



STATE OF TENNESSEE
DEPARTMENT OF HEALTH

JOHN J. DREYZEHNER, MD, MPH
COMMISSIONER

BILL HASLAM
GOVERNOR

February 8, 2013

The Honorable Bill Haslam, Governor
The Honorable Ron Ramsey, Lieutenant Governor and Speaker of the Senate
The Honorable Beth Harwell, Speaker of the House of Representatives
State Capitol
Nashville, Tennessee 37243

Dear Governor Haslam, Lieutenant Governor Ramsey, and Speaker Harwell:

Pursuant to Tennessee Code Annotated § 68-1-120, the Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act of 2003, the Department of Health provides the enclosed report of the nursing home inspection and enforcement activities for calendar year 2012.

Notably, of the 321 licensed facilities, the average number of health deficiencies were 6.2. The number of providers in substantial compliance¹ were 17 (5.3%); 304 (94.7%) were not in substantial compliance. Sixteen (16) providers (5.0%) had zero health deficiencies and eight providers (2.5%) were cited for substandard quality of care².

2012 budgeted expenditures for nursing home inspection and enforcement activities were 8.2M, with 1.8M (25%) being the State's share.

Thank you for your consideration of this report. Please do not hesitate to contact me if you have any questions.

Sincerely,

John J. Dreyzehner, MD, MPH, FACOEM
Commissioner

¹ A level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm

² Deficiencies related to participation requirements under, resident behavior and facility practices (42 CFR 483.13), quality of life (42 CFR 483.15), or quality of care (42 CFR 483.25), constituting either immediate jeopardy; a pattern of or widespread actual harm; or widespread potential of more than minimal harm.

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

A Report to the 2013 108th Tennessee General Assembly

**Tennessee Department of Health
February 1, 2013**

TABLE OF CONTENT:

Executive Summary.....4

Background and Summary of the Law.....6

Complaint Activity.....7

Deficiencies Cited in Nursing Homes.....8

Top 15 Most Frequently Cited Deficiencies in Nursing Homes.....9

Nursing Home Quality Initiative Update 2012.....10

Executive Summary:

This report addresses activities and outcomes under both state and federal laws and rules. The Division of Health Care Facilities (HCF) for the Department of Health, through the Board for Licensing Health Care Facilities, annually licenses nursing homes, among other facility types. As the contracted survey agency for the Center's for Medicare and Medicaid Services (CMS), HCF also federally certifies health care facilities currently participating or seeking participation in the CMS program. In that role, the Division of Health Care Facilities conducts annual or initial surveys and complaint investigations to ensure compliance with state and federal statutes and regulations.

All complaints received by HCF for the 321 state licensed nursing homes, of which 319 are federally certified, are monitored and maintained on a federal proprietary software program. In 2012, **among all facility types, approximately 65% (1,027) of 1,590 total complaints were complaints against nursing homes.** The percentage of nursing homes with at least one substantiated complaint has remained relatively stable at approximately 32% on average over the last two years. **The average number of health deficiencies were 6.2. The number of providers in substantial compliance³ were 17 (5.3%); 304 (94.7%) were not in substantial compliance. Sixteen (16) providers (5.0%) had zero health deficiencies and eight providers (2.5%) were cited for substandard quality of care⁴.**

2012 budgeted expenditures for nursing home inspection and enforcement activities were 8.2M, with 1.8M (25%) being the State's share.

Deficiencies cited in nursing home facilities in the state of Tennessee for 2012 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. **The two most cited direct care related deficiencies were infection control and accidents due to falls. The two most frequently cited facility life safety code deficiencies were electrical wiring and equipment, and sprinkler system maintenance.** These remain unchanged from 2011 reported data.

From its beginning in 2006, the National Nursing Home Improvement Initiative continues to receive CMS support through The Advancing Excellence in America's Nursing Homes Campaign, a major initiative of the Advancing Excellence in Long Term Care Collaborative. The

³ A level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm

⁴ Deficiencies related to participation requirements under, resident behavior and facility practices (42 CFR 483.13), quality of life (42 CFR 483.15), or quality of care (42 CFR 483.25), constituting either immediate jeopardy; a pattern of or widespread actual harm; or widespread potential of more than minimal harm.

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 (LANE), a coalition of nursing home stakeholders within every state. **The current national focus of LANE are 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 participation in a LANE is voluntary, Tennessee has approximately 45% (148) of its nursing homes participating in the LANE coalition. The level of nursing home participation in Tennessee is approximately 11% lower than the national average. Among the four clinical goals, Tennessee LANE participants rank below the campaign's national average for pressure ulcer reductions, and short and long term pain management, and above the national average for physical restraints.

