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GOVERNMENT STANDARDS & QUALITY ASSURANCE

OIG: NURSING HOME STAFFING INSUFFICIENT, INCONSISTENT

Sufficient staffing is a leading indicator of nursing home quality and safety. It is *essential* to the health and wellbeing of residents in long-term care settings. Unfortunately, study after study has shown that severe understaffing is a widespread and pervasive problem in U.S. nursing homes.

[A new federal study by the HHS Office of Inspector General \(OIG\)](#) shows once again that too many nursing homes are failing their residents, and not providing the federally required minimum staffing. According to federal law, nursing homes must have a Registered Nurse (RN) on duty at least eight consecutive hours each day and must staff a licensed nurse at all times. The report, which examined 2018 staffing data, found that 7 percent of nursing homes failed to meet staffing requirements for at least 30 days and another 7 percent failed to meet those requirements for 16 to 29 days.

“My residents go for a week at a time without being showered,” said a Texas ombudsman, quoted in the report. “They complain of

About 1 in 7 nursing homes reported **at least 16 total days** with staffing below required levels in 2018, according to OIG.

not getting their medications on time, which causes pain and agitation. We are already dealing with a population that has behavioral issues; add medications not being given in a timely manner, if at all, it's just not a good mix.”

Staffing levels were especially problematic on weekends; almost two-thirds of the reported understaffing days fell on Saturday and Sunday (see Exhibit 2). Inconsistent staffing levels can leave residents without their accustomed support and supervision, resulting in substandard care and neglect. Residents' care needs don't take off weekends; facilities shouldn't either.

The study also identified issues with CMS's Nursing Home Compare five-star staffing rating system (1 = below average quality; 5 = above average quality). The rating system measures quarterly averages (adjusted by residents' care needs) and thus does not capture the day-to-day staffing compliance. For example, the study found that facility reported staffing levels were either below or above their assigned staffing rating for roughly half the days. Thus, consumers using Nursing Home Compare to identify staffing performance cannot distinguish between a facility with consistent staffing and one with volatile staffing.

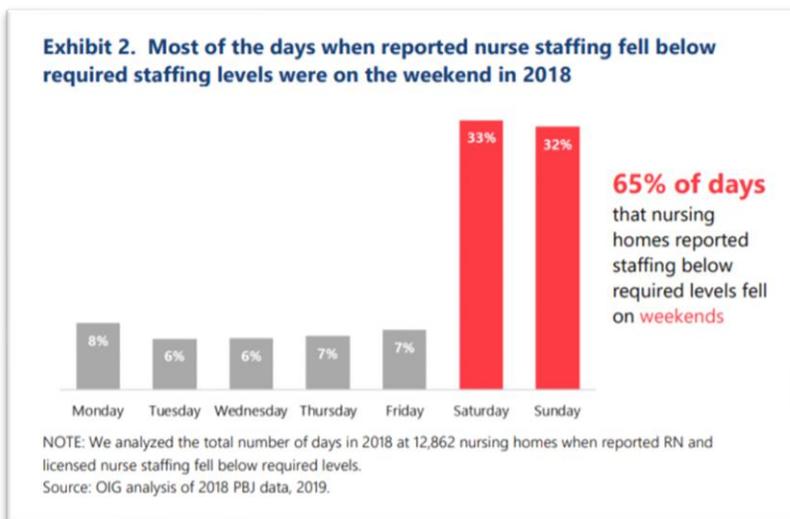
The report has important implications for CMS, particularly in its response to the COVID-19 pandemic. Insufficient staffing has exacerbated the already devastating consequences suffered by residents. However, the extent of understaffing for the months leading up to and at the beginning of the pandemic may never be known because CMS gave nursing homes a holiday from staff reporting requirements for January – March of this year.

The OIG report recommends that CMS **1)** Enhances efforts to ensure nursing homes meet daily staffing requirements and **2)** Improve transparency by providing consumers with additional information on nursing home staffing. By following these recommendations, CMS can help ensure that facilities are providing sufficient staffing to care for residents during COVID-19 and beyond.

- LTCCC publishes quarterly nursing home staffing data for every U.S. nursing home (in compliance with mandatory reporting requirements). Data for the fourth quarter of 2019 is available here: <https://nursinghome411.org/nursing-home-staffing-2019-q4/>.

CMS LOOSENS COVID-19 VISITATION RESTRICTIONS

After waiting more than half a year, many nursing home and assisted living residents are finally able to see their loved ones. In September, [CMS issued new federal guidelines](#) on nursing home visitation allowing residents greater access to in-person visits from family, friends, and ombudsmen.



