Nursing Home Reform: The COVID Crisis and Regulations, Oversight and the Economics of Nursing Homes

John Dalli, Dalli & Marino, LLP Richard Mollot, Long Term Care Community Coalition

+ Today's Agenda

Hour One

- Speaker Introductions
- COVID: How We Got Here.
- The Nursing Home System & Standards
 - Nursing Home Reform Law
 - Admission Standards
 - Staffing: Quality & Quantity
 - Infection Control
- Oversight & Enforcement of Standards
 - CMS/DOH
 - Inspections, Complaints & Enforcement
 - Results

Hour Two

- Nursing Home Economics in NY
 - Funding (Medicare/Medicaid/Private Pay)
 - Ownership
 - Size
 - Demographics & Disabilities
- Immunity
- Time for Questions and Answers

- + Richard Mollot: The Long Term Care Community Coalition
 - LTCCC: Nonprofit, nonpartisan organization dedicated to improving care & quality of life for the elderly & adult disabled in long term care (LTC).
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- Our focus: People who live in nursing homes & assisted living.

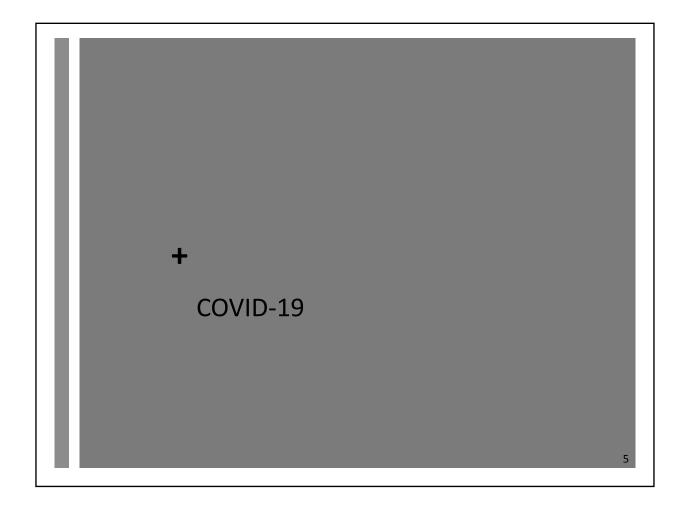
■ What we do:

- Policy analysis and systems advocacy in NYS & nationally;
- Education of consumers and families, LTC ombudsmen, and other stakeholders;
- Sponsor of two local LTC ombudsman programs.
- Richard Mollot: Joined LTCCC in 2002. Executive director since 2005. Member of Maryland Bar.

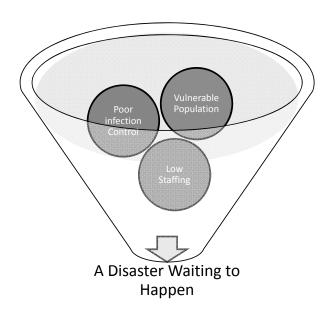
↑ John Dalli: Dalli & Marino, LLP



- John Dalli is a founding Partner of the firm and has been prosecuting cases under the Public Health Law on behalf of families whose loved ones have been injured or abused in Nursing Homes since 2007
- Our Practice:
- Dalli & Marino, LLP has litigated hundreds of cases involving Nursing Home residents who are neglected and/or abused and suffer injuries such as pressure ulcers, falls, medication errors and wrongful death.
- Our firm is committed to holding Nursing Homes accountable for negligent care and to obtain justice for our clients and their families.



+ COVID-19's Impact on Nursing Home Residents



U.S. GAO: <u>Infection Control</u>
<u>Deficiencies Were</u>
<u>Widespread and Persistent in</u>
<u>Nursing Homes Prior to</u>
<u>COVID-19 Pandemic</u>

N.Y. Times: <u>Nursing Homes</u> Were a Disaster Waiting to <u>Happen</u>

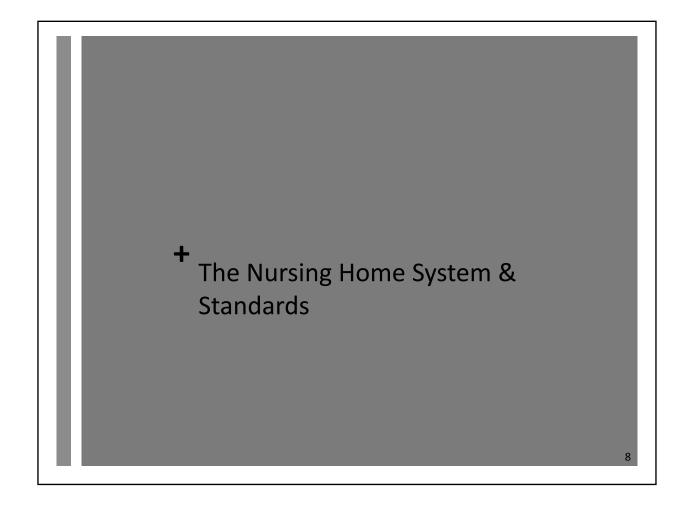
NPR: <u>For Most States, At</u>
<u>Least A Third Of COVID-19</u>
<u>Deaths Are In Long-Term Care</u>
<u>Facilities</u>

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The March 25, 2020 Directive- The Impact on Nursing Home Residents



- The New York State Department of Health issued a directive on March 25th whereby Nursing Homes were not permitted to refuse admission or readmission to COVID positive residents based on a confirmed or suspected case of COVID, IF the Nursing Home could safely care for that resident.
- The Cuomo Administration has argued that the March 25th directive was based on guidance from the CDC that Nursing Home residents not be discriminated against. Therefore, the Department of Health was leaving the final decision on acceptance of a confirmed or suspected COVID positive resident to the Nursing Home administration.
- Nursing Homes owners need residents in their facilities to make money and there were Nursing Homes who accepted residents they could not adequately protect, leading to increased spread of the virus and an increased number of deaths.