In March 2012, CMS implemented a new national nursing home initiative to reduce by 15% psychotropic drug use in nursing home facilities by December 31, 2012. **Tennessee nursing homes have the highest psychotropic drug use in the Southeast region, at 30.1% compared to 23.9% nationwide.** TDH, in partnership with Advancing Excellence coalition stakeholders, is working to meet the goal of the first phase (year) of this initiative. National outcome data will be available in the late spring of 2013.

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 321 nursing homes that were licensed in Tennessee in 2012, 319 were also certified by CMS to participate in the Medicare/Medicaid reimbursement program. Similar to state licensure surveys, the Department surveys the federally certified 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 reported to CMS. CMS makes the 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 (Tenn. Code Ann. § 68-11-210 (4) (b) (2) (D) (E) and § 68-11-211).

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 2012, there were 321 licensed nursing homes in the state of Tennessee.
- The Department investigated a total of 1,590 complaints during 2012 for all health care facilities. Overall, the Department conducted 5,221 surveys for all health care facilities in 2012, which includes annual, complaint, and unusual incident and revisit surveys. This compliment of 2012 surveys closely approximates the 5,279 surveys conducted for all health care facilities in 2011. Complaints against nursing homes totaled 1,027, or 64.5% of the 1,590 total complaints, all facility types, which is approximately a 3.0% decrease from 2011⁵.
- There were 275 nursing homes with at least one complaint filed, constituting 85.6 % of the total nursing homes.
- There were 17 nursing homes with ten or more complaints filed, constituting 5.2% of the total nursing homes; a decrease of 1.5% from 2011.
- The number of nursing homes with at least one substantiated complaint:
 - 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
 - 2012 – 100 nursing homes or 31.1% of all nursing homes

The 2012 nursing home data shows no significant change in either the number of complaints or the number of complaint surveys conducted from the previous year. There appears to be a leveling off in both the number and percentage of nursing homes with substantiated complaints.⁶

⁵ Decrease in complaint investigations against nursing homes from 2011 to 2012 may be attributed to a continued TDH concerted effort to work with provider associations and other stakeholders in conducting joint provider educational seminars.

⁶ 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 HOMES⁷:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2012 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 5.6, compared to 4.4 within CMS region IV and 6.2 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 41.6%; (34.7% for CMS region IV and 21.9% for the nation respectively⁸. The percentage of immediate jeopardy (IJ)⁹ citations to resident health and safety nationally was at 2.1% of the total number of nationwide health citations an increase of 0.4% above 2011. The percentage of IJ citations in Tennessee was higher than the nation at 3.4%, an increase from 2011 by 0.9%, and above the region by 1.2%. Four of the eight CMS Region IV states were above the national IJ citation percentage, with four having an IJ citation percentage above that of Tennessee.

Of the 321 licensed nursing homes in Tennessee in 2012, the following was ascertained:

- There was no nursing home in bankruptcy in 2012.
- Twenty nursing homes were cited with Immediate Jeopardy substandard level of care, which is a 33% increase from 2011.
- Nineteen nursing homes were cited with substandard level of care.
- Twenty-one nursing homes were cited with Federal Civil Monetary Penalties for a total *assessed* amount of \$ 6,990,200.
- Eleven nursing homes were cited with state Civil Penalties for a total assessed amount of \$28,600.00.
- Eight nursing homes had admissions suspended in 2012, for a total of eight suspension of admissions.

⁷ Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (01/22/2013)

⁸ For deficiency citations at level “D”, its 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.

⁹ “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 2012 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. F0371 – Food Procure, Store/Prepare/Serve – Sanitary
5. F0514 – Res Records – Complete/Accurate/Accessible
6. F0431 – Drug Records, Label/Store Drugs & Biologicals
7. F0309 – Provide Care/Services for Highest Well Being
8. F0279 – Use Assessments to Develop Resident’s Care Plan
9. F0281 – Services Provided Meet Professional Standards
10. F0241 – Promote Resident Care That Enhances Resident Dignity
11. F0278 – Resident Assessment Must Accurately Reflect Resident’s Status
12. F0164 – Residents Rights to Personal Privacy and Clinical Records Confidentially
13. F0425 – Provision of Routine and Emergency Drugs to Residents
14. F0315 – No Catheter, Prevent UTI, Restore Bladder
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. K0067 – Ventilating equipment
5. K0831 – Assure Building Standards to Maintain Safety
6. K0038 – Exit access
7. K0029 – Hazardous areas - separation
8. K0050 – Fire drills
9. K0130 – Miscellaneous
10. K0025 – Smoke partition construction
11. K0069 – Cooking equipment
12. K0054 – Smoke detector maintenance
13. K0104 – Penetration of Smoke Barriers
14. K0052 – Testing of fire alarm
15. K0144 – Generators inspected/tested

