



TODAY'S WEBINAR:

A Guide to Nursing Home Oversight & Enforcement

Tuesday, November 23, 2021 | 1-2PM ET

Register: bit.ly/guide-oversight

Join us as we discuss what to expect from the government agencies charged with ensuring resident safety and dignity.



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www.nursinghome411.org



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Background

+ The Long Term Care Community Coalition

- **LTCCC** is a nonprofit, nonpartisan organization dedicated to improving care & quality of life for the elderly & adult disabled in long-term care (LTC).
- **What we do:**
 - Policy research & analysis;
 - Systems advocacy;
 - Public education;
 - Home to two local LTC Ombudsman Programs.

www.nursinghome411.org

+ The Nursing Home Reform Law

- The law passed in 1987.
- **Every** nursing home that participates in Medicaid/Medicare agrees to meet or exceed the standards laid out in the Reform Law and its implementing regulations.
- Participation in Medicaid/Medicare is voluntary. Nursing homes that do not wish to meet these standards are free to run private facilities.



+ The Nursing Home Reform Law

- The federal law requires that every nursing home resident is provided the care and quality of life services sufficient to attain and maintain their **highest practicable physical, emotional, & psycho-social well-being**.
- The law emphasizes **individualized, patient-centered care**.
- Importantly, the law lays out specific resident rights, from **good care** and monitoring to a quality of life that maximizes **choice, dignity, & autonomy**.
- “Effective” infection control and sufficient staffing have been required since the beginning.



+ The Nursing Home Reform Law

Question: If the law and standards are so strong, why aren't nursing homes decent and safe places to live and work?

Answer: Laws and standards can only make a difference if they are enforced.



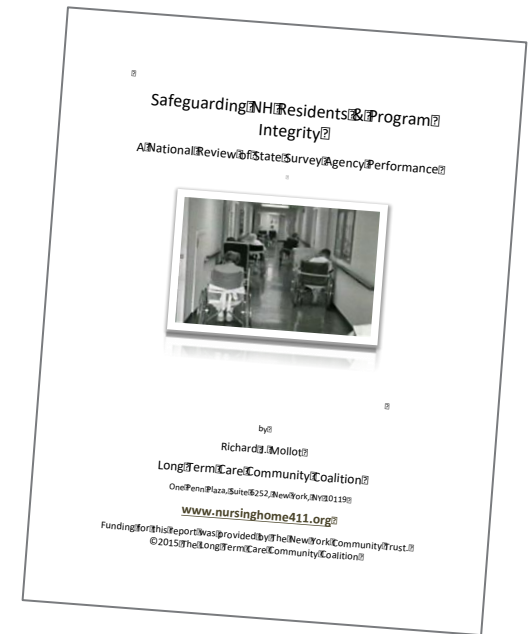
+ The Problem(s)

Federal data,
our studies, and
countless OIG
and GAO
reports indicate
that these
baseline tenets
are largely
unrealized.



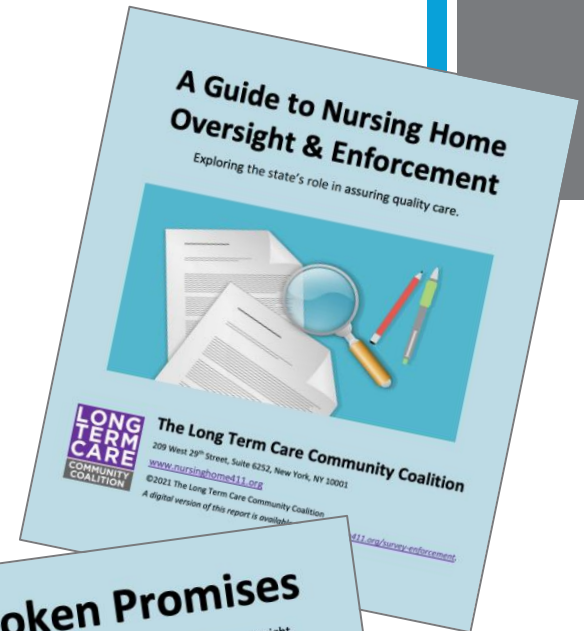
+ LTCCC's 2015 Study: Findings and Issues Raised

