

# ELDER JUSTICE

## What “No Harm” Really Means for Residents

Center for Medicare Advocacy & Long Term Care Community Coalition

Volume 4, Issue 1

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### What is a “No Harm” Deficiency?

Nursing homes that voluntarily participate in the Medicare and Medicaid programs must adhere to minimum standards of care established by the federal Nursing Home Reform Law and its implementing regulations. These standards ensure that every nursing home resident is provided services that help attain and maintain their “highest practicable physical, mental, and psychosocial well-being.” Under the Reform Law, nursing homes that fail to meet the federal requirements are subject to various penalties, based on the scope and severity of the violation(s).

Centers for Medicare & Medicaid Services (CMS) data indicate that most health violations (more than 95%) are cited as causing “no harm” to residents. The failure to recognize resident pain, suffering, and humiliation when it occurs too often means nursing homes are not held accountable for violations through financial penalties. In the absence of a financial penalty, nursing homes may have little incentive to correct the underlying causes of resident abuse, neglect, and other forms of harm.

*In the absence of a financial penalty, nursing homes may have little incentive to correct the underlying causes of substandard nursing home quality and safety.*

## How to Use this Newsletter

The *Elder Justice* newsletter provides examples of health violations in which surveyors (nursing home inspectors) identified neither harm nor immediate jeopardy to resident health, safety, or well-being. These examples were taken directly from Statement of Deficiencies (SoDs) on CMS's [Care Compare](#) website.

**Our organizations encourage residents, families, ombudsmen, law enforcement, and others to use these cases to help identify potential instances of resident harm in their own communities.** When state enforcement agencies and CMS fail to properly identify and penalize nursing homes for health violations, it is important for the public to be aware of nursing home safety concerns in their communities. Fundamentally, from our perspective, every suspected case of resident harm should be reported, investigated, and (if confirmed), appropriately sanctioned.

*“Nursing home industry representatives often state that their industry is one of the most regulated in the country. But if those regulations are not enforced, what does that actually mean?”*

– [Broken Promises: An Assessment of Federal Data on Nursing Home Oversight](#)

## Aberdeen Health and Rehab (South Dakota)

### **‘It was very embarrassing’: Two-star nursing home provides undignified treatment to residents.**

The surveyor determined that the nursing home failed to ensure residents were treated with dignity. In confidential interviews, five residents spoke about undignified treatment while living in the nursing home. Though this deficient practice jeopardized the residents’ right to a dignified existence and left the residents living in discomfort, the surveyor cited the violation as no harm.<sup>1</sup> The citation was based, in part, on the following findings from the [SoD](#):

- The surveyor conducted confidential interviews with five residents.
- Resident 1 said that staff members arrive more than 30 minutes after she uses her call light. One time, she said that staff took so long to arrive that she wet her pants and had a bowel movement in her pants. “It was very embarrassing,” said the resident, who requested anonymity. “If they find out it’s me, they’ll take it out on me.”
- Another resident (2) stated they have had accidents because of long wait times. “Accidents make me feel like a child,” the resident said.
- Resident 3 stated they were told by a CNA to clean up urine that had spilled on the floor. The resident also stated that they “feel like [they] have to shut up and take it sometimes.”

Every facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident’s individuality.

- Resident 4 stated that staff members have gone through the resident's packages, violating the resident's right to privacy.
- Resident 5 told the surveyor that staff members have gone through the resident's dresser drawers and have stolen snacks from the resident. This resident also stated that they have had numerous accidents in a given week because they hate to push their call light.
- **Know Your Rights:** Nursing homes are required to follow many standards to ensure that residents receive appropriate care, have a good quality of life, and are treated with dignity. Read [LTCCC's resident rights fact sheet](#) to learn how you can use these standards as a basis for advocating in your nursing home and community.
- **Note:** The [most recent staffing data \(Q2 2021\)](#) indicates that this nursing home provides 2.99 hours per resident day (HPRD) of total direct care staff time. This figure is well below safety thresholds identified in a landmark 2001 federal study.

