

Today's Webinar:



LTCCC WEBINAR

Uninspected and Neglected: Investigation Reveals High Vacancy Rates at State Inspection Agencies

Tuesday, July 18, 2023 | 1-2PM ET

nursinghome411.org/webinar-uninspected



Peter Gartrell (U.S. Senate Special Committee on Aging) and **Suzanne Messenger** (West Virginia State Long-term Care Ombudsman) discuss how staffing issues in inspection agencies put nursing home residents at risk.

For materials from today's webinar, visit
nursinghome411.org/webinar-uninspected

Presenters:

- **Peter Gartrell, *Chief investigator for the Senate Special Committee on Aging***
 - Nearly two decades working to increase the public's understanding of government and business as a congressional investigator and journalist
 - Prior to his current position with Chairman Bob Casey, Peter spent nine years conducting oversight on the Senate Finance Committee and Senate Energy and Natural Resources Committee with Senator Ron Wyden
- **Suzanne Messenger, *West Virginia's Long-Term Care State Ombudsman***
 - Advocates for LTC residents in a variety of matters related to residential LTC including resident rights, quality of care, payment, guardianship and conservatorship, powers of attorney, health care surrogate matters, and elder abuse and exploitation
 - Previously employed by Legal Aid of WV for eight years



Agenda

- 1. Background:** Nursing Home Standards & State Oversight Requirements.
- 2. Uninspected & Neglected:** How understaffed inspection agencies put residents at risk.
- 3. Ombudsman Perspective:** What ombudsmen, families, and advocates can do to help residents in an environment with limited oversight.
- 4. Q&A!** Please submit questions to Q&A (not the chat).



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Background:

Nursing Home Standards & State Oversight
Requirements

+ 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, & psychosocial 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.

MARCH 18, 2019
ADDRESSING ABUSE, NEGLECT, AND SUSPICION OF CRIME AGAINST NURSING HOME RESIDENTS
POLICY CONSIDERATIONS & PROMISING PRACTICES

Majestic Care of Columbus LLC
Overall rating: 4 stars
Health inspection: 4 stars
Staffing: 4 stars
Quality of care: 4 stars

United States Government Accountability Office
Statement for the Record to the Committee on Ways and Means, House of Representatives
THE LONG-TE GAO

Department of Health and Human Services
OFFICE OF INSPECTOR GENERAL
ADVERSE EVENTS IN SKILLED NURSING FACILITIES: NATIONAL INCIDENCE AMONG MEDICARE BENEFICIARIES

Resident Cases and Deaths per 1,000 Residents
Resident Average Cases per 1,000 Residents
GAO Report to Congressional Requesters

NURSING HOMES
CMS's Special Focus Facility Methodology Should Better Target the Most Poorly Performing Homes, Which Tended to Be Chain Affiliated and For-Profit
April 2019 GAO

Nursing Home Inspect
Nursing Home Inspect
Departmental Initiatives to Improve the Country
GAO

Forbes
Inside Look At How Covid-19 Is Driving An Epidemic Of Loneliness In Nursing Homes
Howard Gleckman Senior Contributor
Lester Kins, Budget and retirement policy from Washington

ANTIPSYCHOTIC DRUG USE
HHS Has Initiatives to Reduce Use among Older Adults in Nursing Homes, but Should Expand Efforts to Other Settings
GAO Report to Congressional Requesters

NURSING FACILITY ASSESSMENTS AND CARE PLANS FOR RESIDENTS RECEIVING ATYPICAL ANTIPSYCHOTIC DRUGS
GAO-19-068

+ LTCCC Report: Broken Promises



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Broken Promises: An Assessment of Nursing Home Oversight

Home » News & Reports » LTCCC Reports » Nursing Home Oversight & Enforcement: Expectation vs. Reality » Broken Promises: An Assessment of Nursing Home Oversight

This report, "**Broken Promises: An Assessment of Nursing Home Oversight**," presents the results of an analysis of survey and enforcement data at the state, regional, and federal levels with a focus on all U.S. states and the 10 Regional Offices of the federal Centers for Medicare and Medicaid Services (CMS) tasked with overseeing the performance of the state enforcement agencies in their respective regions of the country. [Download the full report](#) or access individual sections in the toggle boxes on the right. [Click here for interactive maps and tables.](#)



Broken Promises

An assessment of federal data on nursing home oversight.

