Center for Medicare Advocacy
MedicareAdvocacy.org

LONG TERM CARE COMMUNITY COALITION
Advancing Quality, Dignity & Justice

Elder Justice
What "No Harm" Really Means for Residents

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In This Issue:

What is a "No Harm" Deficiency?

Effective monitoring and oversight of nursing home care are critical to ensuring the safety and dignity of residents, as well as the integrity of the public programs which pay for a majority of nursing home care. Nevertheless, numerous studies over the years have indicated that, too often, the state agencies responsible for ensuring that nursing homes meet minimum standards of care fail to identify when residents experience substandard care, abuse, or neglect. Furthermore, CMS data indicate that, even when state surveyors *do* identify a health violation, they only identify the deficiency as having caused any harm to a resident about four percent (4%) of the time.

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The failure to identify resident harm when it occurs has pernicious implications on many levels. Fundamentally, it signifies a lack of recognition of resident suffering, degradation and even, occasionally, death. Importantly, from a policy perspective, it means that there is likely no accountability because nursing homes rarely face financial or other penalties for "no harm" deficiencies. The absence of any penalty sends a message to nursing homes that such substandard care, abuse, and neglect will be tolerated.

The purpose of this newsletter is to provide the public with examples of these "no harm" deficiencies, taken from Statements of Deficiencies (SoDs) on Nursing Home Compare. Surveyors classified all of the deficiencies discussed here as "no harm," meaning that they determined that residents were neither harmed nor put into immediate jeopardy for their health or well-being. **We encourage our readers to read these residents' stories and determine for themselves whether or not they agree with the "no harm" determinations**.

Glen Cove Center for Nursing and Rehabilitation, NY

Five-star facility administers an "unnecessary drug" to a resident, tripling his dosage over an eleven day period.

The resident's nurse progress notes indicated that he "was very confused with periods of agitation, accusing nursing staff of stealing his dentures and using inappropriate language towards the nursing staff."[1] The resident was given a psychiatric consult and his antidepressant was increased to 100mg every morning. A second psychiatric consult resulted in the continuation of his morning dosage and the addition of 50mg every night.

The resident's records showed "no documentation" that the he was agitated or aggressive other than on one previously recorded occasion. A certified nursing assistant told the surveyor that the resident "was nice and did whatever she asked him to do." The CNA explained that the resident had never cursed or been aggressive towards her. A registered nurse told the surveyor that the resident "always took his medication, was cooperative, friendly, pleasant, and able to make his needs known."

Based on these and other findings, the surveyor ultimately cited the facility for failing to "ensure that each resident's drug regimen was free from unnecessary drugs." Specifically, in regards to this resident, the surveyor stated that his medication was "tripled over an eleven day period without any documented clinical symptoms of Depression." Despite the facility's failure to ensure the resident was not drugged unnecessarily, the surveyor cited the failure as causing neither harm nor immediate jeopardy to the resident's well-being.

Advocacy Tip: Every nursing home resident has the right to be free from unnecessary drugs. A drug may become unnecessary when it is used in an excessive dose and/or duration, without adequate monitoring and/or indications, or in the presence of adverse consequences.

For more information, please see LTCCC's Dementia Care & Psychotropic Drugs **fact sheet**.

Oswego Operator, LLC, Kansas

One-star facility fails to properly report an allegation regarding the misappropriation of a resident's property.

The resident reported to the facility that she was missing $80.00 just shortly after being admitted.[2] The facility's grievance form noted that the resident reported money missing from her purse and that a staff member questioned the nursing staff about the missing money. The facility's investigation into the matter did not result in any conclusive findings, "failed to document the names of staff interviewed, lacked any notarized witness statements, and failed to include a root cause analysis, or other means to identify the cause of the incident."

Although the facility gave written and verbal notice to the resident about the investigation, the facility's policies documented that the facility was to handle the misappropriation of resident property through the abuse and neglect policies and procedures.

Advocacy Tip: Every nursing home resident has the right to be free from the misappropriation of his or her property. Facilities must report any "reasonable suspicion" of crimes against a resident within a specified timeframe.

For more information, please see LTCCC's Abuse, Neglect & Exploitation **fact sheet.**

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The facility’s policies for abuse and neglect specified that the facility must complete a thorough investigation and timely report to the required agencies.

According to the surveyor, the “facility failed to timely report this allegation of misappropriation of resident property, when the facility failed to report the resident's missing $80.00 to the State agency within 24 hours of becoming aware of the incident, as required.” Despite this violation, the surveyor determined there was “no harm.”

