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GOVERNMENT STANDARDS & QUALITY ASSURANCE

[GAO: NURSING HOMES PLAGUED BY INFECTION CONTROL ISSUES PRIOR TO COVID-19](#)

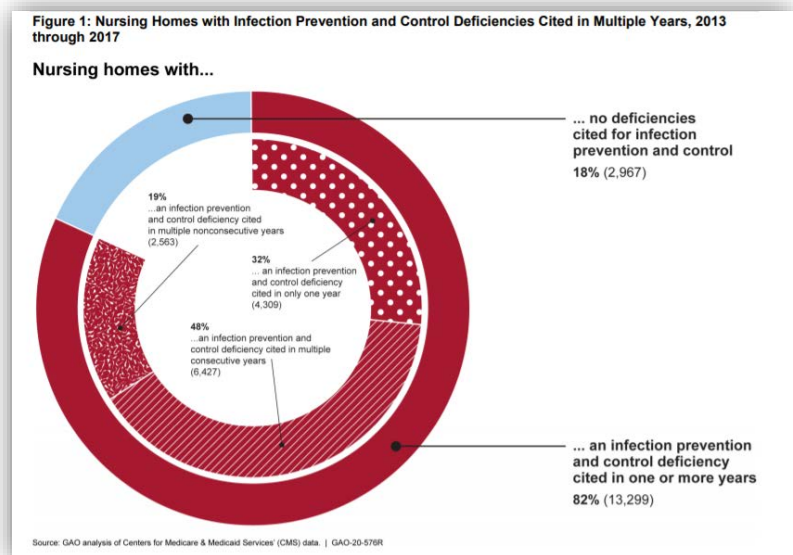
Effective infection prevention and control programs are a federal requirement for every nursing home because they are critical for protecting residents from preventable harm, injury, and death. Though nursing homes have been under the spotlight for their failure to protect residents from the coronavirus (COVID-19), infection control and prevention issues have been long-standing problems for most U.S. facilities.

[A May 2020 federal study found that 82 percent of nursing homes had deficiencies for an infection prevention and control standard](#) during a five-year period prior to the coronavirus (COVID-19) pandemic, and that two-thirds of facilities had infection protection deficiencies in multiple years. The U.S. Government Accountability Office (GAO) report, which evaluated nursing home deficiencies for all 50 states and Washington, D.C. from 2013-2017, indicates that infection prevention and control issues were a pervasive issue in nursing homes in the years leading up to the pandemic.

The GAO report also found that nearly all (99 percent) of the infection prevention and control deficiencies assigned to facilities during the five-year period were classified as not severe, meaning the surveyor determined they did not cause resident harm. Of these “not severe” deficiencies, one (1) percent resulted in CMS enforcement, 67 percent resulted in no enforcement actions imposed or implemented, and 31 percent had enforcement actions imposed but not implemented, “meaning the nursing home likely had an opportunity to correct the deficiency before an enforcement action was imposed.”

From LTCCC’s perspective, this lack of enforcement is a serious problem. Simply put, if a nursing home faces no penalty for substandard infection control and protection practices, it has little incentive to implement a meaningful correction. That two-thirds of facilities had repeat infection protection deficiencies confirms that our concerns are well-grounded.

The report also analyzed characteristics of nursing homes with and without infection prevention and control deficiencies during the five-year period of interest. Though for-profit facilities account for 69 percent of all surveyed nursing homes, they accounted for 72 percent of the facilities with infection prevention and control deficiencies and only 61 percent of those without such deficiencies. Nursing homes with an average overall five-star rating (the highest rating) accounted for 17 percent of facilities with infection deficiencies but accounted for one third of facilities without infection deficiencies.



- The full report, including highlights and podcast discussion, [is available on the GAO website](#).
- LTCCC & the Center for Medicare Advocacy (CMA) publish a monthly *Elder Justice Newsletter* highlighting the prevalence of nursing home violations in nursing homes that are classified as no harm. For the latest issue visit [LTCCC’s newsletter page](#).

NEW FEDERAL REPORTING REQUIREMENTS LEAVE COVID-19 TOLL UNCLEAR

The Centers for Medicare & Medicaid Services (CMS) [released an interim final rule](#), in effect May 8, containing new requirements for reporting on COVID-19 data in nursing homes. Facilities, however, are not required to report deaths and infections occurring before May 8, and optional reporting of this information will leave an incomplete picture of COVID-19’s effect on residents.

