

## Nursing Home Residents at Risk

### A Briefing for Members of Congress

The Nursing Home Reform Law requires every nursing home to provide residents with the services they need to attain and maintain their “highest practicable physical, mental, and psychosocial well-being.” To ensure that residents receive the care that they need and deserve, the law and its implementing regulations detail specific resident rights and protections that all nursing homes must adhere to when they voluntarily participate in Medicare and/or Medicaid. Unfortunately, the Centers for Medicare & Medicaid Services (CMS) has been [rolling back](#) these resident rights and protections, often at the request of the nursing home industry, for the purpose of reducing so-called provider “burdens.”

**The following actions represent only a few of CMS’s deregulatory efforts over the past two years:**

1. CMS placed an [18-month moratorium](#) on the full enforcement of eight standards of care. These standards relate to important resident protections, such as baseline care planning, staff competency, antibiotic stewardship, and psychotropic medications. The moratorium means that nursing homes will not be financially penalized when these safeguards are violated.
2. CMS shifted the [default civil money penalty](#) (CMP) from per day (for the duration of a violation) to per instance. *The New York Times* reported that “the change means that some nursing homes could be sheltered from fines above the maximum per-instance fine of \$20,965 even for egregious mistakes.”
3. CMS issued a notice of proposed rulemaking (NPRM) to roll back [emergency preparedness requirements](#). Most notably, the proposed rule would allow nursing homes to review their programs and train staff every two years instead of annually.
4. In response to industry lobbying, CMS is carrying out plans to [revise](#) the federal nursing home Requirements of Participation to “reform” standards that have been identified as “excessively burdensome” for the nursing home industry. The Requirements were recently revised in [2016](#) (for the first time in 25 years) to better address longstanding problems, including persistent abuse and neglect. These standards need to be implemented, not watered down.

Nursing home residents are some of the most vulnerable individuals in the nation. CMS’s deregulatory agenda puts residents in danger of experiencing harm or being placed in immediate jeopardy of health, safety, or well-being. This potential for resident harm is in direct opposition to the HHS Secretary’s duty under the law. The law makes clear that the Secretary is responsible for assuring the “requirements which govern the provision of care in skilled nursing facilities..., and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.” CMS’s actions indicate that the Secretary is ignoring this long-standing mandate.

CMS’s efforts are even more dangerous because they exacerbate existing problems in nursing homes. Multiple reports from the HHS Office of the Inspector General (OIG) and the Government Accountability Office (GAO) document persistent and widespread problems facing nursing home residents. For instance, a [2014 OIG report](#) found that one-third of Medicare beneficiaries experienced harm within, on average, 15.5 days of entering a nursing home; the OIG stated that 59 percent of these events were preventable. Similarly, a [2008 GAO report](#) highlighted that studies since 1998 indicate state surveyors “sometimes understate the extent of serious care problems in homes because they miss

deficiencies . . . .” Such persistent problems over the years have created greater insecurity for residents, requiring additional legislation and regulations, not less.

**The following problems indicate only some of the ongoing concerns:**

- 1. Citations.** More than [95 percent](#) of all citations for violations of the federal minimum standards of care result in findings of no resident harm. A “no harm” citation does not mean that the resident did not, in fact, experience pain, suffering, or humiliation. However, a finding of [“no harm”](#) all too often **does** mean that the nursing home is **not** penalized for poor care.
- 2. Staffing.** [Staffing is essential](#) to resident care and quality of life. Too often, insufficient staffing is the underlying cause of other health violations. By law, nursing homes must have a registered nurse on duty for eight consecutive hours and 24-hour licensed nurse services every single day. This is recognized as the minimum necessary to ensure that residents receive the “skilled nursing” care and monitoring that they need and which facilities are paid to provide. However, CMS noted in a [2017 memorandum](#) that about six percent of nursing homes that submitted nurse staffing data for the third quarter of 2017 had seven or more days with no reported RN hours and that 80 percent of these days were on weekends. [The New York Times](#) further found that, for at least one day in the last quarter of 2017, 25 percent of nursing homes reported no registered nurses at work.
- 3. Antipsychotic Drugs.** About [20 percent](#) of nursing home residents are administered antipsychotic drugs every day. However, less than two percent of the population will ever have a diagnosis for a clinical condition (e.g., Schizophrenia) identified by CMS when it risk-adjusts for potentially appropriate uses of these drugs. In a [2011 statement](#) addressing widespread and inappropriate use of antipsychotic drugs in nursing homes, the HHS Inspector General stated that “[g]overnment, taxpayers, nursing home residents, as well as their families and caregivers should be outraged - and seek solutions.” Nevertheless, seven years later, in the absence of meaningful enforcement the problem is still widespread.
- 4. Transfer and Discharge.** [CMS](#) has stated that “facility-initiated discharges continue to be one of the most frequent complaints made to State Long Term Care Ombudsman Programs.” Although the Nursing Home Reform Law places specific restrictions on when and how a resident can be transferred or discharged, many residents fall victim to inappropriate and unsafe discharges. Residents have been discharged to unsafe and inappropriate settings, such as homeless shelters, storage units, and motels.
- 5. Ownership.** The buying and selling of nursing homes and the transfer of licenses to new managers [raise questions](#) about who these operators are and whether there are sufficient state and federal law, regulations, and practices in place, and meaningfully enforced, to protect residents. For instance, [Skyline Healthcare](#) took over 100 nursing homes across the country starting in 2015 before ultimately collapsing in 2018. Officials from various states indicated that Skyline was at imminent risk of running out of necessary food and medication, and was unable to meet payroll. Many of Skyline’s nursing homes were acquired from Golden Living, another chain that was sued by the [Pennsylvania Attorney General](#) in 2015 for providing poor care to residents.

Nursing home residents are in need of urgent action to protect their quality of care and quality of life. Given the ongoing problems that already exist in nursing homes, CMS’s deregulation places residents at an even greater risk of experiencing harm. Our organizations would like the opportunity to work with you to address the needs of this exceptionally vulnerable population. Please do not hesitate to contact us if you have any questions or concerns about long-term care issues.

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### **Further Reading:**

- Don't Abandon Nursing Home Residents (Series). See <https://nursinghome411.org/dont-abandon-nursing-home-residents-series/>.
- Protecting Seniors by Improving—Not Eroding—Nursing Home Quality Standards: A Briefing Hosted by the Seniors Task Force (Jun. 4, 2018). See <http://www.medicareadvocacy.org/wp-content/uploads/2018/06/Briefing-Materials-6-2018.pdf>.

### **Organizational Websites:**

- **LTCCC** – [www.nursinghome411.org](http://www.nursinghome411.org)
- **Center for Medicare Advocacy** – [www.medicareadvocacy.org](http://www.medicareadvocacy.org)
- **Consumer Voice** – [www.theconsumervoice.org](http://www.theconsumervoice.org)
- **Justice in Aging** – [www.justiceinaging.org](http://www.justiceinaging.org)
- **CANHR** – [www.canhr.org](http://www.canhr.org)