“My residents go for a week at a time without being showered.”

- Texas Ombudsman

The new guidelines promote outdoor visitation “whenever practicable,” safe indoor visitation, visitor testing, and compassionate care visits. Facilities without COVID-19 cases in the last 14 days in counties with low or medium positivity rates “**must** facilitate in-person visitation consistent with the regulations,” according to CMS. “Failure to facilitate visitation, without adequate reason related to clinical necessity or resident safety, would constitute a potential violation of 42 CFR 483.10(f)(4), and the facility would be subject to citation and enforcement actions.”

CMS also announced that it will approve the use of CMP (civil money penalty) funds to help visitation through the purchase of tents for outdoor visitation and/or clear dividers (e.g., Plexiglas) creating physical barriers to reduce risk of transmission during in-person visits.

The new guidelines are an important and long overdue step toward normalizing life for residents. Visits from family and friends are important for both physical and emotional well-being. They provide residents with social connection, emotional support, and essential monitoring and care. In the absence of visitation, many residents have been suffering serious health declines, experiencing significant weight loss, increased pressure ulcers, and even death due to loneliness. Family members, understandably, have been fed up and desperate. By voicing your concerns and pressuring lawmakers, you helped make a difference.

- On the Nursing Home 411 Podcast, LTCCC spoke with families about their experiences navigating visitation restrictions during the COVID-19 pandemic. Listen to the episode at <https://nursinghome411.org/podcast/visitation-saves-lives-covid/>.

FOLLOWING THE FUNDING

Nursing homes have received billions of dollars in federal and state funds in response to the COVID-19 pandemic. But where is the money going?

A [Washington Post report](#) found that hundreds of millions of dollars in “no strings attached” coronavirus relief aid have been provided to for-profit nursing home providers accused of “Medicare fraud and kickbacks, labor violations or widespread failures in patient care.”

According to *The Post*, more than \$300 million in relief payments has been given to nursing home companies sued for Medicare fraud in recent years. A leading beneficiary of provider relief has been SavaSeniorCare, whose homes have received more than \$65 million in COVID-19 relief aid despite the company being accused in federal court of putting residents into unnecessary therapy services and delaying their release in order to boost Medicare payments.

Providers with widely publicized lapses during the pandemic have also been compensated handsomely. This includes a Pennsylvania facility cited for administering the experimental anti-malarial drug, hydroxychloroquine, to 200 residents, and a New Jersey facility where 17 residents were stored in a makeshift morgue, and another in a shed. Life Care Center of Kirkland, the Washington facility with the first known coronavirus outbreak in the U.S., received more than \$300,000 in pandemic relief despite CMS’s finding that their home failed to properly care for sick residents or alert authorities to the spread of illness.

The nursing home industry has received about \$7.6 billion in federal grants through the federal economic stimulus package and is set to receive \$5 billion more, [according to a New York Times](#)

“The industry is using this epidemic to win a get-out-of-jail-free card.”

- Toby Edelman, CMA

[report](#). This is in addition to the estimated \$11 billion in government loans and advance Medicare payments. Unfortunately, these payments were protected only by loose guardrails and lacked requirements for resident-centered spending on resources such as personal protective equipment or hazard pay for nurses and aides. Too many providers appear to have taken advantage of these programs without using the funds to safeguard residents or care staff.

Despite this lack of accountability, nursing home industry leaders continue to lobby for federal assistance to improve their bottom lines. Some of the largest nursing home companies have assembled lobbyists to fight for direct government aid, tax breaks, and immunity litigation. Among them is Genesis Healthcare, the U.S.'s largest nursing home chain, which hired two former top White House aides, and LifeCare Centers of America – home of the Kirkland facility – which hired four former Republican Senate aides.

“The industry is using this epidemic to win a get-out-of-jail-free card,” Toby Edelman, a senior lawyer at the Center for Medicare Advocacy, told *The New York Times*.

- In the Nursing Home 411 Podcast, [Atlanta-based attorney Will Smith discusses the implications of immunity laws](#) shielding nursing homes from coronavirus related litigation.
- LTCCC has been working with the Consumer Voice and other organizations in opposition of legislation that would grant immunity to nursing homes and other long-term care facilities during the COVID-19 pandemic. We urge readers to tell congress to say NO to immunity [by completing a form on the Consumer Voice website](#).

