

Report to the General Assembly: Nursing Home Inspection and Enforcement Activities

A Report to the 2012 107th Tennessee General Assembly

**Tennessee Department of Health
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Executive Summary:

This report addresses activities and outcomes under both the state and federal laws and rules. The Department of Health's Division of Health Care Facilities (HCF) through the Board for Licensing Health Care Facilities, license nursing homes on an annual basis. HCF is also the contracted agent for the Center's for Medicare and Medicaid Services (CMS) and federally certifies health care facilities currently participating or seeking participation in the CMS program, through an annual or initial survey, and complaint investigatory processes.

Complaints received by HCF for the 325 state licensed, and 319 federally certified nursing homes are monitored and maintained on a federal proprietary software program. Approximately 67% (1,069) of the 1,584 total complaints, all facility types, were complaints against nursing homes in 2011. The percentage of nursing homes with at least one substantiated complaint has remained relatively stable at approximately 32% on average over the last four years.

Deficiencies cited in nursing home facilities in the state of Tennessee for 2011 were relatively consistent with the pattern of deficiencies cited across our eight southeastern states (CMS Region IV which include AL, FL, GA, KY, MS, NC, SC, and TN) and the nation. While the two most common direct health care related deficiencies cited in 2011, were for infection control, and accidents due to falls, the two most frequently facility life safety code deficiencies were cited for electrical wiring and equipment and sprinkler system maintenance.

CMS continues to advance support of the National Nursing Home Improvement Initiative that began in 2006 as The Advancing Excellence in America's Nursing Homes Campaign, a major initiative of the Advancing Excellence in Long Term Care Collaborative. The Collaborative assists all stakeholders of long term care supports and services to achieve the highest practicable level of physical, mental, and psychosocial well-being for all individuals receiving long term care services. The Campaign also helped establish Local Area Networks for Excellence (LANEs), a coalition of nursing home stakeholders within every state. The current focus of LANEs nationwide are on four clinical goals: (1) reducing high risk pressure ulcers; (2) reducing the daily use of physical restraints; (3) improving pain management for long term nursing home residents and (4) improving pain management for short stay, post-acute nursing home residents. While LANEs participation is voluntary, Tennessee has approximately 43% (137) of Tennessee nursing homes participating in the LANEs coalition which is approximately 8% lower than the national average of nursing home participants.

Tennessee LANEs participants were below the campaign's national average goals set for pressure ulcer reductions, and short and long term pain management, and above the average goal set for physical restraints.

BACKGROUND AND SUMMARY OF THE LAW:

The Board for Licensing Health Care Facilities, which is administratively attached to the Department of Health's Division of Health Care Facilities, is the entity responsible for state licensure of nursing homes and, if necessary, the discipline thereof. Surveyors employed by the Department of Health inspect each licensed nursing home on an annual basis (every 9 – 15 months) and in response to complaints to ensure compliance with applicable state rules adopted by the Board for Licensing Health Care Facilities.

The Department of Health is also designated by contract as the survey agency for the Federal Centers for Medicare and Medicaid Services (CMS), and in that capacity, Department surveyors inspect each nursing home that participates in the Medicare/Medicaid reimbursement program to ensure compliance with applicable federal laws and rules. Of the 325 nursing homes that were licensed in Tennessee in 2011, 319 were also certified by CMS to participate in the Medicare/Medicaid reimbursement program. As with licensure surveys, the Department surveys facilities on an annual basis (every 9-15 months) as well as in response to complaints.

If a nursing home is both licensed and certified, Department surveyors will conduct the licensure and certification surveys concurrently to promote efficiency in the survey process. When Department surveyors complete a survey conducted pursuant to the federal laws and rules, the findings are submitted to CMS, and CMS makes all final deficiency determinations. This report addresses enforcement activities under both state and federal laws and rules.

The Department is required to investigate complaints filed by the public and any incidents that a facility reports to the Department that constitute abuse, neglect, or misappropriation.

The Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act of 2003 (codified at Tenn. Code Ann. § 68-1-120) requires the Department to submit a report by February 1 of each year to the governor and to each house of the general assembly regarding the Department's nursing home inspection and enforcement activities during the previous year.

COMPLAINT ACTIVITY:

The number and types of complaints received by the Department of Health are monitored and maintained on a federal software program. The software program tracks complaints on all health care facilities. The following statistical data is derived from the program:

- In 2011, there were 325 licensed nursing homes in the state of Tennessee.
- The Department investigated a total of 1,584 complaints during 2011 for all health care facilities. Overall, the Department conducted 5,279 surveys for all health care facilities in 2011, which includes annual, complaint, and unusual incident and revisit surveys. This is a significant increase from the approximately 4,200 surveys conducted for all health care facilities in 2010. Complaints against nursing homes totaled 1069, or 67.4% of the 1584 total complaints, all facility types, which is a 0.8% decrease from 2010¹.
- There were 264 nursing homes with at least one complaint filed, constituting 81.2% of the total nursing homes.
- There were 22 nursing homes with ten or more complaints filed, constituting 6.7% of the total nursing homes; a decrease of 4.7% from 2010.
- The number of nursing homes with at least one substantiated complaint:
 - 2007 – 125 nursing homes or 37.5% of all nursing homes
 - 2008 – 111 nursing homes or 33.6% of all nursing homes
 - 2009 – 97 nursing homes or 30% of all nursing homes
 - 2010 – 98 nursing homes or 30% of all nursing homes
 - 2011 – 103 nursing homes or 31.6% of all nursing homes

The 2011 nursing home data shows a decline in both the number of complaints and the number of complaint surveys conducted from previous years . There appears to be a leveling off in both the number and percentage of nursing homes with substantiated complaints.²

¹ Decrease in complaint investigations against nursing homes from 2010 to 2011 may be attributed to the department's concerted effort to work with provider associations in conducting joint provider educational seminars.

² Effective May 27, 2009, the Health Data Reporting Act of 2002, was amended by Public Chapter Act 318 which provides that all licensed health care facilities are required to only report incidents of abuse, neglect and misappropriation of residents' property occurring in the facility to the department.

DEFICIENCIES CITED IN NURSING HOMES³:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2011 are relatively consistent with the pattern of deficiencies cited across the eight southeastern states (CMS Region IV) and the nation. The average number of health deficiencies citations on a standard survey, per nursing home nationwide was 2.0, compared to 1.8 within CMS region IV and 2.2 in Tennessee; slightly above both the nation and the region with by far the largest average number of citations per survey occurring at scope and severity of “D” at 1.7; (1.2 for CMS region IV and 1.1 for the nation respectively⁴. The percentage of immediate jeopardy (IJ)⁵ citations to resident health and safety nationally was at 1.7% of the total number of nationwide health citations. The percentage of IJ citations in Tennessee was higher than the nation at 2.5%, declining from 2010 by 0.4%, and lower than the region by 1.1%. Seven of the eight CMS Region IV states were above the national IJ citation percentage, with five having an IJ citation percentage above that of Tennessee.

Of the 317 licensed nursing homes in Tennessee in 2011, the following was ascertained:

- There were no nursing home in bankruptcy in 2011.
- Fifteen nursing homes were cited with Immediate Jeopardy substandard level of care, which is a 36% increase from 2010.
- Eleven nursing homes were cited with substandard level of care.
- Fifteen nursing homes were cited with Federal Civil Monetary Penalties for a total *assessed* amount of \$ 4,535,692.
- Five nursing homes were cited with state Civil Penalties for a total assessed amount of \$28,740.00.
- Three nursing homes had admissions suspended in 2011, for a total of five suspension of admissions.

³ Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (01/16/2012)

⁴ For deficiency citations at level “D”, it’s scope is isolated (affecting few residents), with a severity of no actual harm, and a potential for more than minimal harm that is not immediate jeopardy.