Lori Smetanka, executive director of the National Consumer Voice for Quality Long-Term Care, told the [Wall Street Journal](#) that data on cases from before May 8 would help consumers better understand how facilities handled the virus. “Having the information will tell the story of what’s been happening in

the facility during the pandemic,” she said. Nevertheless, as of this writing (June 24, 2020) CMS has been unresponsive to advocates’ calls for reporting of this information.

The rule establishes a new subsection, “(g) COVID-19 Reporting,” to **§ 483.80 Infection control**, stating that a “facility must electronically report information about COVID-19 in a standardized format specified by the Secretary.”

The reports must include but are not limited to:

- Suspected and confirmed COVID-19 infections among residents and staff, including residents previously treated for COVID-19
- Total deaths and COVID-19 deaths among residents and staff
- Personal protective equipment and hand hygiene supplies in the facility
- Ventilator capacity and supplies in the facility
- Resident beds and census
- Access to COVID-19 testing while the resident is in the facility
- Staffing shortages; and
- Other information specified by the Secretary.

Information is to be provided weekly to the Centers for Disease Control & Prevention (CDC) and then publicly posted by CMS by the end of May. CDC information including facility names, number of COVID-19 suspected and confirmed cases, deaths, and other data, can be viewed at <https://data.cms.gov/>.

The new rule also states that nursing homes must inform residents, their representatives, and families of those residing in facilities by 5 p.m. the next calendar day following a) the occurrence of either a single confirmed infection of COVID-19, b) or three or more residents or staff with new onset of respiratory symptoms occurring within 72 hours of each other.

“Having the information will tell the story of what's been happening in the facility during the pandemic.”

- Lori Smetanka, National Consumer Voice

Facilities can inform families and representatives through a variety of ways including email listservs, website postings, paper notification, and/or recorded telephone messages. Individual calls relaying this information to each resident’s family or responsible party are not required.

This information must:

- **Not include** personally identifiable information;
- **Include** information on mitigating actions implemented to prevent or reduce the risk of transmission, including if normal operations of the facility will be altered; and
- **Include** any cumulative updates at least weekly or the next calendar day following a confirmed COVID-19 infection or onset of respiratory symptoms among residents or staff.

CMS: NURSING HOME OPENING RECOMMENDATIONS

On May 18th, [CMS published guidelines](#) for states and local officials to reopen nursing homes. The recommendations state that “decisions on relaxing restrictions should be made with careful review of

a number of facility-level, community, and State factors/orders, and in collaboration with State and/or local health officials and nursing homes.”

Factors to consider include:

- **Case status in community:** Decline in the number of new cases, hospitalizations, or deaths;
- **Case status in the nursing home(s):** Absence of any new nursing home onset of COVID-19 cases (resident or staff);
- **Adequate staffing:** Facility should not have staffing shortage or be under a contingency staffing plan.
- **Access to adequate testing:** Based on contingencies informed by the Centers for Disease Control and Prevention (CDC). The plan should consider, at minimum:
 - Testing capacity for all residents and staff
 - Written screening protocols for all staff (each shift), each resident (daily), and all persons entering the facility
 - An arrangement with laboratories to process tests
 - Procedure for addressing residents or staff that decline or are unable to be tested
- **Cloth face covering or facemask for residents and visitors:** All visitors maintaining social distancing and perform hand washing or sanitizing upon entry. Consider restricting visitors unable or unwilling to maintain these precautions;
- **Access to adequate Personal Protective Equipment (PPE) for staff:** All staff wear all appropriate PPE when indicated, or cloth face covering if facemask is not indicated; and
- **Local hospital capacity:** Ability for the local hospital to accept transfers from nursing homes.

“Decisions on relaxing restrictions should be made with careful review of a number of facility-level, community, and State factors/orders, and in collaboration with State and/or local health officials and nursing homes.”

- CMS

While LTCCC agrees that the safety of residents, care staff and visitors is paramount, we are very concerned that residents have suffered significantly as a result of the federally imposed blockade on visitors beginning in March (and still in effect as of the time of this newsletter’s writing, June 24, 2020). Specifically, we have heard growing reports since mid-March of abject neglect of residents, including failure to provide necessary food and hydration, increases in the already high rates of pressure sores and falls, psychotropic drugging, and social isolation. Please visit the coronavirus page of our website, www.nursinghome411.org, for the latest rules and recommendations on opening up facilities to family, LTC ombudsman, and other visitors.