LTC NEWS & BRIEFS

ANTIPSYCHOTIC DRUG EPIDEMIC RAVAGING NURSING HOMES

Don't let the declining citation totals fool you: inappropriate drugging in nursing homes continues to be a serious and widespread problem.

[A new study by the U.S. House of Representatives Committee on Ways and Means Majority](#) found that approximately one in five residents in skilled nursing facilities (SNF) – about 300,000 people every week – received antipsychotic medication, most without an appropriate clinical diagnosis for which the drugs are indicated. Nursing homes throughout the country routinely administer these drugs despite the Food and Drug Administration's (FDA) black box warning against using antipsychotics on elderly patients. Studies have shown that inappropriate antipsychotic drugging can damage social and emotional well-being while increasing risks of stroke, heart attack, diabetes, Parkinsonism, and falls.

According to the new Congressional study, although high levels of dangerous and inappropriate drugging persist, citations for over-prescribing antipsychotics decreased by 22 percent from 2017 to 2018 under the Trump Administration. This deviates from previous trends as citations had increased 200 percent between 2015 to 2017. LTCCC is concerned that the lack of accountability and oversight in nursing homes is putting residents in grave danger of the deleterious effects of antipsychotics.

“There really are no excuses for people to be getting these drugs when they shouldn't be.”

- Rachel Dolin, Ways & Means

“There really are no excuses for people to be getting these drugs when they shouldn’t be,” [Rachel Dolin, the study’s lead author, told NPR](#). “We can’t, as a nation, pat ourselves on the back for relative success, when relative success really means nothing to patients and families, if they suffer because they did not get the right care.”

- Visit [NursingHome411](#) to access the latest antipsychotic drugging rates for every US nursing home for the [third quarter](#) and [fourth quarter of 2019](#). Individual data files are available for each US state. They can be sorted by facility, county, zip code, and antipsychotic drugging rates.
- Watch LTCCC’s Webinar, “[Understanding & Advocating for Residents with Dementia](#)” to learn more about advocating for residents with dementia.
- Check out [LTCCC’s Dementia Care Advocacy Toolkit](#), which information on antipsychotic drugging and fact sheets on relevant rules related to dementia care, services, and reducing inappropriate drugging.

OUTLIERS: THE COVID-19 FREE FACILITIES

COVID-19 has likely led to at least 70,000 deaths in long-term care facilities nationwide. Some nursing homes, however, are beating the odds and keeping out COVID-19, thanks to investments in infection control, testing, PPE, and staffing.

The California’s Department of Veterans Affairs (CalVet) is home to several of these outlier COVID-free facilities. [According to Politico](#), only two of the 2,100 residents in CalVet facilities have died from the coronavirus, and a resident of a CalVet home is 31 times less likely to die from the coronavirus than an average nursing home resident in California. Experts attribute CalVet’s success to rigorous testing, contact tracing, PPE supply, and sufficient staffing.

In West Baltimore, the [Maryland Baptist Aged Home has relied on a comprehensive infection control program](#) and a dedicated staff to keep out COVID-19. The facility has also hired extra staff to spend time with residents, help them exercise, and play board games with them, according to the *Baltimore Sun*. “It takes a team. A family,” Johana Walburn, Maryland Baptist’s administrator, [said in an interview with the Nursing Home 411 Podcast](#).

Green House (GH) homes, designed for single-person rooms, have also reported better COVID-19 outcomes than traditional skilled nursing facilities. A June 2020 report found that 95% of GH facilities did not have COVID-19 cases. Of the 256 GH facilities (SNF, assisted living, family care), there have been a total of 47 COVID-19 cases and four COVID-19 deaths, according to the report.

These facilities are outliers, but they did not need to be. The success stories in CalVet, Maryland Baptist, and at the GH homes show that much of COVID-19’s devastating effects on long-term care residents were avoidable.

**“It takes a team.
A family.”**

- Johana Walburn,
Maryland Baptist

- In a July webinar, LTCCC examined the academic research on COVID-19 outcomes in long-term care settings. Numerous studies have found that facilities with low staffing, for-profit ownership, and more minority residents have experienced higher rates of COVID-19 cases and fatalities. [Watch the webinar on LTCCC’s YouTube channel](#).

- LTCCC is providing weekly data updates on [COVID-19-related deaths in New York’s nursing homes \(NHs\) and adult care facilities \(ACFs\)](#), as well as [facility-level case and fatality data for all U.S. nursing homes](#).

