

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

**A Report to the 2017 110<sup>th</sup> Tennessee General Assembly**

**Tennessee Department of Health**

**March 6, 2017**

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## **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.

## **Complaints**

All complaints received by HCF for the 327 state licensed nursing homes, of which 321 are federally certified, are monitored and maintained on a federal proprietary software program.

- **In 2016, among all facility types, approximately 65.8% (1452) of 2,207 total complaints were complaints against nursing homes.**
- **The percentage of nursing homes with at least one substantiated complaint decreased by 7.3% over the previous years to 31.3%**
- **The average number of health deficiencies was 4.4.**
- **The number of providers in substantial compliance<sup>1</sup> upon standard survey were zero.**
- **Zero (0) providers had zero health deficiencies and 13 providers (3.9%, up from 2.7% in 2015) were cited for substandard quality of care<sup>2</sup>.**
- **2016 budgeted expenditures for nursing home inspection and enforcement activities were 10.9M, with 3.6M (33%) being the State's share.**

## **Deficiencies**

Deficiencies cited in nursing home facilities in the state of Tennessee for 2016 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: 1- infection control, 2- sanitary storage and preparation of food.**

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<sup>1</sup> 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

<sup>2</sup> 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.

- **The two most frequently cited facility life safety code deficiencies were sprinkler system installation, and sprinkler system maintenance.**

### **Nursing Home Collaborative**

From its beginning in 2006, the National Nursing Home Quality 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. Advancing Excellence is an ongoing, voluntary campaign to help nursing homes become person-centered, high-performance organizations. It aims to make nursing homes good places to live, work, and visit by achieving measurable improvement and systemic change in the quality of care and quality of life for residents and staff. 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 (LANE), a coalition of nursing home stakeholders within every state. This year the NNHQII continues, refocusing on nursing home quality of care, quality of life for residents, with nine goals, four (4) Organizational, five (5) Clinical, with mechanisms available to support NH quality improvement projects. **The four organizational focus goals are: (1) consistent staff assignment; (2) reducing unneeded hospitalizations; (3) person centered care; and (4) staff stability. The five clinical focus goals are: (1) reducing facility acquired infections; (2) inappropriate medication use including antipsychotics; (3) enhancing mobility; (4) reducing pain; (5) reducing pressure ulcers.**

With LANE participation being fully voluntary, Tennessee has approximately 87% (280) of its nursing homes participating in the LANE coalition. **The level of nursing home participation in Tennessee has increased by approximately 23% above 2015.**

### **Nursing Home Initiative**

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. Prior to the start of the initiative, **Tennessee nursing homes had the highest psychotropic drug use in the Southeast region, at 30.3% compared to 22.2% nationwide.** TDH, in partnership with Advancing Excellence coalition stakeholders which include QSource (State Quality Improvement Organization), Tennessee Health Care Association and State Medicaid Agency (TennCare) as principal partners **saw an overall 2014 reduction in antipsychotic drug use of 23.1%. As of Q2 2016, currently the last quarter of available data, antipsychotic medication use in**

**Tennessee nursing homes is at 18.3% and has been reduced by 37.5% since the implementation of the national initiative. In comparison, the reduction rate nationally for the same period of time is 30.9%. As such, Tennessee is closing the gap between its current Q2 2016 rate of 18.3% and the national antipsychotic medication use rate of 16.3%.**

## **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 327 nursing homes that were licensed in Tennessee in 2016, 320 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 of residents property (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 2016, there were 327 licensed nursing homes in the state of Tennessee of which 320 are federally certified.
- The Department investigated a total of 2,207 complaints (including provider self reported incidents) during 2016 for all health care facilities, of which 345 (21.9%) were substantiated; a decrease of approximately 15.5% in the percentage of investigated complaints substantiated in 2016. Overall, the Department conducted 5,557 surveys for all health care facilities in 2016, which includes annual surveys, complaint investigations, and unusual incident and revisit surveys. This compliment of 2016 surveys conducted is 3.6% higher than surveys conducted for all health care facilities in 2015. Complaints against nursing homes totaled 1,452, or 65.8% of the 2,207 total complaints, all facility types, which is approximately 11.9% *decrease* from 2015 and an overall **28% increase** since 2012.
- There were 278 nursing homes with at least one complaint filed, constituting 85 % of the total nursing homes.
- There were 38 nursing homes with ten or more complaints filed, constituting approximately 13.0% of the total nursing homes; an **increase of 12.1%** from 2015.
- The number of nursing homes with at least one substantiated<sup>3</sup> complaint:
  - 2012 – 100 nursing homes or 31.1% of the 322 nursing homes
  - 2013 – 132 nursing homes or 40.9% of the 322 nursing homes
  - 2014 – 129 nursing homes or 39.9% of the 323 nursing homes

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<sup>3</sup> Onsite investigation verification of associated regulatory standard not met.