+ The Nursing Home System in a Nutshell

- The vast majority of 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 federal 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 Nursing Home Reform Law

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The Nursing Home Reform Law (aka OBRA 87) requires that **every nursing home resident** is provided the care and quality of life services sufficient to attain and maintain his or her **highest practicable** physical, emotional, and psycho-social **well-being**.

- + The Nursing Home Reform Law
 - ■Emphasis on individualized,
 resident-centered care to reduce
 problems, including abuse and
 neglect, and ensure that residents
 are treated with dignity and have a
 quality of life.
 - ■The law lays out specific **resident rights**, from good care and
 monitoring to a quality of life that
 maximizes choice, dignity and
 autonomy.





+ The Nursing Home Reform Law

How Does the Law Connect to a Resident's Experience?

- Every nursing home that is licensed under Medicare/Medicaid agrees to meet (or exceed) the standards in the Nursing Home Reform Law.
- These standards must be met for all residents, no matter if their care is paid for by Medicare, Medicaid, private pay, etc...
- The Reform Law is implemented through regulatory requirements, called the **Requirements for Participation**.
- In addition to the Requirements, CMS issues Interpretive Guidance for providers, surveyors (inspectors), and the public that explain what the expectations are in respect to each regulatory Requirement.

+ Regulatory Standards: Care & Services

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Care and services must be **resident-centered** – Focused on the resident as an individual and...

- Based on his or her **medical**, **nursing**, and **mental** and **psychosocial needs**.
- Based on resident's **goals** and **desired outcomes**.
- Based on a **comprehensive resident assessment** that includes...
 - ✓ customary routine,
 - √ cognitive patterns,
 - ✓ mood,
 - ✓ ability to and methods of communication, and
 - ✓ physical, dental and nutritional status.

+ Regulatory Standards: Care & Services

In other words...

The care plan <u>must</u> be based on the assessment. In other words, it must come from the resident's needs and abilities, not the services or staffing levels which the nursing home decides to provide based on its financial (or other) priorities.

+ Fact Sheet: Resident Assessment & Care Planning

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LONG TERM CARE

COMMUNITY COALITION Advancing Quality, Dignity & Justice

CONSUMER FACTSHEET: RESIDENT ASSESSMENT & CARE PLANNING

There are many standards which nursing homes are required to follow in order to ensure that residents receive appropriate care, have a good quality of life and are treated with dignity. YOU can use these standards as a basis for advocating in your nursing home. Following are two important standards for residents assessment and care planning with information that can help you understand and use them to advocate for your resident. (Note Th brackes provide the relevant feederal regulation (CFR) and F-larg (category of deficiency).

- I. RESIDENT ASSESSMENT [42 CFR 483.20 F-636]
- The facility must conduct initially and periodically a comprehensive, accurate, standardized reproducible assessment of each resident's functional capacity.
- A facility must make a comprehensive assessment of a resident's needs, strengths, goals, life
 history and preferences, using the resident assessment instrument (RAI) specified by CMS.
- The assessment must include at least the following:

 Identification and demographic information.

 Customary routine.

 Cognitive patterns.

 Communication.
- Vision.

 Mood and behavior patterns.

 Psychosocial well-being.

 Physical functioning and structural problems.

 Continence.

- Melancionos.
 Speciol trestments and procedures.
 Discharge planning.
 Discharge pl

II. COMPREHENSIVE PERSON-CENTERED CARE PLANNING [42 CFR 483.21]

The facility must develop and implement a comprehensive person-emerad care plan for each resident, consistent with. ... resident rights..., that includes measurable objectives and simplemes to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment. The comprehensive care plan must describe the following: The services that are to be furnished to attain or mointain the resident's highest practicable physical, mental, and psychosocial well-being...

- Any services that would otherwise be required... but are not provided due to the resident's exercise of rights..., including the right to refuse treatment...
- In consultation with the resident and the resident's representative(s)—
- The resident's goals for admission and desired outcomes.
 The resident's preference and potential for future disknape. Facilities must document whether the resident's desire to return to the commandy was assessed and any referrals to local contact agencies and/or other appropriate entities, for this purpose.
 Disknape plans in the comprehensive care plan, as appropriate.

A comprehensive care plan must be...Developed within 7 days after completion of the comprehensive assessment.

IMPORTANT NOTE: The new federal nursing home standards greatly expanded expectations for care planning. See the "LTCCC Factsheet Care Planning Requirements" for important details on how care plans must be developed and care ed out.

BASIC CONSIDERATION TO KEEP IN MIND

- A facility must make an assessment of the resident's capacity, needs and preferences.

 The assessment must include avider ange of resident needs and abilities, including customary routine, cognitive patterns, mood, ability to and methods of communication, physical, deriff and nutritional size status.

 A facility is expected to primarily rely on direct observation and communication with the resident in other to assess his on the functional capacity.

 In addition to direct observation and communication with the resident, the facility must use a variety of other sources, including communication with care saff on all shifts.