- **Study found significant failure to identify resident harm.** States rarely classify violations of minimum health standards as causing harm or putting residents in immediate jeopardy. Because, generally speaking, only findings of harm result in a penalty against the nursing home, this means that **penalties for substandard care are exceedingly rare.**
- **Study raised concerns about regional variations in quality assurance.** CMS contracts with the states to conduct *effective* oversight of nursing home care. CMS provides rules for state performance and oversees that performance through Regional Offices across the country.



+ LTCCC's 2021 Project

- What can we **expect from those responsible** for ensuring that nursing home residents are safe and treated with dignity?
- To what extent are **requirements for nursing homes – and the agencies responsible for overseeing them – being realized** in the lives of nursing home residents?





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The Expectation

Exploring the state's role in nursing home certification, surveys, enforcement, and more.

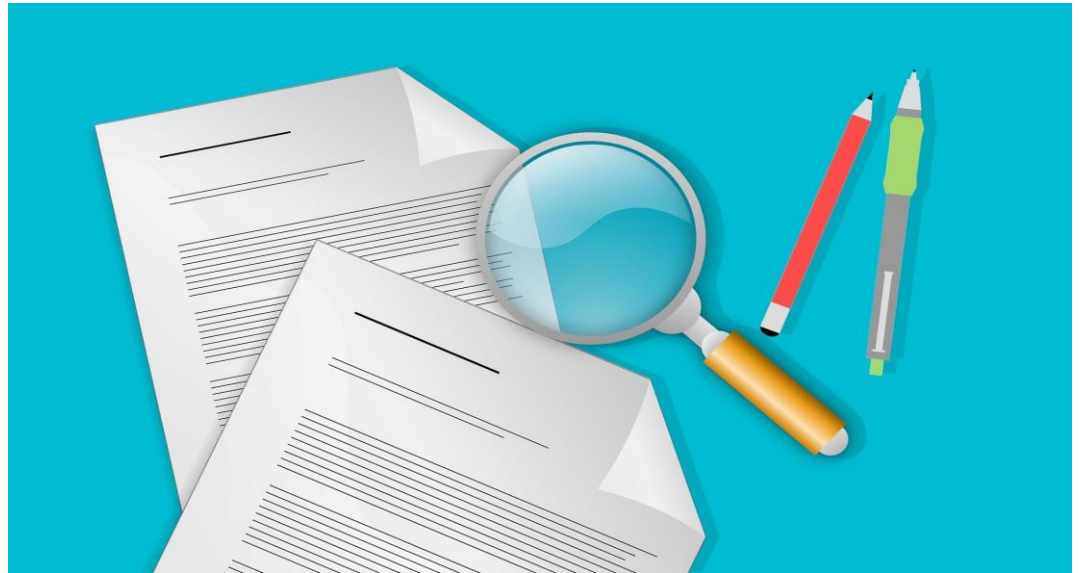


Part I: Expectation



■ A Guide to Nursing Home Oversight & Enforcement

- Exploring the state's role in nursing home oversight: certification, surveys, enforcement, and more.
- LTCCC's guide covers portions of the State Operations Manual to support good care, accountability, and resident-centered advocacy.





The Nursing Home System in a Nutshell

- Virtually all nursing homes participate in Medicaid and/or Medicare.
- In order to do so, a facility agrees to meet the standards provided for in the federal **Nursing Home Reform Law**.
- The federal agency, Centers for Medicare & Medicaid Services (CMS), contracts with state agencies (SAs) to ensure that residents are protected and receive the services they need and deserve.
- Primary activities of an SA include surveying (inspecting) facilities, enforcement, responding to complaints about care, remedies, and other quality assurance functions.