Bayside Village, MI

Three-star facility’s staff member fails to follow the resident’s care plan for a two-person assist, causing the resident to experience “pain and discomfort.”

The surveyor interviewed the resident about her care.[3] The resident told the surveyor that she felt uncomfortable when one of the certified nursing assistants (CNAs) came into her room to provide care. The resident stated that the CNA should have been with a woman; however, the CNA entered the room and attempted to get the resident ready for bed by himself. The resident explained that the CNA “held my arms down on the bed, trying to turn me. I said ‘Ow, stop it.’”

The CNA told the surveyor that the resident was “brand new to him.” The CNA acknowledged that the resident required a two-person assist for care but he rolled the resident “alone.” The CNA noted that “it was painful to her.” The director of nursing (DON) added that the CNA was trying to put an adult brief on the resident and that the resident felt the CNA was being too rough.

The facility’s records indicated that the CNA rushed the resident’s care, did not drape her while retrieving a gown, and turned the resident by himself, which caused pain in the resident’s hip. The resident’s care plan documented that the resident required a two-person assist and had pain due to a pelvis fracture.

Advocacy Tip: Every nursing home resident has the right to receive appropriate care, have a good quality of life, and be treated with dignity.

For more information about the standards for nursing home services, please see LTCCC’s **fact sheet**.

The surveyor cited the facility for failing “to implement the care plan intervention requiring two staff to provide care . . .” The surveyor added that “[t]his deficient practice resulted in pain and discomfort . . . .” Although the surveyor determined that facility’s failures resulted in pain to the resident, the surveyor cited the violation as “no harm.”

Consulate Health Care of West Palm Beach, FL

Two-star facility does not inform a resident of medication changes, violating her right to be fully informed and understand her health status, care, and treatment.

The resident told the surveyor that she was not involved in her own care.[4] The resident clarified that she was not informed of medication changes that occurred the prior month. The resident learned of the medication change after she became nauseated. As the resident pointed out to the surveyor, “[t]hey have no right to start a medication without my approval. I’m not like most around here. I have my marbles.”

The resident's records indicated that she was alert and oriented, and that she complained that her medications were making her nauseous. The resident's medications included anti-depressants. The surveyor asked the facility to provide evidence that the resident was "informed of and educated about the new medications ordered since her hospitalization . . . ." At the time of the surveyor's exit conference, the facility was only able to provide an order but no further documentation.

Advocacy Tip: Every nursing home resident has the right to be informed of, and participate in, his or her treatment.

For more information, please see LTCCC's Informed Consent **fact sheet.**

The surveyor cited the facility for failing "to inform . . . residents of new or changed medications." While the facility administered medications to the resident without her informed consent, resulting in her feeling nauseous, the surveyor determined that this violation was "no harm."

A Note on Residents' Rights

Under the federal Nursing Home Reform Law, every nursing home must provide each resident with services that help attain or maintain the resident's "highest practicable physical, mental, and psychosocial well-being." This federal law and its implementing regulations offer residents specific rights and protections to ensure quality of care and quality of life in nursing homes. While CMS's enforcement of the nursing home standards of care may be lacking, the nursing home standards must still be followed. Our organizations encourage residents and families to remain vigilant, learn about resident protections, and continue advocating for the rights of their loved ones. **For more information about the nursing home standards of care, please see www.nursinghome411.org and www.medicareadvocacy.org.**

Tell Your Story

Your voice matters! Your experiences as a resident, family member, friend, ombudsman, or nursing home staff member play an invaluable role in shaping our advocacy, as well as informing federal and state governments about ways to improve resident care and quality of life. We encourage you to share your story using **LTCCC's user-friendly form**.

Our organizations will never divulge any identifiable information without your specific permission.

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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[1] Statement of Deficiencies for Glen Cove for Nursing and Rehabilitation, CMS (Sept. 14, 2018), https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=335716&SURVEYDATE=09/14/2018&INSPTYPE=STD.

[2] Statement of Deficiencies for Oswego Operator, LLC, CMS (Oct. 9, 2018), https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=175434&SURVEYDATE=10/09/2018&INSPTYPE=STD. The resident's sex was not identified in the inspection report. To make the summary more user-friendly, we refer to the resident as being female.

[3] Statement of Deficiencies for Bayside Village, CMS (Oct. 4, 2018), https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=235144&SURVEYDATE=10/04/2018&INSPTYPE=STD.

[4] Statement of Deficiencies for Consulate Health Care of West Palm Beach, CMS (Oct. 4, 2018), https://www.medicare.gov/nursinghomecompare/InspectionReportDetail.aspx?ID=105492&SURVEYDATE=10/04/2018&INSPTYPE=STD.

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