



IN THIS ISSUE

GOVERNMENT STANDARDS & QUALITY ASSURANCE	1
CMS GUIDANCE ON CORONAVIRUS RAISES CONCERNS ABOUT UNMET CARE NEEDS AND POOR OVERSIGHT	1
CMS WAIVES 3-DAY INPATIENT HOSPITAL STAY REQUIREMENT FOR MEDICARE-COVERED NURSING HOME SERVICES	2
DOJ ANNOUNCES NATIONAL NURSING HOME INITIATIVE AIMED AT NURSING HOME OPERATORS	3
LTC NEWS & BRIEFS	4
COVID-19 INCREASES SCRUTINY OF NURSING HOME ROLLEBACKS, INCLUDING THOSE FOR INFECTION CONTROL STANDARDS	4
STUDY FINDS CONNECTION BETWEEN ANTIPSYCHOTIC DRUG USE AND INFECTIONS	5
LTCCC PUBLISHES NEW REPORT ON NURSING HOME OWNERSHIP, INCLUDING ESSENTIAL PRINCIPLES FOR IMPROVING THE NURSING HOME LICENSURE PROCESS	5
LTCCC IN THE MEDIA	6
FREE LTCCC RESOURCES	7
LTCCC LEARNING CENTER	7
LTCCC WEBINARS	7
LTCCC PODCASTS	7

GOVERNMENT STANDARDS & QUALITY ASSURANCE

[CMS GUIDANCE ON CORONAVIRUS RAISES CONCERNS ABOUT UNMET CARE NEEDS AND POOR OVERSIGHT](#)

COVID-19 (more commonly known as coronavirus) is a pandemic, which means that the disease has spread worldwide. According to the Centers for Disease Control and Prevention ([CDC](https://www.cdc.gov)), symptoms of the virus include fever, cough, and shortness of breath. While the virus may be fatal in all age groups, it poses a significant risk to older adults and those with underlying chronic medical conditions.

The virus has proven to be exceptionally dangerous for nursing home residents due to their confinement and existing vulnerabilities. Unfortunately, weak enforcement of the federal standards of care, particularly for infection control and sufficient staffing, have placed residents at an even greater risk of contracting the virus.

Unfortunately, weak enforcement of the federal standards of care, particularly for infection control and sufficient staffing, have placed residents at an even greater risk of contracting the virus.

In order to limit residents' exposure to the virus, the Centers for Medicare & Medicaid Services (CMS) has issued [guidance](#) restricting all visitation, except in end-of-life and other compassionate care situations. CMS has only carved out two exceptions to the restriction: health care workers and health inspectors are allowed to enter facilities when following CDC guidelines. CMS also issued [guidance](#) suspending non-emergency health inspections nationwide. Until further notice, CMS is directing state survey agencies to focus on a limited set of inspections and to prioritize all immediate jeopardy complaints, allegations of abuse and neglect, and complaints alleging infection control violations. CMS hopes that the suspension will allow inspectors to focus on the most serious nursing home violations during the outbreak.

The Long Term Care Community Coalition (LTCCC) is deeply troubled by these CMS directives. First, the majority of nursing homes are understaffed. As a result, substandard care is a persistent problem. To compensate, families often provide vital monitoring and care, from ensuring that their loved ones are fed to identifying common signs of neglect and abuse. **While we understand the need to implement sensible, evidence-based limitations, the monolithic barricade of families puts residents in jeopardy.** Importantly, health care workers have the same exposure risks as families when they leave the facility and, when they return to a facility, they are in contact with numerous residents, surfaces in common areas, and equipment. If common sense safeguards can be implemented to ensure that they do not infect residents, then surely the same safeguards can be implemented in respect to families who only enter the facility to see their loved one.

Second, health inspections are integral to nursing home quality and safety. Weak oversight places residents at risk of harm, as years of persistent infection control violations in nursing homes nationwide have shown. **While focus on addressing the coronavirus is critical, CMS must ensure that all essential federal standards of care are enforced.** Otherwise, residents will be exposed to significant risk now and in the future.

- For more information about COVID-19 in nursing homes, including the latest information about federal guidance, please visit [LTCCC's Coronavirus Resources webpage](#).
- To learn about the infection prevention and control requirements, please see LTCCC's [fact sheet](#) and issue alert.

