

## **LAWMAKERS MUST BE CAUTIOUS ABOUT RECOMMENDATIONS FROM A NEW INDUSTRY REPORT ON NURSING HOME CLOSURES**

---

**Feb. 28, 2020** - LeadingAge, a trade association for non-profit nursing homes, has released a [report](#) on nursing home closures and trends between June 2015 and June 2019. The report finds that more than 550 nursing homes—approximately four percent of all facilities certified to participate in Medicare and/or Medicaid—have closed during the four-year period. Among the trends identified, the report found that approximately 67 percent were for-profit facilities, quality ratings were not associated with closures, and closures occurred at the same rate in rural and urban areas.

LeadingAge advises that these closures were the result of multiple issues, pointing to low occupancy and Medicaid reimbursement rates as factors. In light of the report’s findings, LeadingAge makes several recommendations, including the following:

- States must reevaluate their Medicaid rate setting processes to ensure that providers are reimbursed for their actual cost of care.
- The National Academy of Sciences should launch a new study to evaluate the nursing home survey process, links to care outcomes, and alternative strategies for nursing home quality.

The Center for Medicare Advocacy and the Long Term Care Community Coalition urge state and federal policymakers to be cautious about these recommendations. **First, our organizations do not believe that nursing homes should receive additional public funds without audits to determine how facilities spend public reimbursement and the implementation of a [medical loss ratio \(MLR\)](#) designed to hold nursing home operators accountable for taxpayer dollars.** Without an MLR, there is no guarantee that increases in reimbursement rates will be used on direct resident care instead of administrative costs and profits. In fact, nursing home industry rate increases, even those targeted to direct care staff wages, often do not result in improvements in staffing or resident safety.

**Second, we do not believe that another Institute of Medicine (IoM) <sup>1</sup> study is necessary.**

LeadingAge’s report suggests that some federal regulations are “unnecessarily burdensome” for providers. However, the 1986 [IoM study](#) concluded, “[r]egulation is essential to protect these vulnerable consumers. Although regulation alone is not sufficient to achieve high-quality care, easing or relaxing regulation is inappropriate under current circumstances.” In fact, a 2020 [study](#) published in *The Journal of Post-Acute and Long-Term Care Medicine* determined that “much of the quality progress made in NHs [nursing homes] has been because of regulation and

---

<sup>1</sup> The National Academy of Medicine (formerly the Institute of Medicine) was established under the congressional charter of the National Academy of Sciences.

oversight over the years.” Nevertheless, the circumstances identified in the 1986 study which necessitated strong regulations remain in 2020.

Today, too many nursing home residents are at risk of experiencing harm due to weak enforcement of the standards of care. Following are only a few examples:

- A 2019 Government Accountability Office ([GAO](#)) report found that the number of cited abuse deficiencies more than doubled from 2013 to 2017.
- A 2019 HHS Office of the Inspector General ([OIG](#)) report found that 1 in 5 high-risk Medicare claims for nursing home residents who received hospital emergency room services in 2016 indicated potential abuse or neglect.
- A 2014 [OIG](#) report found that an astounding one-third of Medicare-covered residents experienced harm within, on average, 15.5 days of entering a nursing home. The report also found that 59 percent of these events were preventable.
- A 2011 [OIG](#) report found that a shocking 83 percent of antipsychotic drug use in nursing homes was off-label and that 88 percent were associated with the condition specified on the FDA’s “black box” warning. A 2018 Human Rights Watch [report](#) followed-up on the issue to find that, in an average week, nursing homes administered off-label antipsychotic drugs to over 179,000 residents, often without informed consent.
- A 2019 *Health Affairs* [study](#) on nursing home staffing found that a new data system revealed “large daily staffing fluctuations, low weekend staffing, and daily staffing levels often below the expectations of the Centers for Medicare & Medicaid Services (CMS).” Similarly, *The New York Times* [reported](#) in 2018 that the new data source showed 7 out of 10 nursing homes had lower staffing than previously identified through the old self-reported system, with a 12 percent average decrease.

Unfortunately, current efforts to [deregulate](#) the nursing home industry may be intensifying problems in nursing homes. For instance, in 2019, CMS [proposed](#) rolling back the nursing home Requirements of Participation. Perhaps most shockingly, the proposed rule makes it easier for nursing homes to administer antipsychotic drugs. At the same time, the growing financial sophistication of bad actors within the nursing home industry has placed residents at greater risk. For example, a private equity firm’s ownership of the second largest nursing home chain in the country ultimately led to bankruptcy. *The Washington Post* [reported](#) in 2018 that the sale of the chain’s underlying real estate for \$6.1 billion constrained the chain’s finances, resulting in hundreds of layoffs and an increase in violations.

Given the realities of nursing home quality and safety, our organizations respectfully urge state and federal policymakers to take steps to hold the nursing home industry accountable for the use of public funds and quality of resident care. Implementing an MLR and properly enforcing the standards of care are, we believe, the best places to start in respect to the achieving the recommendations made by LeadingAge.