

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

**A Report to the 2009 106<sup>th</sup> Tennessee General Assembly**

**Tennessee Department of Health**

**February 1, 2009**

## **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 330 nursing homes that were licensed in Tennessee in 2008, 323 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 at the same time 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 could violate conditions of participation in the Medicare/Medicaid reimbursement program.

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 2008, there were 330 licensed nursing homes in the state of Tennessee.
- The Department investigated a total of 5,172 complaints during 2008 for all health care facilities. Overall, the Department conducted approximately 11,580 surveys for all health care facilities in 2008, which includes annual, complaint, unusual incident and revisit surveys.
- Complaints against nursing homes totaled 4,028, or 78% of the total complaints, which is a 4% increase from 2007.
- There were 317 nursing homes with one or more complaints filed, constituting 96% of the total nursing homes.
- There were 170 nursing homes with ten or more complaints filed, constituting 52% of the total nursing homes.
- The number of nursing homes with substantiated complaints:
  - 2004 – 134 nursing homes or 39% of all nursing homes
  - 2005 – 144 nursing homes or 43% of all nursing homes
  - 2006 – 141 nursing homes or 42.7% of all nursing homes
  - 2007 – 125 nursing homes or 37.5% of all nursing homes
  - 2008 – 111 nursing homes or 33.6% of all nursing homes

In 2008, the Department received more complaints and conducted more complaint surveys in nursing homes than in previous years. Although the number of complaints consistently rose (from 1,453 in 2005 to 1,516 in 2006; 3,033 in 2007; and 4,028 in 2008), the percentage of substantiated complaints decreased consistently from 19% in 2005; 17% in 2006; 8% in 2007 and 6% in 2008.

## **DEFICIENCIES CITED IN NURSING HOMES:**

Deficiencies cited in nursing home facilities in the state of Tennessee for 2008 are relatively consistent with the pattern of deficiencies cited across the eight southeastern states (CMS Region IV) and the nation, with the exception of Scope and Severity of “J” and “K” (which are two distinct delineations of immediate jeopardy (IJ) <sup>1</sup> to resident health and safety; “J” delineates an isolated IJ situation and “K” delineates a pattern of IJ) for both Standard and Complaint Surveys. However, based solely on the data, it is not clear at present whether the higher number of cited deficiencies at the stated scope and severity is a result of a larger number of facilities having been cited or rather a few facilities cited with a high number of these “J – K” deficiencies. The overall results would suggest the latter. The average number of health deficiencies cited in Tennessee per nursing home was 5.5, compared to 7.0 nationwide and 6.2 within CMS Region IV.

Of the 330 licensed nursing homes in Tennessee in 2008, the following was ascertained:

- One (1) nursing home was free of both health and life safety deficiencies.
- The year started with two nursing homes in bankruptcy; December ended with zero.
- Thirty-one nursing homes were cited with Immediate Jeopardy substandard level of care, which is a 20 % decrease from 2007.
- Forty nursing homes were cited with substandard level of care.
- Forty-four nursing homes were cited with Federal Civil Monetary Penalties for a total assessed amount of \$ 6,437,333.
- Twenty-four nursing homes were cited with state Civil Penalties for a total assessed amount of \$62,500.00.

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<sup>1</sup> “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 2008 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. F0323<sup>2</sup> Facility is free of accident hazards
2. F0371 Storage/preparation/distribution food under sanitary conditions
3. F0281 Services provided meet professional standards
4. F0309 Provide necessary care for highest practical well being
5. F0279 Develop comprehensive care plans
6. F0329 Drug regimen is free from unnecessary drugs
7. F0253 Housekeeping and maintenance services
8. F0315 Residents not catheterized unless unavoidable
9. F0314 Proper treatment to prevent/heal pressure sores
10. F0441 Facility establishes infection control program
11. F0514 Clinical records meet professional standards
12. F0241 Dignity
13. F0282 Services by qualified persons in accordance with care plan
14. F0431 Proper labeling of drugs and biologicals
15. F0425 Facility provides drugs and biologicals

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<sup>2</sup> The “F” and “K” designations refer to “Tag numbers”, which correspond to the deficiency citation format used by the Centers for Medicare and Medicaid Services in its survey procedures.