⁵ “Immediate Jeopardy” is defined as “a situation in which the provider’s noncompliance with one or more requirements of participation [in the Medicare/Medicaid reimbursement program] has caused, or is likely to cause serious injury, harm, impairment, or death to a resident.” 42 CFR Part 489.3

TOP 15 MOST FREQUENTLY CITED DEFICIENCIES IN NURSING HOMES:

The most common deficiencies cited in nursing homes in 2011 are divided into two groups – those cited in areas related to health (quality of care of residents) and life safety (construction code compliance).

The top fifteen health and quality of care deficiencies were the following:

1. F0441 – Infection Control, Prevent Spread, Linens
2. F0323 – Free of Accident Hazards/Supervision/Devices
3. F0280 – Right to Participate Planning Care – Revise CP
4. F0315 – No Catheter, Prevent UTI, Restore Bladder
5. F0309 – Provide Care/Services for Highest Well Being
6. F0514 – Res Records – Complete/Accurate/Accessible
7. F0371 – Food Procure, Store/Prepare/Serve – Sanitary
8. F0281 – Services Provided Meet Professional Standards
9. F0333 – Resident's Free of Significant Med Errors
10. F0431 – Drug Records, Label/Store Drugs & Biologicals
11. F0832 – Building Standards
12. F0157 – Notify of Changes (Injury/Decline/Room, Etc)
13. F0328 – Treatment/Care for Special Needs
14. F0332 – Free of Medication Error Rates of 5% or More
15. F0282 – Services by Qualified Persons/Per Care Plan

The top fifteen life safety code deficiencies were the following:

1. K0147 – Electrical wiring and equipment
2. K0062 – Sprinkler system maintenance
3. K0018 – Corridor doors
4. K0052 – Testing of fire alarm
5. K0067 – Ventilating equipment
6. K0050 – Fire drills
7. K0029 – Hazardous areas - separation
8. K0038 – Exit access
9. K0064 – Portable fire extinguishers
10. K0054 – Smoke detector maintenance
11. K0130 – Miscellaneous
12. K0144 – Generators inspected/tested
13. K0025 – Smoke partition construction
14. K0069 – Cooking equipment
15. K0066 – Smoking Area Compliance

NURSING HOME QUALITY INITIATIVE UPDATE 2011:

HISTORY OF THE QUALITY INITIATIVE:

In 2006, the Centers for Medicare and Medicaid Services (CMS) continued the National Nursing Home Improvement Coalition. In April 2006, CMS was asked to develop a plan to address the Government Performance and Results Act of 1993 (GPRA) Goals. A major focus was to develop regional coalitions. The CMS Region IV Office in Atlanta developed a plan for collaboration outreach efforts with CMS Central Office staff, other CMS Regional Offices, State Survey Agencies, Quality Improvement Organizations, Provider Associations and the Ombudsman. The CMS Regional IV Office in Atlanta convened conference calls with State Survey Agency Directors and Quality Improvement Organizations. It was identified that a need existed for a face-to-face meeting to include Nursing Home Associations and Ombudsman representatives.

In September 2006 a new coalition based, two-year campaign—Advancing Excellence in America’s Nursing Homes—was launched. This campaign is designed to improve the quality of care and quality of life for those living or recuperating in America’s nursing homes. The campaign identified four clinical quality goals and four organizational improvement goals. The first face-to-face meeting was held in Atlanta on December 12, 2006. Many success stories by the QIO organizations were given during this meeting that described the reductions of restraints and pressure ulcers in nursing homes. The coalition made plans for additional face-to-face meetings to be held in 2007. The initial two year phase of the campaign has demonstrated measurable progress toward reducing the prevalence of pressure ulcers, reducing the use of physical restraints, and improving pain management for long-term and short-stay nursing home residents.

The Advancing Excellence campaign has worked diligently over the past four years to encourage improvements in care for nursing home residents across the country. The Campaign, having achieved its national objective for reducing physical restraint, will set a lower rate as a new goal for the coming year. In addition to setting and measuring clinical goals, the Campaign is now working to help nursing homes retain good workers (staff retention and consistent assignment),

which can make for higher quality of care, and make sure residents are consistently cared for by the same aides in order to build stronger relationships, which is valued by residents, and leads to better care.