- 2015 – 126 nursing homes or 38.6% of the 326 nursing homes
- 2016 - 101 nursing homes or 31.3% of the 327 nursing homes

**The 2016 nursing home data show a significant percent increase (28%) in complaints substantiated; and a continuing upward trend in the number of complaints and incidents reported against nursing homes since 2012<sup>4</sup>.**

### **DEFICIENCIES CITED IN NURSING HOMES<sup>5</sup>:**

Deficiencies cited in nursing home facilities in the state of Tennessee for 2016 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 5.9, compared to 4.5 within CMS region IV and 4.4 in Tennessee; slightly below the region and significantly below the region with by far the largest average number of citations per survey occurring at scope and severity of “D” at 68.8%; (68.6% for CMS region IV and 55.6% for the nation respectively)<sup>6</sup>. The percentage of immediate jeopardy (IJ)<sup>7</sup> citations to resident health and safety nationally was at 0.8% of the total number of nationwide health citations, unchanged from 2015 . The percentage of IJ citations in Tennessee was higher than the nation at 3.7%, with no change from 2015, and above the region by 2.9%. All of the eight CMS Region IV states were above the national IJ citation percentage. Of the 327 licensed nursing homes in Tennessee in 2016, the following was ascertained:

- **There were five (5) nursing homes owned by one (1) corporation in bankruptcy in 2016, with that corporation currently undergoing reorganization.**
- Thirteen (13) nursing homes were cited with substandard level of care, with (10) immediate jeopardy (IJ) citations.

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<sup>4</sup> Staffing challenges continue to be a serious HCF concern, significantly hindering the ability to accomplish both state and federal annual recertification surveys and initial surveys, and timely state and federal complaint investigations.

<sup>5</sup> Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (01/26/2015)

<sup>6</sup> 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.

<sup>7</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



- Ten (10) nursing homes were cited with Federal Civil Monetary Penalties for Immediate Jeopardies a total *assessed* amount of \$ 9.1M; \$5.1M above 2015 CMP total (more than double 2015 federal CMP penalties), mainly as a result of the Centers for Medicare and Medicaid Services (CMS) adjustments (increase) to CMPs.
- Five (5) nursing homes were cited with state Civil Penalties for a total assessed amount of \$23,102; \$18,101 more than 2015 state cited monetary penalties.
- Five (5) nursing homes had admissions suspended in 2016, for an increase of 3 above the 2 suspended in 2015.
- Two nursing homes were involuntarily terminated by the Centers for Medicare and Medicaid Services (CMS) from participation in the Medicare/Medicaid programs in 2016.
- One nursing home ceased (voluntarily terminated) operations.

### **TOP 15 MOST FREQUENTLY CITED DEFICIENCIES IN NURSING HOMES:**

The most common deficiencies cited in nursing homes in 2016 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. 0441 - INFECTION CONTROL, PREVENT SPREAD, LINENS
2. 0371 - FOOD PROCURE, STORE/PREPARE/SERVE – SANITARY
3. 0431 - DRUG RECORDS, LABEL/STORE DRUGS & BIOLOGICALS
4. 0278 - ASSESSMENT ACCURACY/COORDINATION/CERTIFIED
5. 0323 - FREE OF ACCIDENT HAZARDS/SUPERVISION/DEVICES
6. 0514 - RES RECORDS-COMPLETE/ACCURATE/ACCESSIBLE
7. 0309 - PROVIDE CARE/SERVICES FOR HIGHEST WELL BEING
8. 0241 - DIGNITY AND RESPECT OF INDIVIDUALITY
9. 0280 - RIGHT TO PARTICIPATE PLANNING CARE-REVISE CP
10. 0282 - SERVICES BY QUALIFIED PERSONS/PER CARE PLAN
11. 0225 - INVESTIGATE/REPORT ALLEGATIONS/INDIVIDUALS
12. 0314 - TREATMENT/SVCS TO PREVENT/HEAL PRESSURE SORES
13. 0279 - DEVELOP COMPREHENSIVE CARE PLANS
14. 0315 - NO CATHETER, PREVENT UTI, RESTORE BLADDER
15. 0312 - ADL CARE PROVIDED FOR DEPENDENT RESIDENTS