NURSING HOME QUALITY INITIATIVE UPDATE 2012:

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, campaign—Advancing Excellence in America’s Nursing Homes—was launched. This campaign, designed to improve the quality of care and quality of life for those living or recuperating in America’s nursing homes, 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 national Advancing Excellence campaign has worked diligently over the past six years to encourage improvements in care for nursing home residents across the country.

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 Q2 April – June 2012 participation in this program, there were 8,935 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 second quarter (Q2) 2012 progress results¹⁰ for the campaign's four clinical quality goals:

Goal 1: Reducing high-risk pressure ulcers.

Objective A: The state average for high-risk pressure ulcers will be at or below the national average by December 31, 2012.

Results: The prevalence of high-risk pressure ulcers has decreased nationally from the September 2006 campaign start of 12.8% through the June 2012 Q2 average of 6.6%. The Q2 2012 state average for Tennessee is slightly below the national average at 5.9%.

Goal 2: Reducing the use of daily physical restraints.

Objective A: The state average for physical restraints will be at or below the national average by December 31, 2012.

Results: Nationally, the use of restraints in nursing homes decreased continually from the September 2006, campaign start of 6% through the Q2, June 2012, average of 2.1%. The Q2, June 2012, data shows Tennessee nursing homes still above the national average at 4.1%, but declining.

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

Objective A: The state average of moderate or severe pain experienced by long-stay residents will be at or below the national average by December 31, 2012.

¹⁰ 2012 Quarter 2 campaign progress results last updated November 2012, and reflects the target quarter, April through June 2012, quality measure data.

Results: The campaign’s national objective to improve pain management for long-term nursing home residents by reducing the percent of long stay residents experiencing continual moderate to severe pain below the national average of 10.7% by December 31, 2012, finds the state of Tennessee, having met the goal at 9.9%, as of Q2

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

Objective A: The state average of moderate to severe pain experienced by post-acute residents will be at or below the national average of 21.8% by December 31, 2012.

Results: Tennessee nursing homes were at 21.3%, slightly below the Q2 2012 objective.

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. Fifty-seven percent (57%) of nursing homes in the nation have registered for campaign participation as of December 31, 2012. 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 2013, Tennessee nursing homes’ participation in the coalition was lower than that of the nation by 10.6%.

	Tennessee	Nation
Participating nursing homes¹¹:	148	8,935
Percentage of participating nursing homes:	46.4%	57%

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

¹¹ 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

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.

Antipsychotic Drug Use Reduction Initiative:

In March 2012, CMS launched a national initiative aimed to improve behavioral health and minimize the use of medications (such as antipsychotic medications) to manage individuals with dementia. CMS has partnered with the American Health Care Association (AHCA) in this nationwide initiative to reduce antipsychotic drug use among nursing home residents by 15% by December 31, 2012 and further reduce those rates in 2013. As part of the initiative, CMS is developing a national action plan that will use a multidimensional approach to improve care for individuals with dementia that includes public reporting, raising public awareness, regulatory oversight, technical assistance, provider and consumer education and research.

Tennessee has the highest usage of antipsychotic medications in the Southeast Region at 30.1% for long-stay residents, as compared to the national average of 23.8%. The Tennessee Department of Health Office of Health Care Facilities has received grant approval from the federal Centers for Medicare and Medicaid Services to expend more than \$370,000 in federal civil monetary penalty funds collected from deficient nursing homes to provide special training for every certified nursing home in Tennessee in the reduction of antipsychotic drug use among nursing home residents, especially those with dementia. This is the largest single CMP grant application approved by CMS Region IV to date this year.

The CMS funding enables TDH, in partnership with the Tennessee Advancing Excellence Coalition (TN-AEC) members, to provide three symposiums across the state focused on how to effectively reduce antipsychotic drug therapy, address the root cause of behaviors and improve quality of life for residents living with dementia. These training sessions are being facilitated by The Eden Alternative, a stakeholder in the TN-AEC. Training sessions are occurring in Nashville, Knoxville and Memphis Tennessee. Tennessee nursing home's success in achieving the initial 15% reduction by December 2012, will be reportable sometime after late Spring of 2013.