- + [Introduction: The Government's Broken Promises](#)
- + [Overall Citations](#)
- + [Antipsychotics](#)
- + [Infection Control](#)
- + [Pressure Ulcers](#)
- + [Quality of Life](#)
- + [Resident Rights](#)
- + [Staffing](#)
- + [Fines](#)
- + [Discussion and Recommendations](#)

www.nursinghome411.org/survey-data-report

+ Summary of findings

Frequency

- Annually, surveyors recorded **one citation for every 13 residents** in the three-year period from 2018 to 2020.

Severity

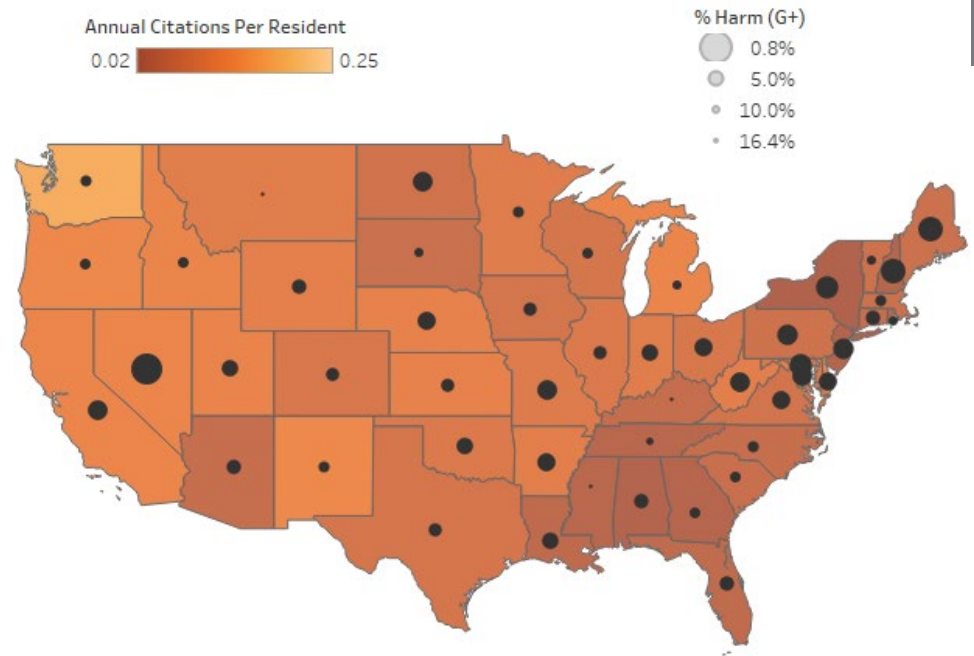
- **Harm (G or above) citations are rare.** Of the 290,000 citations, 5.0% were categorized as Harm. 1.8% were categorized as Immediate Jeopardy (J or above).

Citations by Category

- Infection Prevention & Control (F880) citations accounted for 7.8% of all deficiencies.
- Antipsychotics (F758), Pressure Ulcers (F686), and Resident Rights (F550) each accounted for roughly 2%.
- Sufficient Staffing (F725) accounted for 1%.
- Quality of Life (F675) accounted for 0.1%.

+ Summary findings: State & Region

- State and regional enforcement and severity varied considerably but were often consistent across categories of nursing home care.
- New Jersey and New York ranked in the bottom-quintile in most citation metrics evaluated in this report.
 - In an average year in New York, there was one citation for every 50 residents. In Alaska, there was one citation for every four residents.
- Region 2 (New York) ranked at the bottom of most enforcement metrics, meaning the region had lower enforcement rates. Region 10 (Seattle) ranked first and second in most enforcement metrics.



Darker → lower citation rate.
Larger circles → lower % of Harm citations.

To download LTCCC's report, go to

<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)

+ 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	Ensure that residents are free from significant medication errors. **NOTE- TERMS IN BRACKETS HAVE BEEN EDITED TO PROTECT CONFIDENTIALITY** 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. Findings include: 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]. 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. 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. 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]. 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.		

F-Tag
and
Scope & Severity


CFR
Reference

Evidence to
Support the
Deficiency



+ Head to NursingHome411...



- For materials from today's webinar, visit: nursinghome411.org/webinar-uninspected.
- To watch LTCCC's Family Empower Half Hour, 'like' us on Facebook: www.facebook.com/ltccc.
- To download LTCCC's report, "Broken Promises," go to <https://nursinghome411.org/survey-enforcement>.
- **REMINDER: NO AUGUST WEBINAR!** 

+ Thank You For Joining Us Today!

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**LTC Ombudsmen: Look out for an email
confirming your attendance of this program on
Thursday.**



Questions?

Comments?