ensuring that nursing homes are free of accident hazards, provide adequate supervision of residents, and provide adequate assistance devices for residents and
 - 2) providing care & services for the highest well-being of residents.



<https://oig.hhs.gov/oas/reports/region9/91802010.pdf>

+ **OIG: *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries***

- **OIG found that one-third of residents who were in a nursing home for short-term care were harmed.**
- **Almost 60 percent of the injuries were preventable and attributable to poor care.**
- **Much of the preventable harm was due to substandard treatment, inadequate resident monitoring, and failure or delay of necessary care.**
- **As a result, six percent of those who were harmed died, and more than half were rehospitalized at an annualized cost of \$2.8 billion in 2011.**
- **“Because many of the events that we identified were preventable, our study confirms the need and opportunity for SNFs to significantly reduce the incidence of resident harm events.”**





How Have Federal Leaders
Responded to Concerns About
Nursing Home Care and Safety?

+ Congress

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Senate Finance Hearings

- Not Forgotten: Protecting Americans From Abuse and Neglect in Nursing Homes
- Promoting Elder Justice: A Call for Reform

House Ways & Means Hearing

- Caring for Aging Americans

Letters & Statements

- Senate Finance Chair Grassley op-ed: *Oversight is necessary to ensure quality care in nursing homes*
- House Ways & Means Chair Neal letter to CMS: *Continued concern with overuse of antipsychotics in nursing homes*

As of Oct. 23, 2019, the Nursing Home Compare website displays an alert icon next to facilities where abuse led to patient harm within the past year or where abuse could have potentially harmed residents in the last two years.



+ Federal legislation

November 22, 2019: *Schakowsky, Blumenthal*
Introduce Bill To Improve Quality Of Care At Nursing Homes

The bill...

- establishes higher minimum nurse staffing levels for nursing homes under Medicare and Medicaid;
- expands training requirements and supervision for all nursing staff;
- creates whistleblower and other protections for nursing home residents and personnel;
- prohibits the use of forced arbitration agreements between residents and any nursing home entity; and
- develops a standardized protocol for nursing facilities to obtain written informed consent from residents for treatment with psychotropic drugs.



Resident Advocacy

+ LTCCC Action Center

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Contact your state and federal representatives and let them know that you are concerned about poor care, demeaning conditions, abuse, and neglect.



Thank You For Joining Us Today!

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

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- 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:

www.surveymonkey.com/r/ltncc-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?

Next Program: January 21 at 1pm Eastern.

Topic: Assessing the Humanity of Nursing Home Care: A Special Report From the Long Term Care Community Coalition