What is the State Operations Manual?

- Primary survey and certification rules and guidance from the Centers for Medicare & Medicaid Services (CMS).
- The SOM includes 10 chapters and more than 1,000 pages with information on survey protocols such as instructions, checklists, and other tools.



Report available at <https://nursinghome411.org/survey-enforcement/>

+ LTCCC's Guide to Nursing Home Oversight & Enforcement



- LTCCC's guide covers important SOM guidance (the expectations) on the following six categories:
 1. Program Background and Responsibilities
 2. Survey Process
 3. State Oversight Performance Standards
 4. Enforcement and Remedies
 5. Civil Money Penalties
 6. Information Disclosure

+ Example: Survey Process

- The Survey Process section includes guidance on:
 - Survey team size and composition; survey frequency
 - Conflicts of interest for surveyors
 - Complaint/incident process and how state agencies manage complaints
 - Types of surveys and how they are conducted
 - Actions taken when a facility is not in substantial compliance

Team Size, Team Composition, and Survey Length [SOM §7201, see also §2706]

Note: As the language in this section indicates, both the state agencies and CMS Regional Offices are expected to tailor the size and composition of survey teams, as well as the length of surveys, to ensure that they have both the time and the skills necessary to ensure that the needs of the residents in each facility are being met.

Team Size [SOM §7201.1]

Survey team size will vary, depending primarily on the size of the facility being surveyed. The state (or, for federal teams, the RO) determines how many members will be on the team. Survey team size is normally based upon the following factors:

- The bed size of the facility to be surveyed;
- Whether the facility has a historical pattern of serious deficiencies or complaints;
- Whether the facility has special care units; and
- Whether new surveyors are to accompany a team as part of their training.

Team Composition [SOM §7201.2]

The state (or, for federal teams, the RO) decides what the composition of the survey team will be, as long as certain statutory and regulatory requirements are met:

- Standard surveys conducted by a multidisciplinary team of professionals, *at least one of whom must be a registered nurse (RN)*;
- Surveyors free of conflicts of interest (see §7202); and
- Surveyors successfully complete a training and testing program in survey and certification techniques that has been approved by the Secretary.

Surveyors must successfully complete the CMS-approved training and pass the Surveyor Minimum Qualifications Test.

Via LTCCC's SOM Guide (pg. 20)



Why Do Nursing Home Surveys Matter?



- Nursing home surveys are the principal mechanism through which nursing home quality is assessed and compliance with standards is determined.
- F-Tags (“F” for “federal”) constitute the system through which federal regulations are identified in the survey process.
 - F550: Resident Rights/Exercise of Rights
- Scope and Severity Grid: used by CMS and SAs for rating the seriousness of nursing home deficiencies.
- **Important Note:** numerous studies have found that surveyors often fail to identify nursing home problems adequately, including serious care problems.





Scope & Severity

- CMS and state survey agencies use the Scope and Severity grid for rating the seriousness of nursing home deficiencies.
- For each deficiency, the surveyor indicates the level of harm to the resident and the scope of the problem within the facility.
- Unfortunately, most of these violations (more than 95%) are cited as causing “no harm” to residents.

	Isolated	Pattern	Widespread
Immediate Jeopardy to Resident Health or Safety	J	K	L
Actual Harm that is Not Immediate Jeopardy	G	H	I
No Actual Harm with Potential for More than Minimal Harm that is Not Immediate Jeopardy	D	E	F
No Actual Harm with Potential for Minimal Harm	A	B	C