For phase 2 participation in this program, October 22, 2009 – December 31, 2011, there were 7,934 nursing homes signed up nationally with the campaign to work on measurably improving care in eight areas. The campaign's coalition includes long-term care providers, caregivers, medical and quality improvement experts, government agencies, consumers and others. Tennessee is modeling on the success of other quality initiatives, including Quality First, the Nursing Home Quality Initiative (NHQI), the culture change movement, and other quality initiatives.

Following are the current phase 2 progress results⁶ for the campaign's four clinical quality goals:

Goal 1: Reducing high-risk pressure ulcers.

Objective A: The national average for high-risk pressure ulcers will be below 9% by December 31, 2011.

Results: The prevalence of high-risk pressure ulcers has decreased nationally from the September 2006 campaign start of 12.8% through the September 2010, third quarter average of 10.3%. The third quarter 2010 state average for Tennessee is slightly below the national average at 10.1%.

Goal 2: Reducing the use of daily physical restraints.

Objective A: The national average for physical restraints will be at or below 2% by December 31, 2011.

Results: Nationally, the use of restraints in nursing homes decreased continually from the September 2006, campaign start of 6% through the third quarter, September 2010, average of 2.6%. The percentage of restraint usage in Tennessee nursing homes during the phase 1 period ending September 2008, was above the national average at 7%. However, a continued decline in restraint usage into the third quarter, September 2010, (phase 2 period) shows Tennessee nursing homes still above the national average at 4.5%, but declining.

⁶ Phase 2 campaign progress results last updated February 2011, reflects Quarter 3 2010, quality measure data.

Goal 3: Improving pain management for long-term nursing home residents.

Objective A: The national average of moderate or severe pain experienced by long-stay residents will be at or below 2% by December 31, 2011.

Results: The campaign's national objective to improve pain management for long-term nursing home residents was at 3.2% by third quarter, September 2010, for the nation; and for the state of Tennessee, below the nation and just slightly above the national goal at 2.1%.

Goal 4: Improving pain management for short stay, post-acute nursing home residents.

Objective A: The national average of moderate or severe pain experienced by post-acute residents will be at or below 16% by December 31, 2011.

Results: The average for post acute care pain nationally, as of third quarter, September 2010, was above the objective at 19.2%. Tennessee nursing homes were at 13.2%, well below the overall phase 2 objective of 16% during this same period.

Analysis of Advancing Excellence in Nursing Home registrants shows that nursing homes are registering for the Advancing Excellence campaign and selecting goals in areas in which there is greater need to improve. Almost 51% of nursing homes in the nation have registered for phase 2 campaign participation (October 22, 2009 – December 31, 2011). Preliminary results show:

- Nursing homes that register for the campaign are making faster improvement toward clinical goals than homes that don't register.
- Nursing homes that register for the campaign and select a particular clinical goal improve faster on that goal than homes that do not select that goal.
- Nursing homes that not only select a goal, but also target how much they aim to improve, improve faster than homes that do not set targets.

As of January 2012, Tennessee nursing homes' participation in the coalition was lower than that of the nation by 7.7%.

	Tennessee	Nation
Participating nursing homes⁷:	137	7,934
Percentage of participating nursing homes:	42.9%	50.6%

The Quality Improvement Organization (QIO) in Tennessee is currently working with the nursing homes participating in this coalition. The QIO works with each nursing home by providing quality improvement tools and instructions that reflect the goals selected. After use of the tools and revising the approaches to the goals, the nursing homes evaluate their own progress. Best practices are shared with other nursing homes through a teleconference call with all members each month. A listserv has also been set up for the nursing homes that are participating to continually share information and best practices. The Division of Health Care Facilities is a member of this coalition and participates both on the listserv and the teleconference calls.

⁷ Data found in this subsection for Advancing Excellence in America's Nursing Homes campaign coalition may be viewed at http://www.nhqualitycampaign.org/star_index.aspx?controls=about