LTC NEWS & BRIEFS

TESTING MANDATED IN NEW YORK NURSING HOMES

New York Governor Andrew Cuomo issued an [executive order on May 10th](#) mandating the state’s facilities to conduct COVID-19 testing for all staff (twice per week). Facilities failing to comply license revocation and daily penalties starting at \$2,000 and rising to \$10,000. On June 10, citing “tremendous progress” in controlling the spread of COVID-19, [State Health Commissioner Howard Zucker announced](#)

that New York would begin “requiring nursing home staff to be tested once a week, and implement this for regions that have met the criteria to enter Phase 2 of New York’s reopening, and continue twice weekly testing in facilities that are still located in Phase 1 regions.”

Governor Cuomo also announced a reversal on a policy that directed nursing homes to accept COVID-19. Though facilities are still allowed to accept some people with COVID-19, Cuomo said hospitals are responsible for finding alternatives for discharged patients, and that nursing facilities shouldn’t accept coronavirus patients if unable to care for them.

“This hit us, perhaps, harder than it should have,” [LTCCC’s executive director Richard Mollot told POLITICO](#). “Some of this was avoidable, preventable — some of it still is if we take the appropriate actions.”

- LTCCC is calling on the Governor and state officials to take emergency actions to help prevent further outbreaks and loss of life in New York. Please join LTCCC in this call to action by contacting the [Governor via LTCCC’s Action Center](#) and urging him to implement [LTCCC’s Emergency Action Plan](#) to save the lives of residents of New York long term care facility residents.
- LTCCC is providing weekly data updates on COVID-19-related deaths in New York’s nursing homes (NHs) and adult care facilities (ACFs). For the latest data, visit <https://nursinghome411.org/ny-nursinghome-covid-data/>.

COUNTRY’S LARGEST SENIOR LIVING COMPANY FACING POTENTIAL CLASS-ACTION LAWSUIT

Brookdale Senior Living, the largest senior living company in the U.S., [is facing a potential class-action lawsuit over alleged unfair trade practices and alleged failure to deliver promised services at its assisted living communities](#). In the complaint, filed in late April, the senior-living operator is [accused of purposeful “chronically insufficient staffing” to boost profitability](#). The filing states that Brookdale misled residents and families when it promised basic care and daily living services and that residents “have not received the care and services they paid for.”

The proposed lawsuit claims that the proposed class of plaintiffs — who are current and former residents of 56 Brookdale facilities in North Carolina — “have not received the care and services they paid for.” The lawsuit asks for damages and for Brookdale to “stop the unlawful and fraudulent practices.”

“Brookdale created and implemented lucrative bonus and incentive programs tied to meeting or exceeding Brookdale’s financial performance targets,” the filing states. “These programs provided facility department heads and Brookdale’s senior management significant bonuses for staying at or below Brookdale’s budgeted expense limits — the largest of which was staffing.”

LTCCC has long had an interest in improving safety and accountability in assisted living facilities. There are currently no federal quality standards for assisted living. Though assisted living facilities are increasingly providing care to residents with similar needs to nursing homes (including dementia care), state standards tend to be minimal and weakly enforced as a result of industry lobbying. Thus, the existence of this lawsuit and the claims alleged are of particular interest.

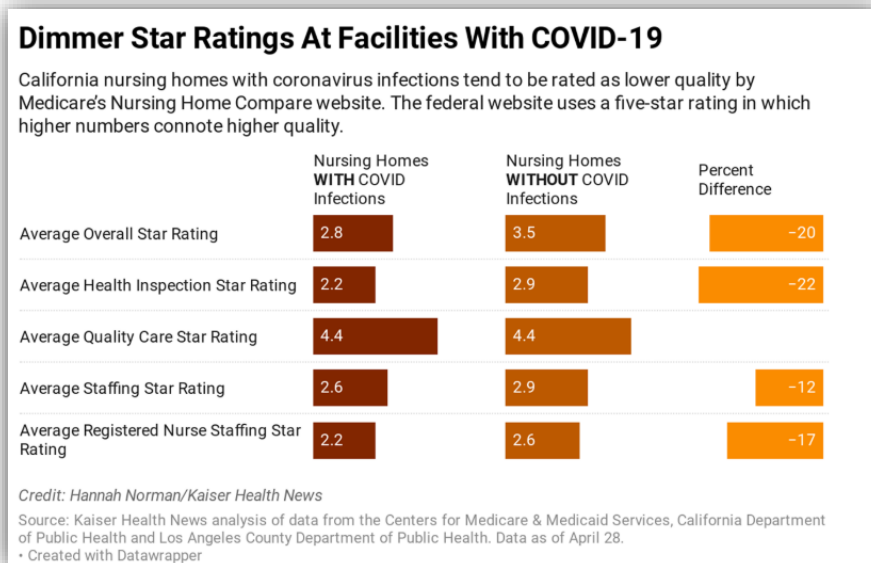
- In April, LTCCC released a series of updated [Assisted Living Guidebooks](#) to help achieve the promise of assisted living by fostering independence and choice. Originally published in 2005,