The top fifteen life safety code deficiencies were the following:

1. 0353 - Sprinkler System - Maintenance and Testing
2. 0351 - Sprinkler System – Installation
3. 0321 - Hazardous Areas – Enclosure
4. 0324 - Cooking Facilities
5. 0923 - Gas Equipment - Cylinder and Container Storage
6. 0372 - Subdivision of Building Spaces - Smoke Barriers
7. 0232 - Aisle, Corridor, or Ramp Width
8. 0511 - Utilities - Gas and Electric
9. 0711 - Evacuation and Relocation Plan
10. 0920 - Electrical Equipment - Power Cords and Extension
11. 0281 - Illumination of Means of Egress
12. 0311 - Vertical Openings – Enclosure
13. 0345 - Fire Alarm System - Testing and Maintenance
14. 0741 - Smoking Regulations
15. 0911 - Electrical Systems - Other

## **NURSING HOME QUALITY INITIATIVE UPDATE 2016**

### **HISTORY OF THE QUALITY INITIATIVE:**

In April 2006, CMS was asked to develop a plan to implement the Government Performance and Results Act of 1993 (GPRA) Goals. A major focus in that implementation was the development of 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 State Ombudsman. The CMS Atlanta Regional Office convened conference calls with State Survey Agency Directors and Quality Improvement Organizations (QIOs). 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, the first voluntary, national effort to help nursing homes to measurably improve the quality of care and quality of life for those living or recuperating in America’s nursing homes, selected a total of eight goals, 4 clinical and 4 organizational. Technical assistance materials and other resources to help nursing homes achieve

results on the goals were posted on the website. Webinars were held on each goal and made available to nursing homes. The first face-to-face meeting was held in Atlanta on December 12, 2006. Many success stories by the QIOs were given during this meeting that described the reductions of restraints and pressure ulcers in nursing homes – two of the targeted clinical goals. By 2009, with two full years of data available, almost half of all nursing homes in the nation participated in the Phase 1 Campaign. The Campaign met two of its goals; nationally, the use of daily restraints was reduced to 5%, with 30% of nursing homes at 0%, and another quarter below 3% ,and symptoms of pain in the long-stay resident were reduced to 5%. By the end of the 2013, Tennessee was below the national average for prevalence of high risk pressure ulcers, and managed pain in long and short stay nursing home residents better than the national average. However, Tennessee was higher than the national average in use of daily physical restraints.

As a result of the success of initial campaign phases, the Campaign continues its quality improvement efforts. – The newly launched Campaign features an improved website with new and revised goals - (4) organizational goals and (5) clinical goals – see Table 1.

<b>Table 1. Nursing Home Quality Improvement Project Goals</b>				
<b>Organizational:</b>				
<b>Consistent Assignment</b>	<b>Hospitalizations</b>	<b>Person Centered Care</b>	<b>Staff Stability</b>	
<i>Strengthens relationships between caregivers and residents and their family members</i>	<i>Avoid unnecessary hospitalizations and re-hospitalizations</i>	<i>Promotes choice, purpose and meaning in daily living</i>	<i>Increases competence and confidence in staff while buliding strong bonds between residents and</i>	
<b>CLINICAL:</b>				
<b>Infection</b>	<b>Medications</b>	<b>Mobility</b>	<b>Pain</b>	<b>Pressure Ulcers</b>
<i>Implementation of strategies to reduce the incident and spread of infection among NH residents</i>	<i>Only appropriate use of medications</i>	<i>Enhancing and maintaining mobility increases physical and psychological well being</i>	<i>Proper management to promote daily activity and quality of living (QoL)</i>	<i>Proper skin care to avoid/reduce skin breakdown, infection and other complications</i>

The national Advancing Excellence in America’s Nursing Home Campaign has worked diligently over the past ten years encouraging all nursing homes in the country to register through their website<sup>8</sup>, use the Circle of Success for guidance and the data collection tools and resources for quality improvement, and enter their aggregate data in the secure website section, a required step for active participation.