## Barfield Health Care (Alabama)

### Stolen narcotics: Registered nurse steals medication from two residents at five-star nursing home.

The surveyor determined that the nursing home failed to protect residents from the wrongful use of the residents' property. Though a staff member stole narcotic pain medication prescribed to two residents, the surveyor cited the violation as no harm.<sup>2</sup> The citation was based, in part, on the following findings from the [SoD](#):

- According to an investigative summary, a registered nurse (RN) failed a drug test through the Alabama Board of Nursing.
- In an interview, the Director of Nursing (DON) stated that the RN in question was instructed by the Alabama Board of Nursing to notify the facility that she had failed her drug test.
- During the nursing home's investigation, the RN said that that she had been stealing narcotic pain medication prescribed to two nursing home residents.
- The RN admitted to stealing the drugs starting in January 2021. The RN's last day working at the facility was February 26, 2021.
- **Know Your Rights:** Crimes against nursing home residents are a serious, yet under-recognized problem. Nursing homes are required to respect residents' private space and property, and to protect residents from the wrongful use of their property.

Crimes against nursing home residents are a serious, yet under-recognized problem.

## Accordius Health at Greene County (Virginia)

### Begging for baths: Four-star nursing home fails to provide appropriate hygiene care.

The surveyor determined that the nursing home failed to provide care and assistance to perform activities of daily living for residents. According to the citation, nursing home staff neglected to bathe a resident and provide appropriate hygiene care. Although the facility's

deficient practice resulted in the resident begging for a shower, the surveyor cited the violation as no harm.<sup>3</sup> The citation was based, in part, on the following findings from the [SoD](#):

- According to observation, a resident was found with unkept hair and unkept facial hair.
- The resident stated in an interview that he had gone a week without a shower and felt that he had to beg the nursing home staff to provide him one. Residents were supposed to be showered twice weekly according to the director of nursing.
- The nursing home used to have a shower team, but one of its staff quit and another was on leave, so the responsibility was left to the CNAs.
- **Know Your Rights:** Every resident has the right to receive the care and services they need to reach and maintain their highest possible level of functioning and well-being. This includes appropriate hygiene care of bathing, dressing, grooming, and oral care, in accordance with the resident's preferences and customs. To learn more, see [LTCCC's fact sheet on resident care and well-being](#).

Nursing homes must provide care and services for activities of daily living, including hygiene care – bathing, dressing, grooming, and oral care.

## Bronx Center for Rehabilitation & Health Care (New York)

### Uncovered and exposed: Four-star nursing home fails to honor residents' right to dignity.

The surveyor determined that the facility did not ensure that residents were cared for in a manner that maintained or enhanced their dignity. Though residents were observed with their catheter bags and tubing uncovered and exposed to public view as well as dining in a public space without pants, the surveyor cited the violation as no harm.<sup>4</sup> The citation was based, in part, on the following findings from the [SoD](#):

- According to observation, one resident was seen lying in bed with a catheter bag and tubing facing the door. Yellow urine drained into the exposed catheter bag.
- A CNA stated that a privacy bag is supposed to be placed on the catheter bag when residents are seated or in their bed.
- The surveyor observed a second resident sitting in a wheelchair in the dining room with a hospital gown tied around the back of their neck and gray sweatpants. As the resident leaned forward, the resident's upper to mid-lower back were exposed.
- The next day, the same resident was observed in the dining area wearing only a hospital gown and sneakers with no socks.
- **Know Your Rights:** Quality of life is a fundamental principle that applies to all care and services provided to facility residents. Nursing home care staff should encourage and assist residents to dress in their own clothes appropriate to the time of day, activity, and

No matter what our needs are, or how our abilities have diminished, we all want to live with dignity and control over our lives, even if our health necessitates limitations.

individual preferences. To learn more, check out [LTCCC's fact sheet on resident dignity and quality of life standards](#).

## Advanced Health Care of Coeur D'Alene LLC (Idaho)

### Short-staffed: Call lights go unanswered at four-star nursing home.

The surveyor determined that the nursing home failed to provide enough nursing staff to meet the needs of every resident and to have a licensed nurse in charge on each shift. Despite the potential for harm if residents did not receive appropriate care or received a delay in care, the surveyor cited the violation as no harm.<sup>5</sup> The citation was based, in part, on the following findings from the [SoD](#):

- A review of facility grievances, call light logs, and resident and staff interviews revealed that there were not enough competent staff to answer call lights in a timely manner. Two of six grievances documented complaints with call light response times. Resident interviews revealed that call lights, especially at night, were not answered for 30 to 40 minutes.
- The first grievance stated that a resident who recently transferred from an acute care hospital was not attended to for two hours and 15 minutes. Staff also did not timely respond to his call lights.
- In a second grievance, a resident stated her call light was left unanswered for four to five hours.
- A review of the nursing home's call light log revealed 362 call lights with elapsed times of more than 30 minutes, including 68 of more than an hour.
- In an interview, the nursing home administrator said there was no written policy for answering call lights, but that she expected responses to be immediate or at most 20 minutes.
- **Know Your Rights:** Sufficient staffing is one of the most important indicators of a nursing home's quality and safety. Visit [LTCCC's staffing page](#) to access the latest staffing data and information.