 A resident's care plain "instat describe. the services to be furnished to attain or maintain the resident's highest practicable physical, mental and psychosocial week-being..."

 The care plain must be based on the assessment. In other words, it must come from the resident's cased and abilities, not the services of saffing levels which the nursing home decides to provide based on its financial (or other) priorities.

RESOURCES

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care, training materials and other resources.

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Regulatory Standards: Staffing

LONG TERM CARE COMMUNITY COALITION

CONSUMER FACT SHEET:

REQUIREMENTS FOR NURSING HOME CARE STAFF & ADMINISTRATION

Staffing is widely considered to be the most important factor in the quality of care provided in a nursing home. Too often, facilities fail to have sufficient staff or the staff does not have the appropriate knowledge and competencies to provide the care residents need. Thus, federal requirements for sufficient and competent staff are critical to support resident-centered advocacy to ensure that recidents are safe and that they receive appropriate services. This is what we pay for and what every facility agrees to provide for all of its residents when it participates in Medicald/Medicare.

Below are relevant standards with descriptions excerpted from the federal regulations, followed by some points for you to consider when you advocate on these issues. [Note: The brackets below provide, for reference, the applicable federal regulation (42 CFR) and the F-tag number used when a facility is cited for failing to meet the standard.]

I. Fundamental Requirements for Nursing Services [42 CFR 483.35 F-725]
The facility must have sufficient nursing staff with the appropriate competencies and skills sets to
provide nursing and related services to assure resident softery and attain or maintain the highest
practicable physical, mental, and psychosocial well-being of each resident, as determined by resident
assessments and individual plans of care and considering the number, ecuity and diagnoses of the
facility's resident population...

II. Sufficient Staffing Levels [42 CFR 483.35(a) F-725]

The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) ...licensed nurses; and (ii) Other nursing personnel, including but not limited to nurse aides.

III. Nurse Aide Competency [42 CFR 483.35(d) F-728]

General rule. A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless—

That individual is competent to provide nursing and nursing related services; and

That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State...; or

That individual has been deemed or determined competent [based on long-term experience and other

Non-permanent employees. A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the [above] requirements....

LTCCC Fact Sheet: Care Staff & Administration Requirements

Considerations for Resident-Centered Advocacy – Staffing Competency & Quantity:

- onsiderations for Resident-Centered Advocacy Staffing Competency & Quantity;
 Note the reference to the 1987 Nursing Home Reform Law's requirement that reuring home services must be sufficient to assure that residents attain and maintain their "highest practicable physical, mental and psychosocial well-being." This means that services must be tailored to what residents need, not what the facility wishes to provide based on its profit margins and financial goals.

 Nursing services must be both sufficient and competent to fulfill the needs identified in each and every resident's assessment and care plan.

 When a facility accepts a resident it is affirming that it has both enough staff to meet the care and service needs of that individual and that the staff it here and retains are appropriately trained to carry out this promise. When a facility lacks sufficient staff to meet the needs of the residents is breaking that promise and violating its agreement with the federal government.

IV. Nursing Home Administration [42 CFR 483.70 F835]

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

Federal guidelines state that, to order for a facility to be cited for substandard administration the surveyor's "investigation must demonstrate how the administration knew or should have known of the deficient practice and how the lock of administration involvement contributed to the deficient practice found."

This is important in two ways:

- Is the administrator aware of the specific problem or concerned about which you are advocating? Depending on the nature of the problem, and how long it has continued, it may be worth bringing it to the attention of the administrator and/or senior staff.

 Even if you do not know if the administrator has direct knowledge, there are numerous situations for which it is expected that an administrator is aware and accountable,
- studions for which it is eggetted into a norministrator is aware and accountaions, including;

 a. "Inflateged violations involving neglect, abuse, including injuries of unknown source, and/or misappropriation of resident property, by anyone furnishing services on behalf of the provider...

 b. very of provider..."

 or which is a provider of the facility policies/procedures, including to prohibit involutiony seclusion." and

 c. any reasonable suspicion of a crime against a resident.

RESOURCES

WWW.NURSINGHOME411.ORG, LTCCC's website includes materials on the relevant standards for nursing home care and a variety of resources on specific issues, such as dementia care, resident assessment and care planning, dignity and quality of life.

Regulatory Standards: Infection Control

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LONG TERM CARE

COMMUNITY COALITION

INFECTION PREVENTION AND CONTROL

FACT SHEET

Nursing homes are required to follow specific standards in order to ensure that residents receive riate care, have a good quality of life, and are treated with dignity. You can use these standards

infection prevention and control deficiencies are among the most frequently dited health violations in nursing homes. According to the Centers for Disease Control and Prevention (<u>CDC</u>), **1 to 3 million** serious infections occur every year in nursing home and assisted living facilities and as many as 388,000 residents die each year due to infections. Many infections can be prevented and controlled through basic precautions, such as hand hygiene.

Following are the standards we have identified as essential to infection prevention and control in nursing homes. The numbers below the descriptive title of each standard indicate the specific regulatory provision (42 C.F.R. XX) and relevant F-tag (tutlized by state and desar in inspectors when citing a nursing home for violation of the standard), Italicized text indicates that the language is quoted directly from federal Requirements or Guidance. For more information on infection prevention and control, please see LTCC's <u>issue Alert</u> or visit <u>www.NursingHome511.org</u> for all of our <u>fact sheets</u> on residents' rights and care standards.