the guidebooks are updated to reflect current circumstances for both seniors and the industry. Guidebooks for [prospective residents and families](#), [current residents](#), [owners and managers](#), and [direct care staff](#), are available at <https://nursinghome411.org/assisted-living-guidebooks/>.

- In a 2018 report, [LTCCC identified promising policies and practices](#) to improve care, safety, and dignity. The report also offers recommendations for prospective residents, facility operators, and policymakers.

KHN: CALIFORNIA’S COVID-PLAGUED FACILITIES HAD HISTORY OF PROBLEMS

A [Kaiser Health News \(KHN\) analysis](#) of California nursing homes found that facilities with COVID-19 outbreaks had a history of understaffing and failing basic staffing and infection control rules. The May 4 report found that California facilities with one or more COVID-19 patients had on average a 25 percent fewer registered nurses per resident in the final three months of 2019. Further, 91 percent of facilities reporting at least one COVID-19 case had a previous health violation for not following infection control rules compared to 81 percent without reported cases.



“With low RN staffing, it is not surprising that these facilities have had previous violations for infection control and poorer overall quality as measured by having more deficiencies,” Charlene Harrington, a renowned researcher of nursing homes and professor emerita of the School of Nursing at the University of California-San Francisco, told KHN. “It is a classic situation that reaffirms what researchers have found previously, only the situation with the COVID-19 virus is far more serious than anything the nursing homes have experienced before.”

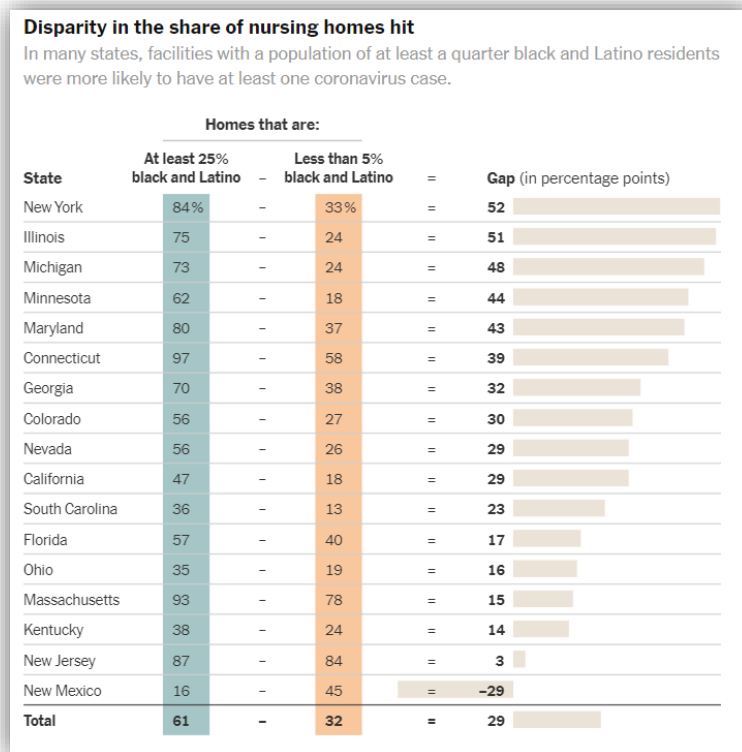
RACIAL DISPARITIES IN COVID-19 NURSING HOME TOLL

COVID-19 has inflicted immeasurable harm to residents in long-term care facilities across the United States, but a new report indicates it has been more virulent toward African Americans and Latinos.