+ Statement of Deficiencies and Plan of Correction

Department of Health & Human Services Centers for Medicare & Medicaid Services		Printed: 07/08/2021 Form Approved OMB No. 0938-0391	
STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 155666	(X2) MULTIPLE CONSTRUCTION A. Building B. Wing	(X3) DATE SURVEY COMPLETED 06/08/2020
NAME OF PROVIDER OR SUPPLIER Auburn Village		STREET ADDRESS, CITY, STATE, ZIP CODE 1751 Wesley Road Auburn, IN 46706	
For information on the nursing home's plan to correct this deficiency, please contact the nursing home or the state survey agency.			
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (Each deficiency must be preceded by full regulatory or LSC identifying information)		
F 0760 Level of Harm - Minimal harm or potential for actual harm Residents Affected - Few	<p>Ensure that residents are free from significant medication errors.</p> <p>**NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY**</p> <p>Based on interview and record review, the facility failed to ensure a resident was free of significant med error administration when an anti-convulsant medication was not given as ordered by the physician for 1 of 3 residents reviewed (Resident T). After missing 3 doses of medication, the resident experienced a seizure that resulted in injury.</p> <p>Findings include:</p> <p>On 6/5/20 at 1:15 P.M., Resident T's record was reviewed. [DIAGNOSES REDACTED]. The resident had been admitted to the facility recently, following hospitalization for [MEDICAL CONDITIONS] (death of brain cells due to complete lack of oxygen). While hospitalized, the resident was started on anti-convulsant medication for [MEDICAL CONDITION].</p> <p>A Care Plan, dated 4/30/20, indicated the resident was at risk for injury related to [MEDICAL CONDITION] disorder of [MEDICAL CONDITION]. The goal was the resident would remain free from serious injury related to his [MEDICAL CONDITION] disorder. Interventions included, but were not limited to, administer medications as ordered.</p> <p>On 6/5/20 at 2:27 P.M., Resident T's family member was interviewed by phone. The family member expressed concern about the resident having bitten his tongue during a [MEDICAL CONDITION] and was treated at the facility.</p> <p>An NP (Nurse Practitioner) Progress note, dated 5/1/20 at 9:34 a.m., indicated the resident was newly admitted to the facility. He had a history of [REDACTED].</p> <p>An NP Progress note, dated 5/5/20 at 8:54 a.m., indicated the resident was seen for a visit after staff reported the resident was having continual [MEDICAL CONDITION] and had a piece of his tongue between clenched teeth. The nurse and RT (Respiratory Therapist) attempted to unclench his jaw using tongue depressors but were unsuccessful. [MEDICATION NAME] was ordered to relax his jaw so that his tongue could be placed back behind his teeth which was bleeding and dark purple. After the effects of the [MEDICATION NAME] began, Resident T began to relax his jaw and unclench his teeth. He was found to have bitten this part of his tongue off. The resident was having [MEDICAL CONDITION] activity and his [MEDICAL CONDITION] medications were to be reviewed and changed as needed to get his [MEDICAL CONDITION] under control.</p>		

F-Tag
and
Scope & Severity

CFR
Reference

Evidence to
Support the
Deficiency

+ LTCCC's December webinar

Broken Promises: An Assessment of Nursing Home Oversight

- Tuesday, December 21, 1pm EST
- Presenter: Eric Goldwein, LTCCC's Director of Policy & Communications
- Register: <https://bit.ly/webinar-broken-promises>



LONG TERM CARE
COMMUNITY COALITION

UPCOMING WEBINAR:

Broken Promises: An Assessment of Nursing Home Oversight

*How often are nursing homes cited by federal agencies for substandard care?
Are "Harm" deficiencies more common in some states than others?*

Join us to learn more!

Tuesday, December 21, 2021 | 1-2PM ET

Register: bit.ly/webinar-broken-promises

Eric Goldwein, MPH (presenter), is LTCCC's Director of Policy and Communications, conducting policy and data research and hosting LTCCC's NursingHome411 Podcast.

+ Thank You For Joining Us Today!

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LTC Ombudsmen: If your program supervisor allows credit for attending this training program, please take the quick survey at:

<https://www.surveymonkey.com/r/ltccc-ltcop1>.



Questions?

Comments?