- A system for preventing, identifying, reporting, investigating, and controlling infections and communicable diseases for all residents, staff, volunteers, visitars, and other individuals providing services under a controctual arrangement based upon the facility assessment...;

 Written standards, policies, and procedures for the program, which must include, but are not
- - nited to:

 O A system of surveillance designed to identify possible communicable diseases or infections before they can spread to other persons in the facility;

 o When and to whom possible incidents of communicable disease or infections should be

 - OWhen and to whom possible incidents of communicable disease or injections should be reported:
 Standard and transmission-based precoutions to be followed to prevent spread of infections:
 When and how isolation should be used for a resident; including but not limited to:
 The type and duration of the isolation, depending upon the infectious agent or organism involved, and

LTCCC Infection Prevention & Control Fact Sheet

- A requirement that the isolation should be the least restrictive possible for the resident under the circumstances.
 The circumstances under which the facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, direct contact will transmit the disease; and
 The hand hygiene procedures to be followed by staff involved in direct resident contact.

 A system for recording incidents identified under the facility's IPCP and the corrective actions taken by the facility.

Linens. Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

Annual review. The facility will conduct an annual review of its IPCP and update their program, as necessary.

NOTE: INFECTION PRECAUTIONS CANNOT BE OVERLY RESTRICTIVE

The Centers for Medicare & Medicaid Services (CMS) Guidance states that "transmission-based precautions should be the least restrictive possible for the resident based on his/her clinical situation and used for the least amount of time." CMS adds that staff must ke measures to reduce or minimize any potential psychosocial side effects of a resident's isolation (such as boredom, anger, and depression). CMS makes clear that nurning homes must continue to ensure that each resident's individualized needs are meet, including those for activities.

The facility must establish an infection prevention and control program (IPCP) that must include, at a minimum, the following elements:

An antibiotic stewardship program that includes antibiotic use protocols and a system to monitor antibiotic use.

NOTE: OVERUSE OF ANTIBIOTICS IN NURSING HOMES IS DANGEROUS & HARMFUL

According to the CDC, "studies have shown that 40-75% of antibiotics prescribed in nursing According to the <u>Subs</u>, satures have a simon with a Wo-750 or a minutous present user in instange, homes may be unnecessary or inappropriate. Harms from antibiotic oversue are significant for the firal and older adults receiving care in nursing homes. These harms include risk of serious diarrheal infections from Clostridium difficile, increased adverse drug events and drug interactions, and colonization and/or infection with antibiotic-resistant organisms."

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Regulatory Standards: Infection Control

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LTCCC Infection Prevention & Control Fact Sheet

Infection Preventionist

42 C.F.R. §§ 483.80(b), 483.80(c) | F882

The facility must designate one or more individual(s) as the infection preventionist(s) (IP)(s) who are responsible for the facility's IPCP. The IP must:

- Have primary professional training in nursing, medical technology, microbiology, epidemiology, or other related field:
 Be qualified by education, training, experience or certification;
 Work at least part-time at the facility; and
 Have completed specialized training in infection prevention and control.

IP participation on quality assessment and assurance committee. The individual designated as the IP, or at least one of the individuals if there is more than one IP, must be a member of the facility's quality assessment and assurance committee and report to the committee on the IPCP on a regular basis.

The federal requirement that nursing homes have an infection preventionist in the facility at least on a part time basis was established in 2016 in response to concerns about high rates of infections and deaths among nursing home residents. However, in July 2019, in response to unsing home industry lobbying efforts to reduce safety standards, CMIs issued a proposed rule that would roll back the infection preventionist standard. Specifically, CMS is proposing to allow facilities to have an infection preventionist who only devotes "sufficient" time to infection prevention and control. LTCC strongly opposes the proposed rule because a facility's determination of what is "sufficient" may be based on profit incentives rather than resident safety.

Note: Please check back periodically. We will update this fact sheet when the final rule has been published.

Influenza and Pneumococcal Immunizations

- Before offering the influenza immunization, each resident or the resident's representative
- receives education regarding the benefits and potential side effects of the immunization; Each resident is offered an influenza immunization October 1 through March 31 annually, unless
 the immunization is medically contraindicated or the resident has already been immunized
- The resident's medical record includes documentation that indicates, at a minimum, the following:

LTCCC Infection Prevention & Control Fact Sheet

- That the resident or resident's representative was provided education regarding th benefits and potential side effects of influenza immunization; and
 That the resident either received the influenza immunization or did not receive the influenza immunization due to medical contraindications or refusal.

Pneumococcal disease. The facility must develop policies and procedures to ensure that-

- Before offering the pneumococcal immunization, each resident or the resident's representative receives education regarding the benefits and potential side effects of the immunization:
- receives education regarding the benefits and potential side effects of the immunization:

 Each resident is offered a pneumococal immunization, unless the immunization is medically
 contraindicated or the resident has already been immunized:

 The resident or the resident's representative has the opportunity to refuse immunization; and

 The resident's medical record includes documentation that indicates, at a minimum, the
 following:

 That the resident or resident's representative was provided education regarding the
- - It results with the resident or resident's representative was provided education regarding the benefits and potential side effects of pneumococcal immunization; and That the resident either received the pneumococcal immunization or did not receive the pneumococcal immunization due to medical contraindication or refusal.

CMS states that vaccinations are essential to the health and well-being of nursing home residents, noting that outbreaks put both residents and staff at risk of infection. CMS notes that individuals "65 years or older are two to three times more likely than the younger population to get pneumococcal infections."