CMS WAIVES 3-DAY INPATIENT HOSPITAL STAY REQUIREMENT FOR MEDICARE-COVERED NURSING HOME SERVICES

On March 13, 2020, President Trump [proclaimed](#) the COVID-19 outbreak in the United States a national emergency, granting the U.S. Department of Health and Human Services (HHS) the authority to temporarily waive or modify requirements of public health programs. In line with this authority, the Centers for Medicare & Medicaid Services (CMS) is waiving the 3-day inpatient hospital stay requirement for Medicare-covered skilled nursing facility services. Additionally, CMS is allowing certain beneficiaries who have exhausted their SNF benefit periods to renew coverage for up to an additional 100 days without starting a new benefit period first.

While LTCCC supports removing access barriers to nursing home care, we are concerned by the potential impact that the waiver may have on nursing home quality and safety.

In a March 13th [memorandum](#), CMS Administrator Seema Verma stated that the waiver of the 3-day inpatient hospital stay requirement would apply to beneficiaries who “experience dislocations or are otherwise affected by the emergency” The memo provides the following examples:

1. Beneficiaries who have been evacuated from an emergency area;
2. Beneficiaries who have been discharged from a hospital to make room for more seriously ill patients; or
3. Beneficiaries who need SNF services because of the emergency, “regardless of whether that individual was in a hospital or nursing home prior to the emergency.”

While LTCCC supports removing access barriers to nursing home care, we are concerned by the waiver’s potential impact on nursing home quality and safety. Too many nursing home residents are already at risk of harm due to inadequate staffing. For example, a [2019 study](#) found that, even under normal conditions, nursing homes had “large daily staffing fluctuations, low weekend staffing, and daily staffing levels often below the expectations of the Centers for Medicare & Medicaid Services (CMS).” The influx of additional residents may place a greater strain on nursing home staff, increasing the potential for resident harm.

- To learn more about staffing in your nursing home or for those in your community, please visit [LTCCC’s Nursing Home Data & Information webpage](#).

DOJ ANNOUNCES NATIONAL NURSING HOME INITIATIVE AIMED AT NURSING HOME OPERATORS

On March 3, 2020, the Department of Justice (DOJ) launched the National Nursing Home Initiative. As noted in a [press release](#), the aim of the initiative is to “coordinate and enhance civil and criminal efforts to pursue nursing homes that provide grossly substandard care to their residents.” The DOJ announced that 30 individual nursing facilities in nine states are already being investigated under this Initiative.

Addressing the initiative, U.S. Attorney General (AG) William Barr discussed the importance of ensuring nursing home quality and safety. A.G. Barr stated:

[A]ll too often, we have found nursing home owners or operators who put profits over patients, leading to instances of gross abuse and neglect. This national initiative will bring to justice those owners and operators who have profited at the expense of their residents, and help to ensure residents receive the care to which they are entitled.

“[A]ll too often, we have found nursing home owners or operators who put profits over patients, leading to instances of gross abuse and neglect.”

- U.S. Attorney General William Barr

According to the press release, the DOJ considers many factors when identifying problematic nursing homes. These factors include inadequate nurse staffing, substandard hygiene and infection control measures, insufficient food to residents, and improper use of physical or chemical restraints. The DOJ notes in the press release that “[c]are failures cause residents to develop pressure sores down to the bone, to lie in their own waste for hours, to starve because they cannot reach the food on their trays and to remain unwashed for weeks at a time.” The DOJ adds that facilities providing “grossly substandard care also force vulnerable elderly residents who cannot leave the facilities to live in filthy and dangerous conditions where there are leaks in the roofs, mold is found growing and rodents found living in residents’ rooms.”

- A transcript of A.G. Barr’s speech can be found here: <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-announces-results-department-justices-2020-elder-fraud>.

LTC NEWS & BRIEFS

COVID-19 INCREASES SCRUTINY OF NURSING HOME ROLLBACKS, INCLUDING THOSE FOR INFECTION CONTROL STANDARDS

[NBC News](#) reports that, with the support of the nursing home industry, the Trump Administration has undertaken efforts to reduce nursing home regulations and “taken significant steps to reduce fines for violations.” The NBC News article notes that the Trump Administration even took steps late last year to roll back infection control regulations, noting that it is “a decision that is facing renewed criticism for endangering the elderly amid the coronavirus outbreak.”