Nursing homes with higher staffing levels are better equipped to meet their residents' care needs.

## Alden Meadow Park Hcc (Wisconsin)

### 'The food was always cold': Unpalatable meals found at three-star nursing home.

The surveyor determined that the facility did not ensure that each resident received food and drink that is palatable, attractive, and at a safe and appetizing temperature. The citation stated that two residents complained to the surveyor about receiving cold food. Nonetheless, the surveyor cited the violation as no harm.<sup>6</sup> This citation was based, in part, on the following findings from the [SoD](#):

- Interviews and complaints revealed that the nursing home served cold meals to residents. "The food was always cold, all the meals," a resident said.
- The surveyor received a test tray and found the food was not palatable and not at an appropriate temperature.

- One resident complained of three cold meals. The resident stated that certified nurse assistants would warm it up, but the resident did not like to ask them because they were so busy.
- The dietary manager told the surveyor he would implement a new serving system immediately.
- **Know Your Rights:** Food palatability and consumption are critical issues in nursing homes. Federal regulations require that nursing homes obtain food from government-approved sources and that they “[s]tore, prepare, distribute, and serve food in accordance with professional standards for food service safety. For more information and statistics, see [LTCCC’s issue brief on safe food handling](#).
- **Note:** “Across the country, 230 foodborne outbreaks were reported from 1998 to 2017 in long-term care settings, according to the Centers for Disease Control and Prevention. The outbreaks resulted in 54 deaths and 532 hospitalizations, and sickened 7,648 people—figures experts say are almost certainly an undercount.” -[FairWarning](#)

Nursing homes are required to ensure food and drink is palatable, attractive, and at a safe and appetizing temperature.

## Can I Report Resident Harm?

**YES! Residents and families should not wait for annual health inspections to detect resident harm.** Anyone can report violations of the nursing home standards of care by contacting their state survey agency. To file a complaint against a nursing home, please use [this resource](#) available at CMS’s Nursing Home Compare website. If you do not receive an adequate or appropriate response, [contact your CMS Regional Office](#).



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To learn more about nursing home and assisted living care, visit us online at [MedicareAdvocacy.org](https://MedicareAdvocacy.org) & [NursingHome411.org](https://NursingHome411.org).

Note: The overall star rating of any facility identified in this newsletter is subject to change. The star ratings are current up to the date of newsletter's drafting.

Note: This document is the work of the LTCCC. It does not necessarily reflect the views of the Department of Health, nor has the Department verified the accuracy of its content.

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<sup>1</sup> Statement of Deficiencies for Aberdeen Health and Rehab (July 9, 2021). Available at <https://nursinghome411.org/wp-content/uploads/2022/01/Aberdeen-Health-and-Rehab-SD-2.pdf>.

<sup>2</sup> Statement of Deficiencies for Barfield Health Care (April 16, 2021). Available at <https://nursinghome411.org/wp-content/uploads/2022/01/Barfield-Health-Care-AL-5.pdf>.

<sup>3</sup> Statement of Deficiencies for Accordius Health at Greene County (March 4, 2021). Available at <https://nursinghome411.org/wp-content/uploads/2022/01/Accordius-Health-at-Greene-County-VA-4.pdf>.

<sup>4</sup> Statement of Deficiencies for Bronx Center for Rehabilitation & Health Care (May 20, 2021). Available at <https://nursinghome411.org/wp-content/uploads/2022/01/Bronx-Center-for-Rehabilitation-Health-Care-NY-4.pdf>.

<sup>5</sup> Statement of Deficiencies for Advanced Health Care of Coeur D'Alene LLC (August 23, 2021). Available at <https://nursinghome411.org/wp-content/uploads/2022/01/Advanced-Health-Care-of-Coeur-DAlene-LLC-ID-4.pdf>.

<sup>6</sup> Statement of Deficiencies for Alden Meadow Park Hcc (February 3, 2021). Available at <https://nursinghome411.org/wp-content/uploads/2022/01/Alden-Meadow-Park-Hcc-WI-3.pdf>.