Additional Information & Resources

LTCCC strongly encourages nursing home residents to review their facility's infection prevention and control policies to ensure that adequate procedures are in place to deal with individual infections and outbreaks. The CDC has also developed Jo leve infection prevention questions that consumers should ask nursing homes. We recommend using the CDC resource as well as the information provided in this fact sheet to assist you in evaluating a nursing home's practices and protocols.

Recent outbreaks of infectious diseases in nursing homes across the country also suggest that nursing home residents at facilities with previous infection prevention and control violations are at a higher risk of experiencing harm. LTCC recommends that residents review their facility's health inspection records to determine whether infection prevention and control violations occurred in the previous few years. For the latest data on infection prevention and control violations at your nursing home or in your community, please vital tTCCC's <u>furning Home Data & Information</u> webpage.

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The Root Causes of Injuries in Nursing Homes



- Understaffing
- Lack of training
- Improper Assessments
- Poor Care Planning
- Inadequate Monitoring
- Failure to Report Injuries
- Lack of Enforcement

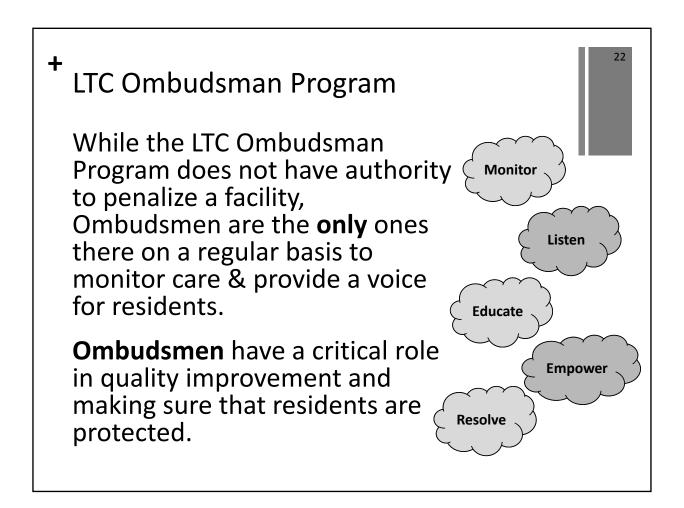




+ The Nursing Home Enforcement Agencies

■ US CMS.

- The federal agency, CMS, is responsible for paying for Medicare and Medicaid services in *every* setting nation-wide, for developing standards for provision of that care and for ensuring that those standards are met.
- o CMS contracts with the State Agencies to perform oversight functions.
- **NYS DOH.** The State Survey Agency, responsible for monitoring care and ensuring quality in NYS facilities.
- **NYS MFCU.** The Medicaid Fraud Control Unit, housed in the NYS Attorney General's office, also has an important role. By ensuring that public \$\$ is spent on quality services, it can hold nursing homes accountable for abuse and neglect. MFCU has its own abuse and neglect complaint line.
- **NYS Comptroller.** The Comptroller focuses on the integrity of public programs and public agencies. Because most nursing home care is paid for with public funds, they have a less direct but still important role in ensuring that residents receive decent care.



+ Background

As a result of the 1987 Nursing Home Reform Law, U.S. nursing homes are subject to a range of standards, with the goal of ensuring that every individual receives the care and services he or she needs to attain and maintain his or her highest practicable physical, emotional, and psycho-social well-being.

While the federal law and its implementing regulations are strong, weak enforcement over the years has resulted in persistent, system-wide failures to ensure that residents are safe and able to live with dignity.

+ Federal "Requirements of Participation"

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- Standards of care that facilities must meet in order to be eligible for public reimbursement (Medicare or Medicaid or, most often, both programs).
- Standards apply to all residents in the facility equally.
- Key principles:
 - ★ Each resident is to receive care and services, based on individualized assessment and care plan, to attain and maintain "the highest practicable physical, mental, and psychosocial wellbeing."
 - * Regulations made clear: resident should not decline unless the decline was medically unavoidable for that resident.
 - *Quality of life and dignity are essential components of the standards of care.

Problems in Implementation of Reform Law

Nursing home industry's power to influence state and federal regulatory agencies

Campaign contributions & Lobby associations

Poor enforcement of federal standards of care

Based, in part, on pervasive (though false) belief that facilities do not receive enough reimbursement to provide good care

Changing ownership/management of nursing homes hinders accountability

Chains and private equity firms separated ownership and management; multiple companies – sometimes related – involved in running facilities

+ Nursing Home Problems: Pervasive, Persistent, and Serious

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Over the decades, numerous studies, assessments, and audits have all indicated what most residents and families can tell you personally...



- + Nursing Home Problems: Pervasive, Persistent, and Serious
 - While conditions have improved since the Reform Law was implemented, substandard care, abuse, humiliating conditions persist.
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- Over 90% of nursing homes have insufficient care staff (as per numerous studies).
- Continually high rates of inappropriate antipsychotic drugging.
- 2014 OIG Adverse Events report:
 - *One-third of all short term rehab residents are harmed within one month of entering facility.
 - * Physician reviewers found that 59% of the time this was preventable.
- Longstanding failure of state and federal oversight agencies to properly identify and address problems.

It's NOT about the \$\$\$!

+ LTCCC 2015 Report: Safeguarding Nursing Home Residents & Program Integrity

Study assessed, on a state-by-state basis, factors which we identified as important:

Accountability. To what extent are states penalizing nursing homes for substandard care?