Specifically, the Centers for Medicare & Medicaid Services (CMS) proposed rolling back a requirement that facilities have a part-time infection preventionists. Citing so-called industry “burden,” CMS is proposing to allow infection preventionists to work only a “sufficient” amount of time. NBC News reports that CMS is also proposing to roll back the frequency of facility assessments to every two years. Currently, nursing homes are required to conduct a facility assessment annually to determine what resources are necessary for daily operations and in cases of emergencies.

While the changes are endorsed by the nursing home industry, they are strongly opposed by leading epidemiologists and long-term care experts who are “stressing the importance of having trained specialists on staff at nursing homes to prevent infection outbreaks,” according to NBC News. As Toby Edelman, Senior Policy Attorney at the Center for Medicare Advocacy, stated, “[t]hese are frail, medically compromised people, and they need to have someone focused on infection.”

A KHN analysis found that 63 percent of all nursing homes have cited “for one or more infection-control deficiencies during the past two regular inspection periods.”

Kaiser Health News ([KHN](#)) similarly reported on the problems with nursing home oversight, finding that infection control deficiencies are the most cited health violations. A KHN analysis found that 63 percent of all nursing homes have been cited “for one or more infection-control deficiencies during the past two regular inspection periods.” Additionally, KHN found that 40 percent of five-star nursing homes have been cited for infection control violations. The KHN article notes that 99 percent of infection control violations are identified “as minor and not warranting fines.” The article adds that inspection reports show many of the violations stem from failing to follow basic precautions, providing example such as “workers not washing their hands as they moved to the next patient, or failing to don masks, gloves and gowns when in the rooms of contagious patients in isolation.”

- For more information about infection prevention and control violations in your nursing home or those in your community, please visit LTCCC’s [Nursing Home Data & Information](#) webpage.
- To learn more about the importance of infection control in nursing homes and CMS’s efforts to rollback standards of care, please listen to [LTCCC’s podcast](#).

STUDY FINDS CONNECTION BETWEEN ANTIPSYCHOTIC DRUG USE AND INFECTIONS

Nursing homes administer antipsychotic drugs to approximately 20 percent of residents nationwide. Sadly, and too often, these drugs are used as a form of chemical restraint, to address the so-called behavioral and psychological symptoms of dementia. This is a serious problem for many reasons, including:

1. The U.S. Food and Drug Administration (FDA) issued a “black box” warning against using antipsychotic drugs on elderly patients with dementia. The FDA warning provides that the use of these drugs on elderly patients with dementia is associated with a significantly increased risk of death. Antipsychotics are also associated with substantially increased risks of Parkinsonism, falls, heart attacks, and strokes.
2. Nursing homes have long been required – and paid – to avoid the use of psychotropic drugs and, instead, implement non-pharmacological interventions to help residents with dementia who are expressing discomfort, boredom, or distress.

“The data are consistent with increased susceptibility to infection in patients administered these medications and can have profound implications for off-label prescribing to vulnerable patient populations including children and the elderly.”

A recently published [study](#) in *PLOS One* has identified another reason to avoid antipsychotics: they may also increase the risk of infections. Researchers from the University of New England “discovered that antipsychotic drugs are getting into bone marrow, making it difficult for them to fight off infections.” The study indicates that antipsychotic medications, such as Risperidone, “infiltrates bone marrow in concentrations higher than found in the bloodstream.” A [press release](#) notes that the “data are consistent with increased susceptibility to infection in patients administered these medications and can have profound implications for off-label prescribing to vulnerable patient populations including children and the elderly.”

- For more information about dementia care and antipsychotic drug use, please see [LTCCC’s Dementia Care Advocacy Toolkit](#).

LTCCC PUBLISHES NEW REPORT ON NURSING HOME OWNERSHIP, INCLUDING ESSENTIAL PRINCIPLES FOR IMPROVING THE NURSING HOME LICENSURE PROCESS

Over the last several years, it has become increasingly evident that too many nursing home residents are at risk of experiencing poor care because of fundamental problems with a facility’s ownership, management, and finances. This trend is supported most recently by the dramatic collapse of Skyline Healthcare and the shocking bankruptcy of HCR ManorCare. Such high-profile cases of nursing home chain closures and bankruptcies raise serious questions about the standards by which federal and state governments evaluate potential and existing nursing home owners.