A [New York Times investigation](#) found that nursing homes with a significant number of black and Latino residents have been twice as likely to get hit by coronavirus compared to majority white nursing homes. The racial disparities in coronavirus burdens remained when adjusting for a variety of factors including facility location and size, according to the analysis conducted by *The Times* in partnership with *The Baltimore Sun*, *KPCC/LAist* and *The Southern Illinoisan*. For example, a home in an urban area was more likely to get hit by the virus if it had a larger black and Latino population compared to if it had a smaller black and Latino population.

The striking racial disparities in resident outcomes during COVID-19 are consistent with those found among nursing home resident outcomes prior to the pandemic. *The Times* reports that facilities with more black and Latino residents tended to score worse than mostly white homes on quality metrics and more likely to have been punished for serious violations of the standards of care. Furthermore, [previous research has found](#) that racial/ethnic minorities are more likely than whites to be cared for in nursing homes with limited clinical and financial resources, low nurse staffing levels, and more care deficiency citations.

These findings highlight the need to further examine and address the role of racial disparities in COVID-19 outcomes and in COVID-19 risk factors, including nursing home staffing levels, the nature and scope of deficiency citations, and other indicators relevant to quality and safety.



The New York Times

[LTCCC LAUNCHES CORONAVIRUS RESOURCE CENTER](#)

LTCCC is publishing critical information on the new [Coronavirus Resource Center](#) to help residents and those working with them during this difficult time. This page provides information on COVID-19 in long-term care settings to help you navigate this crisis including fact sheets on [infection control](#) and [Cares Act “stimulus checks,”](#) information on [COVID-19 fatalities and cases](#), [facility staffing data](#), federal guidance, and more. The Coronavirus Resource Center is regularly updated with new resources from LTCCC and other advocacy organizations.

[COVID-19 ESSENTIAL CHECKLISTS FOR MOVING HOME](#)

Two new checklists - [“Keeping Family Together During COVID-19: A Checklist”](#) and [“Should I Take My Loved One Home During the COVID-19 Crisis?”](#) - are available from the [National Center on Elder Abuse](#) and the [National Consumer Voice for Quality Long-Term Care](#). In an effort to help keep families from falling apart while coming together, these checklists were created to serve as a blue print for thoughtful conversations in the beginning to avoid awkward conversations later.

LTCCC IN THE MEDIA

LTCCC has been a leading voice advocating for residents in nursing homes and other long-term care facilities during the COVID-19 crisis. Following are some of the recent publications in which LTCCC has appeared:

- LTCCC Executive Director Richard Mollot penned a [New York Times op-ed](#), “Nursing Homes Were a Disaster Waiting to Happen,” on how the existing problems in U.S. nursing homes exacerbated the devastating effects of COVID-19. “So we can’t accept industry excuses about costs or give in to Trump administration efforts to undermine regulatory standards and reduce the already low frequency of inspections. Instead, existing standards need to be more strictly enforced, and tougher standards need to be put in place. Residents’ lives depend on it.
- LTCCC’s ombudsman program has played a pivotal role as a voice for residents during the pandemic. Gloria Murray, ombudsman program director for LTCCC, spoke to [Hudson Valley 360](#) for an article detailing concerns from residents and family members over conditions at a Livingston Hills Nursing and Rehabilitation Center in Hudson. “They are concerned, staffing has always been a concern, a question because there is always a shortage,” Murray said.
- Richard Mollot [spoke to NPR](#) about the concerns over giving nursing homes civil immunity protections during the COVID-19 emergency. “Providing blanket immunity to nursing homes for any kind of substandard care, abuse or neglect is an extremely poor and dangerous idea anytime and particularly so in regard to COVID-19.”
- LTCCC has also been featured by [Fox News](#), [Kaiser Health News](#), [New York Post](#), [ProPublica](#), [Time](#), and dozens of other publications.

“Providing blanket immunity to nursing homes for any kind of substandard care, abuse or neglect is an extremely poor and dangerous idea anytime and particularly so in regard to COVID-19.”

- Richard Mollot, LTCCC

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'S "NURSING HOME 411 PODCAST"

LTCCC recently launched the "Nursing Home 411 Podcast," a podcast series featuring topical interviews, issue-oriented programming, and audio versions of our webinars. Recent episodes include discussions on [the hidden costs of COVID-19](#), [food safety in nursing homes](#), and [why nursing home ombudsmen are 'the best kept secret.'](#) Episodes are available on our website at <https://nursinghome411.org/podcast/>, and on [Spotify](#), [Apple Podcasts](#), and [Google Podcasts](#).

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