Staffing. Sufficient care staff is one of the most important indicators of a nursing home's safety. Nursing homes are required – and paid – to have "sufficient" staff, yet the vast majority do not. To what extent is this problem being addressed by the states?

Pressure Ulcers. A serious problem, almost always treatable or preventable, too often resulting from inadequate monitoring and care.

Antipsychotic Drugging. AP drugs are <u>not</u> clinically indicated for the symptoms of dementia and carry a "black-box" warning due to high risk of death. Yet 20% of nursing home residents receive AP drugs, often as a form of chemical restraint.

+ LTCCC 2015 Study on Nursing Home Enforcement

Key Findings:

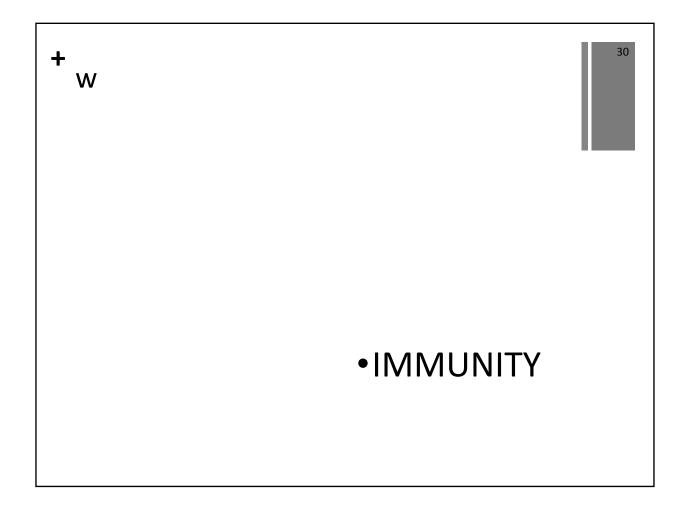
- *The annual average per capita state citation rate is 14%. [Range: 3 34%.]
- ★ Less than 5% of health care violations are identified by surveyors as causing any resident harm. [Range: 1.1 – 10.8%.]

When a surveyor does not identify and cite harm, facilities almost never face a penalty.

Subsequent Findings (2017 LTCCC reports):

- * 42% of nursing homes have what we call "chronic deficiencies," meaning that they have three or more violations for the same regulatory standard in the three years covered on Nursing Home Compare.
- * Even for nursing homes that had the lowest possible star rating (1-star), surveyors only identified resident harm in less than half of the facilities.



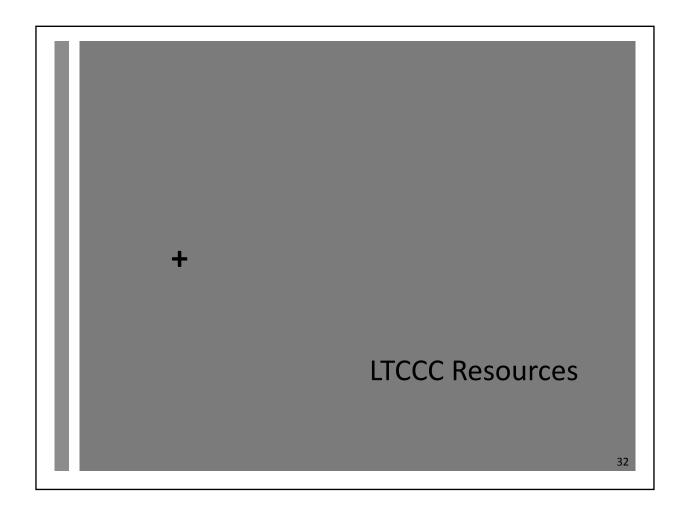


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Immunity disincentivizes Nursing Homes from providing adequate care



- In March of 2020, an Executive Order by Governor Cuomo and the April New York State Budget Bill granted blanket immunity to Nursing Homes for negligent care in the wake of the Covid-19 crisis
- Coupled with the restrictions on visitation, the Immunity Law could have led to widespread injuries and death to Nursing home residents
- Scope of the Law in New York was unclear
- The Immunity Law was modified in New York State as of August 2020 and now only applies to care related to Covid-19
- Senate Republicans in Washington are seeking to attach blanket immunity to the next Corona Virus relief Bill





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LONG TERM CARE COMMUNITY COALITION

FACT SHEET: REQUIREMENTS FOR NURSING HOMES TO PROTECT RESIDENTS FROM ABUSE, NEGLECT & EXPLOITATION

Following are several standards and guidelines that we have identified as important when it comes to protecting residents from abuse, neglect and exploitation. The descriptions are taken directly from the federal regulations and guidelines (as indicated by text in Italics). The excerpts are formatted into bulleted lists to make it easier to identify the points that we believe are most relevant. For more detailed information, see the webinar program & other resources on our website, https://www.nusringhome41.org (Notes: (1) The brackets below provide the citation to the federal regulation. (42 CF 483.xx) and the F-tag used when a facility is cited for failing to meet the requirement. (2) All emphases added.]

Freedom From Abuse, Neglect & Exploitation [42 CFR 483.30(A) F-710]
 The resident has the right to be free from abuse, neglect, misappropriation of resident property, and exploitation. This includes but is not initiated to freedom from corporal punkment, involuntary seclus and any physical or chemical restraint not required to treat the resident's medical symptoms.

II. Key Elements Of Noncompliance With This Standard The facility...

☐ Failed to protect a resident's right to be free from any type of abuse, including corporal punishment, and neglect, that results in, or has the likelihood to result in physical harm, pain, or

mental anguish; or

Falled to ensure that a resident was free from neglect when it falled to provide the required structures and processes in order to meet the needs of one or more residents.