The top fifteen life safety code deficiencies were the following:

1. K0018 Corridor doors
- 2.. K0029 Hazardous areas - separation
3. K0062 Sprinkler system maintenance
4. K0147 Electrical wiring and equipment
5. K0038 Exit access
6. K0025 Smoke partition construction
7. K0050 Fire drills
8. K0056 Automatic sprinkler system
9. K0144 Generators inspected/tested
10. K0076 Medical gas system
11. K0052 Testing of fire alarm
12. K0012 Construction type
13. K0067 Ventilating equipment
14. K0069 Cooking equipment
15. K0027 Doors in smoke partitions

**UPDATE ON SPRINKLERED NURSING HOME STATUS:**

In 2004, the General Assembly enacted Public Chapters 590 and 856 (codified at Tenn. Code Ann. § 68-11-235), which required generally that any licensed nursing home that was not fully sprinklered as of July 1, 2004 was to become sprinklered within twelve months or eighteen months (depending on whether the facility provides patient care above or below the ground floor or on the ground floor only) after July 1, 2004 or the date of the Department's approval of the facility's sprinkler plan, whichever date was later. Alternatively, a nursing home could comply with the law by replacing its existing facility, so long as the new facility was approved by the Health Services and Development Agency and was in construction beyond the footing stage no later than July 1, 2007.

As of December 2008, all nursing homes in the state of Tennessee were in compliance with Public Chapters 590 and 856.

## **NURSING HOME QUALITY INITIATIVE UPDATE 2008:**

### **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. 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.

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. It has worked diligently over the past two years to encourage improvements in care for nursing home residents across the country. Currently, more than 71,000 nursing homes have signed up 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.

From data collected during the first eighteen months, the campaign announced that there has been progress in reducing the prevalence of pressure ulcers in nursing homes, reducing use of physical restraints, managing pain for long-term nursing home residents, and managing pain for

short stay, post-acute nursing home residents. Advancing Excellence is a coalition-based campaign to improve and measure quality of life for residents and staff in America's nursing homes. The campaign has identified four clinical quality goals and four organizational improvement goals. Following are the progress results 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 10% by September 2008.

**Results:** The prevalence of high-risk pressure ulcers decreased slightly from September 2005 through March 2008. Although not yet met, the campaign is close to meeting this goal, with a current national average of 11.8%. The state average for Tennessee is 13%.

**Goal 2:** Reducing the use of daily physical restraints.

**Objective A:** The national average for physical restraints will be at or below 5% by September 2008.

**Results:** The use of restraints in nursing homes decreased from September 2005 through March 2008. As of December 2007, the campaign's objective for average use of restraints was met and it continues to improve. The campaign has also met its objective for the percentage of nursing homes with low use of restraints. (4.6%). The percentage of restraint usage in Tennessee nursing homes is above the national average, at 7%.

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

**Objective A:** The national average for chronic pain will be at or below 4% by September 2008.

**Results:** Moderate or severe pain among people who live in nursing homes longer than ninety days decreased from September 2005 through March 2008. The campaign's national objective to improve pain management for long-term nursing home residents is very close to being met. The campaign has met its goal for the percentage of nursing homes with lower rates of pain for long-stay residents. (3.8%). The Tennessee average for chronic pain (at 5%) is currently above the national average of pain for long-stay residents.



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

**Objective A:** The national average for post acute care pain will be at or below 15% by September 2008.

**Results:** Moderate to severe pain among people who come to nursing homes after staying in the hospital decreased gradually from September 2005 through March 2008 (to 19.6%). The average for post acute care pain among Tennessee nursing home residents is below the current national average (at 18%), but still above the quality goal for this measure.

Further 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.

Over 45% of nursing homes in the nation have registered for the campaign. 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 December 2008, Tennessee nursing homes' participation in the coalition exceed that of the nation by 2.6%.

	<b>Tennessee</b>	<b>Nation</b>
<b>Participating nursing homes<sup>3</sup>:</b>	160	7,156
<b>Percentage of participating nursing homes:</b>	48%	45.4%

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<sup>3</sup> 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](http://www.nhqualitycampaign.org/star_index.aspx?controls=about)

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 three 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.

In December 2008, the Centers for Medicare and Medicaid Services (CMS) added another component to its Quality Initiative Campaign, namely a Five-Star Quality Rating System for nursing homes. The Five-Star Quality Rating System was created to help consumers, their families, and caregivers compare nursing homes more easily, and as a starting point for dialogue between the nursing home provider and the consumer. The ratings are reported and are available to the public on CMS' Nursing Home Compare website ([www.medicare.gov](http://www.medicare.gov)).

Nursing Home Compare provides quality ratings for each of the nation's 16,000 Medicare and/or Medicaid-certified nursing homes. Each facility is rated from a low of one star to a high of five stars based on three critical areas: health inspection results, quality measures as reported by the facility, and staffing levels as reported by the facility. An overall rating is also provided. The state of Tennessee is currently ranked at number fifty-one out of fifty-four in the nation (ranking includes Virgin Islands, Puerto Rico, Hawaii, and Guam).