On March 9, 2020, the Long Term Care Community Coalition (LTCCC) published a report on nursing home ownership. The report, entitled [Meaningful Safeguards:](#)

[Promising Practices & Recommendations for Evaluating Nursing Home Owners](#), identifies promising

Our organization encourages federal and state policymakers to use this report as a guideline for developing meaningful legislation and regulations.

practices among states for evaluating nursing home owners for state licensure and provides essential principles for improving accountability and integrity in the licensure process. The report offers essential principles for issues involving ownership disclosure, financial capacity, leases or subleases, character and fitness, management, change of ownership, and criminal liability.

Our organization encourages federal and state policymakers to use this report as a guideline for developing meaningful legislation and regulations. Consumers can speak out in support of these measures by writing to their representatives via our Action Center:

<https://nursinghome411.org/action-center/>.

- To read the report and access accompanying materials, please visit:
<https://nursinghome411.org/evaluating-nursing-home-owners/>.

LTCCC IN THE MEDIA

LTCCC is dedicated to informing the public and advocating for nursing home residents during the COVID-19 pandemic. Following are some of the recent local and national publications in which LTCCC has appeared:

- The *Seattle Times* has been at the forefront of coronavirus coverage and has reported extensively on the outbreak at Life Care Center in Kirkland, “the national epicenter of coronavirus.” In a [March 3 report on Life Care Center](#), LTCCC Executive Director Richard Mollot spoke about why nursing homes are especially vulnerable to outbreaks. “We don’t really know what has led to this, but we know generally speaking that it’s very common for nursing homes to have very lax systems for control in place,” Mollot said.
- In [The New York Times](#), Richard offered advice to families on protecting loved ones in nursing homes: “Think about your loved one’s needs, and ‘just very carefully and clearly iterate’ your concerns to the staff about their vulnerabilities,” he told *The Times*.
- In *The Wall Street Journal*’s article, “[Nursing Homes Brace for Coronavirus Outbreak Amid Staffing Concerns](#),” Richard noted that nursing homes “have a high infection rate because there is just not enough staff to provide appropriate care.”
- In a [New York Times article](#), “92 Years Old, Scared and Pleading to Come Home,” Richard voiced his concerns about the newly implemented visitation restrictions aimed at preventing spread of coronavirus, saying that “‘he was deeply concerned about residents being cut off from their loved ones.’ While emphasizing the need for extensive precautions, Richard said that banning family members, but not employees who come and go — some to second jobs as home-care aides—makes no sense.
- [Richard spoke to Syracuse.com](#) about how the prevalence of infection control violations is a symptom of widespread substandard care in nursing homes. “Mollot said the infection control problem combined with inadequate staffing at many nursing homes could have ‘catastrophic implications for residents’ during the coronavirus outbreak.”
- More media coverage featuring LTCCC can be found in [AARP.org](#), [The Atlanta Journal-Constitution](#), [Buffalo News](#), [Cleveland.com](#), [HuffingtonPost](#), [Indianapolis Star](#), [KCRA](#), [NorthJersey.com](#), [St. Louis Post-Dispatch](#), and [The Post-Star](#).

FREE LTCCC RESOURCES

LTCCC's resources are free to use and share. To access all of our materials, please visit our homepage www.nursinghome411.org. We thank the [Fan Fox & Leslie R. Samuels Foundation](#) and [The New York State Health Foundation](#) for supporting the development of these resources.

To sign-up for updates & alerts, please visit www.nursinghome411.org/join/ or call 212-385-0355.

LTCCC LEARNING CENTER

[LTCCC's Learning Center](#) offers visitors resources and tools designed for resident-focused advocacy. The Learning Center displays LTCCC's most recent and most relevant materials, including easy-to-use [record-keeping forms](#), [handouts](#), and [fact sheets](#), that residents, families, ombudsmen, and nursing home staff can utilize when advocating for the rights and protections of a resident.

LTCCC WEBINARS

LTCCC conducts [free monthly webinars](#) on a variety of timely nursing home topics, ranging from the survey process to resident rights. Recordings of past webinars are available on [LTCCC's YouTube](#) page.

LTCCC PODCASTS

LTCCC recently launched a podcast series featuring topical interviews, issue-oriented programming, and audio versions of our webinars. It is available on our website at <https://nursinghome411.org/podcast/>, and on [Spotify](#) and [Apple Podcasts](#).

The LTC Journal

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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.