Abuse: the willful infliction of injuny, unreasonable confinement, intimidation, or punishment wi resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.

Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

- Neglect: the failure of the facility, its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, poin, mental anguish or emotional
- astress. Sexual abuse: non-consensual sexual contact of any type with a resident. Willful: means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

LTCCC Fact Sheet: Protection from Abuse, Neglect & Exploitation

IV. Federal Guidelines - Facility Characteristics Associated With Increased Risk of Abuse.

Identified facility characteristics, that could increase the risk for abuse include, but are not limited to

- Unsympothetic or negative activates to ward residents;

 Chronic staffing problems;

 Lack of administrative oversight, staff burnout, and stressful working conditions;

 Poor or inadequate preparation or train in for care giving responsibilities;

 Policineries of the physical environment; and

 Facility policies operate in the interests of the institution rather than the residents.
- V. Reporting Requirements for Abuse, Neglect & Suspicion of a Crime Against a Nursing Home Resident

There are both state and federal requirements for reporting abuse or neglect. Nevertheless, far too much resident abuse, neglect, their of personal property, etc., gossurreported. To help address this problem, the Afrodable Care Act exablished important requirements for reporting any reasonable suspicion of a crime against a nursing home resident.

Requirements for reporting all alleged abuse, neglect, exploitation or mistreatment:

- Duty: Must report all alleged violations of abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of resident property.

- injuries of unknown source and misappropriation of rescent property.

 For Whom 27 The nursing home.

 When 24 ii alreged violations-immediately but not later than (1) 2 hours- if the alleged violation imvolves abuse or results in serious bodily injury (2) 24 hours- if the alleged violation does not involve abuse and does not result in serious bodily injury.

 To Whom?: The facility administrator and to other officials in accordance with State law, including to the 54 (purvey agency, i.e., bott ment of Health) and the adult protective services where state law provides for jurisdiction in long-term core facilities.

Requirements for reporting suspicion of a crime against a nursing home resident include:

- Duty: Must report any "reasonable suspicion" that a crime has been committed against a reside of the facility.

 For Whom?: Any and all of a nursing home's employees, owners, operators, managers, agents

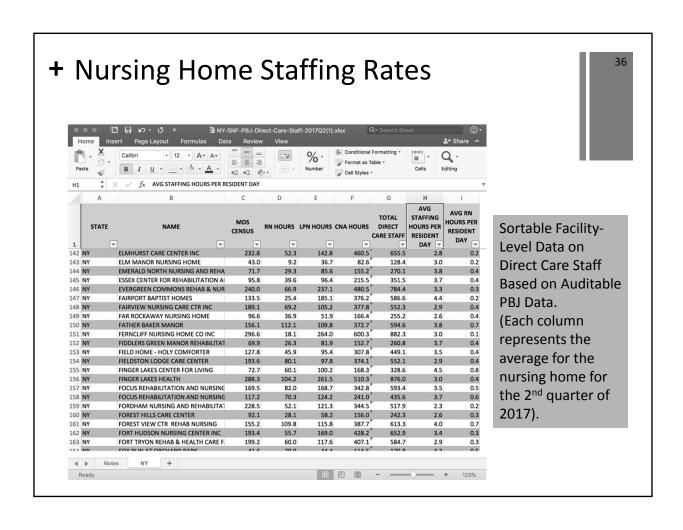
- □ For Whom? Any and all of anursing home's employees, owners, operators, managers, agents and contract workers

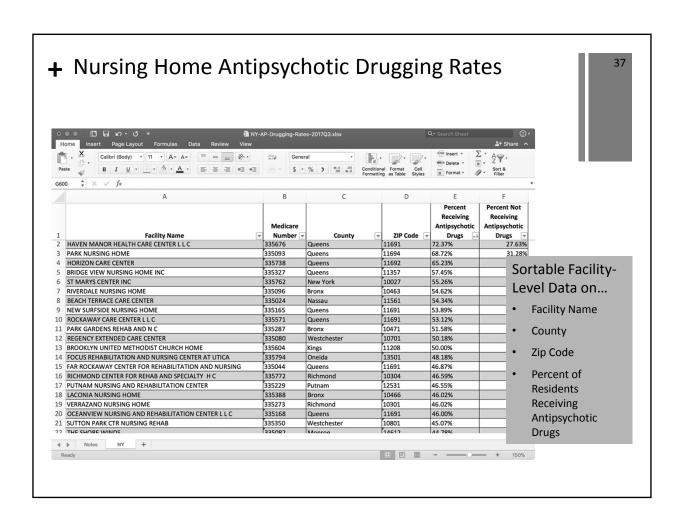
 □ When? Immediately if Must be within 2-hours if the act or incident suspected to be a crime resulted in physical injury to a resident, otherwise, within 24-hours

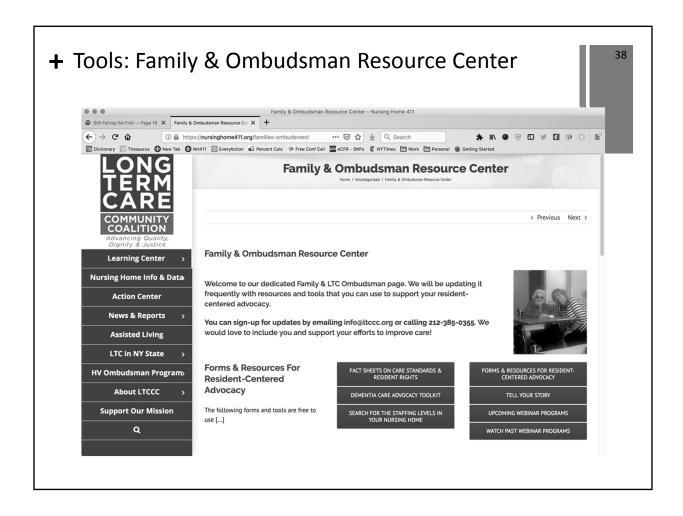
 □ To Whom? Local law enforcement and the state survey agency (Dept. of Health).