STUDY: HOME HEALTH CARE WORKERS ‘FORGOTTEN’ DURING COVID-19

Home health care workers (HHCWs) serve an important role in supporting community-dwelling adults and have served on the frontline during the COVID-19 pandemic. Unfortunately, they are too often forgotten by the medical community and society at large.

A [new study in JAMA Internal Medicine](#) sought to understand the experiences of HHCWs caring for patients in New York City during the COVID-19 pandemic. Based on interviews with 33 HHCWs, five key themes emerged. HHCWs:

1. Felt invisible despite being on the front lines of the pandemic;
2. Reported a heightened risk for COVID-19 transmission;
3. Received varying amounts of support from their home care agencies (information, supplies, and training);
4. Relied on nonagency alternatives for support; and
5. Were forced to make difficult trade-offs between their own health and finances.

“We’re definitely a forgotten field. ... it would be nice for people to show us gratitude.”

- A Home Health Care Worker

The COVID-pandemic has exacerbated challenges faced by HHCWs, long a marginalized workforce comprised largely of middle-aged women and racial/ethnic minorities earning low wages. As one HHCW described it, “We’re definitely a forgotten field. . . . You hear people clapping, thanking doctors and nurses, even the hospital cleaning staff. . . . I’m not doing this because I want praise; I love what I do. But it would be nice for people to show us gratitude.” The findings demonstrate the need for interventions and policies that better support HHCWs and ultimately, protect the patients they serve.

CHECK OUT LTCCC’S CORONAVIRUS RESOURCE CENTER

LTCCC is publishing critical information on the [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 the crisis, including fact sheets on [nursing home care and the coronavirus](#), [infection control information](#), COVID-19 data, and more. The Coronavirus Resource Center is regularly updated with new resources from LTCCC, other advocacy organizations, and government agencies.

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’s Tri-County Ombudsman Director Judy Farrell and Executive Director Richard Mollot both testified on August 3rd in front of a live Zoom audience at [a New York State Assembly joint public hearing](#) on residential health care facilities and COVID-19. [Farrell’s testimony, based on hundreds of heartbreaking conversations with families and residents](#), provided critical

perspective on how isolation is affecting the health, cognitive capacity, and lives of so many residents. “We must all work to ensure that we are prepared for the next outbreak and that we do everything we can to protect New York’s elderly population and people with disabilities,” Farrell said.

- On August 13th, Richard Mollot testified about the impact of the COVID-19 pandemic on New Jersey’s nursing home residents before a [meeting](#) of the [New Jersey Senate Health, Human Services and Senior Citizens](#).
- Speaking to [The New York Times](#), LTCCC’s Richard Mollot said the nursing home industry should shoulder much of the responsibility for the 7,000 COVID-19 deaths in New York state’s long-term care facilities, as it has failed residents both before and during the pandemic. “These deaths were not inevitable.”
- A [ProPublica investigation](#) detailed how a major New Jersey nursing home chain, CareOne, experienced deadly COVID-19 outbreaks after designating their facilities as COVID-capable and taking in COVID-19 patients. “It’s hard to imagine any circumstance where the entity doing the evaluation should also be the one profiting off of the outcome of that evaluation when peoples’ lives are at stake,” Mollot told ProPublica.
- LTCCC has also been featured by [ABC News](#), [The Buffalo News](#), [The Atlanta Journal-Constitution](#), [Stateline](#), and in dozens of other publications.

“We must all work to ensure that we are prepared for the next outbreak.”

- Judy Farrell, LTC
Ombudsman Coordinator

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 Zoom 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’s “Nursing Home 411 Podcast” features topical interviews, issue-oriented programming, and audio versions of our webinars. Recent episodes topics include [visitation during COVID-19](#), [nursing home law](#), and the [perils of long-term care privatization](#). Listen to the Nursing Home 411 Podcast on

our website at <https://nursinghome411.org/podcast/>, and on [Spotify](#), [Apple Podcasts](#), and [Google Podcasts](#).

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Staff: Richard J. Mollot, Executive Director; Sara Rosenberg, Office Manager; Hayley Cronquist, Policy Attorney; Eric Goldwein, Director of Policy and Communication; Gloria Murray, Ombudsman Program Director; and Judy Farrell, Ombudsman Program Director.

Board of Directors: Deborah Truhowsky, Esq., President; Joan Burke; Patricia Fildes-Vosburg; Geoffrey Lieberman; Martin Petroff, Esq.; Eilon Caspi, PhD; and Dennis Rosen.

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