 Penalty, Failure to report carriers after of up to \$220,048; if the failure results in increased harm to the original victim, or harm to another resident, the fine can be up to \$331,752.

WWW.NURSINGHOME411.ORG. LTCCC's website includes materials on the relevant standards for nursing home care and a variety of resources on specific issues, such as dementia care, resident assessment and care planning, dignity and quality of life.



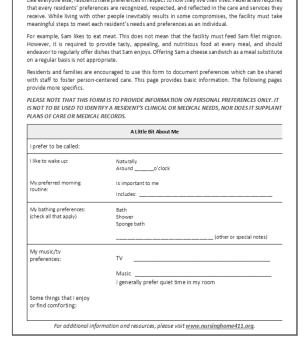




+ Resident Preferences Form

My Personal Preferences

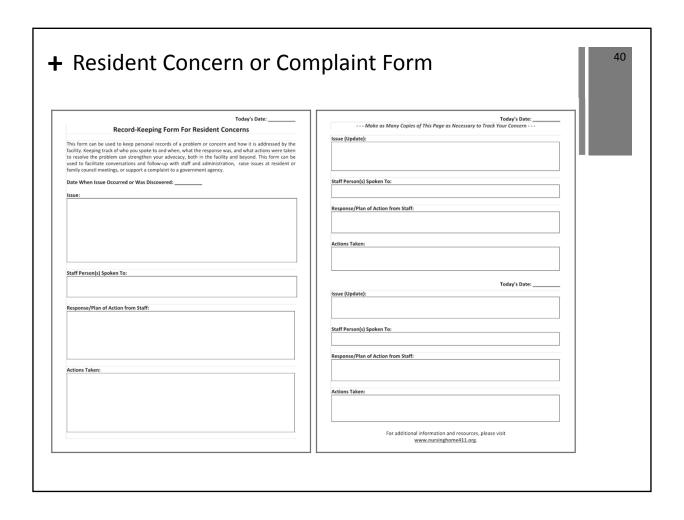
Like everyone else, residents have preferences in respect to how they live their lives. Federal law requires



Additional topics covered:

- Personal background
- Sleeping
- Dressing
- Grooming
- Activities
- TV & Music
- Social interactions
- Religious/spiritual

Form is available in both PDF & Word formats. Add as little or as much information as you like.



+ The Dementia Care Toolkit

- What should I look for when assessing a facility?
- What should I see going on in my facility?
- What do we have a right to expect before drugs are given to a resident?
- What do we have a right to expect after drugs are given?
- And more!



+ The Dementia Care Toolkit

- Dementia Car Considerations
- Dementia Care Practices
- Dementia Care & Psychotropic Drugs
- Non-Pharmacological Approaches Standards for Nursing Home to Dementia Care
- Resident Dignity & Quality of Life Standard of Care to Ensure
- Standards for a Safe Environment
- Resident Assessment & Care Planning
- Care Planning Requirements

- Informed Consent
- Resident & Family Recordkeeping
- Standards for People Providing Care
- Services
- **Resident Wellbeing**



+

Webinars & More...

LONG TERM CARE COMMUNITY COALITION

Free Lunch & Learn Educational Programs:

Quality, Dignity, and Resident-Centered Advocacy

When Are The Programs? The third Tuesday of the month at 1pm Eastern.

October 15: The New Federal Nursing Home Payment System: Patient Driven Payment Model (PDPM)

The new federal payment system for nursing home care, PDPM, is going into effect in October. This program will review PDPM and discuss potential concerns for residents and families.

November 19: Recent Updates to Nursing Home Compare: Accessing Useful Information on Nursing Home Quality, Safety, and Staffing

December 17: Do You Have the Right to Expect More?: A Review of Recent

Federal Studies on Nursing Home Quality, Safety, and Oversight too often, there is a disconnect between the promise of good care and residents' experiences. This program will present highlights of recent federal reports that have assessed abuse, neglect, and oversight in nursing homes and the relevance of these reports to resident-centered advoxocy.

January 21: Assessing the Humanity of Nursing Home Care: A Special Report From the Long Term Care Community Coalition

February 18: Using Data to Strengthen Your Nursing Home Advocacy

Attend Any Program in Two Easy Ways:

1) To Join the online meeting, go to: https://join.freeconferencecall.com/richardmollot.

2) To participate by phone, at the time of the program call (712) 770-4010. When prompted, enter the Access Code, 878277, followed by the pound (#) key.

Note: All program materials will be posted in the Learning Center at www.nursinghome411.org. To view the recording of the program, click on the YouTube button on our homepage.

Visit www.nursinghome411.org for...
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- Receive alerts for future programs or
- Sign up for our newsletter and alerts.

You can also...

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- Follow us on Twitter at www.twitter.com/LTCconsumer
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