<sup>8</sup> <https://www.nhqualitycampaign.org/>

Campaign participation helps nursing homes improve the quality of care and quality of life for the more than 1.5 million residents of America's nursing homes. A well designed website with a rich array of goal related resources ensure that every nursing home can have easy access to free, evidence-based practical materials to help with their quality improvement activities. To be an active participant in the Advancing Excellence Campaign, a nursing home must minimally during the first year:

1. Select two goals on which they will work.
  - Adopt one organizational goal (consistent assignments, staff stability, reducing hospitalizations or person-centered care) and enter monthly data on that goal.
  - Adopt a clinical goal (pain, pressure ulcers, mobility, infections or medications) for which monthly data entry is optional in the first year but **must** be worked on in the second year unless the nursing home felt it had the interest and capacity to move on the clinical goal sooner.
2. After the first year a nursing home can continue with the two goals of the first year, entering data for both, or adopt additional goals as desired. Active participant status on a goal will **require at least six consecutive months of monthly data submissions on the goal.**

Prior to the 2014 year it was possible for nursing homes to register and to be counted as “participating” without submitting outcomes data. This is no longer the case. Homes that register on the website, but do not select goals or do not enter aggregate data on the website are referred to as “registered homes”. This revision promotes data integrity and data extrapolation of participating homes only.

Registration Statistics of each state captured on the website as compared to the nation, identifies Tennessee with a 87% registrations rate in 2016 with 82% of those registered nursing homes having also selected at least one Organizational Goal and one Clinical Goal to work on since the current round of nine goals was launched in 2012.

	<b>Tennessee</b>	<b>Nation</b>
<b>Registrant nursing homes that have selected goals<sup>9</sup>:</b>	280	9,680
<b>*Percentage of registrant nursing homes:</b>	87%	61.6%

\*Enrollment in TN increased by 23% in 2016, while the nation saw a slight decrease (0.2%)

### **Antipsychotic Drug Use Reduction Initiative:**

In March 2012, The Centers for Medicare and Medicaid Services (CMS) launched a national initiative, the National Partnership to Improve Dementia Care, aimed at improving behavioral health and reducing the use of unnecessary antipsychotic medications, as well as other potentially harmful medications in nursing homes and eventually other care settings as well. The partnership catalyzed a broad range of activities by provider organizations and others, and ultimately led to the formation of state-based coalitions to improve dementia care in every state. Further, CMS 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 developed a national action plan using a multidimensional approach to improve care for individuals with dementia that included public reporting, raising public awareness, regulatory oversight, technical assistance, provider and consumer education and research. The Partnership currently includes consumers, advocacy organizations, nursing home staff, and professional associations, such as The American Medical Director's Association (AMDA), The Society for Post-Acute and Long-Term Care Medicine, American Health Care Association (AHCA), LeadingAge, and Advancing Excellence in America's Nursing Homes.

Prior to the March 2012 commencement of this initiative, Tennessee had 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 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

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<sup>9</sup> Data found in this subsection for Advancing Excellence in America's Nursing Homes campaign coalition may be viewed at [https://www.nhqualitycampaign.org/Statistics.aspx?opt=QMS#bottom\\_anchor](https://www.nhqualitycampaign.org/Statistics.aspx?opt=QMS#bottom_anchor)

reduction of antipsychotic drug use among nursing home residents, especially those with dementia.

The CMS funding enabled TDH, in partnership with the Tennessee Advancing Excellence Coalition (TN-AEC) members, to provide a three day symposium in each of the Grand Divisions of the state which 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. The educational sessions were facilitated by The Eden Alternative, a stakeholder in the TN-AEC. Educational sessions were conducted in Nashville, Knoxville and Memphis Tennessee.

Tennessee nursing home's did not achieve the initial 15% reduction by the designated December 31, 2012 (Q42012), timeframe. However, during Q1 (January – March) 2013 antipsychotic medication usage rate in Tennessee dropped by 16.8% to 25.02, exceeding the initial (phase 1) 15% reduction target. Tennessee continued to experience a significant decline in antipsychotic medication use such that by Q2 2013 the antipsychotic usage rate was 23.87, a 20.6% usage decrease since the initiative began in March 2012.

In September 2014,, the National Partnership to Improve Dementia Care announced that it met its initial goal of reducing the national prevalence of antipsychotic use in long-stay nursing home residents by 15.1 percent. It also announced a new goal of a 25 percent reduction by the end of 2015, and a 30 percent reduction by the close of 2016, using the prior baseline rate (fourth quarter of 2011).

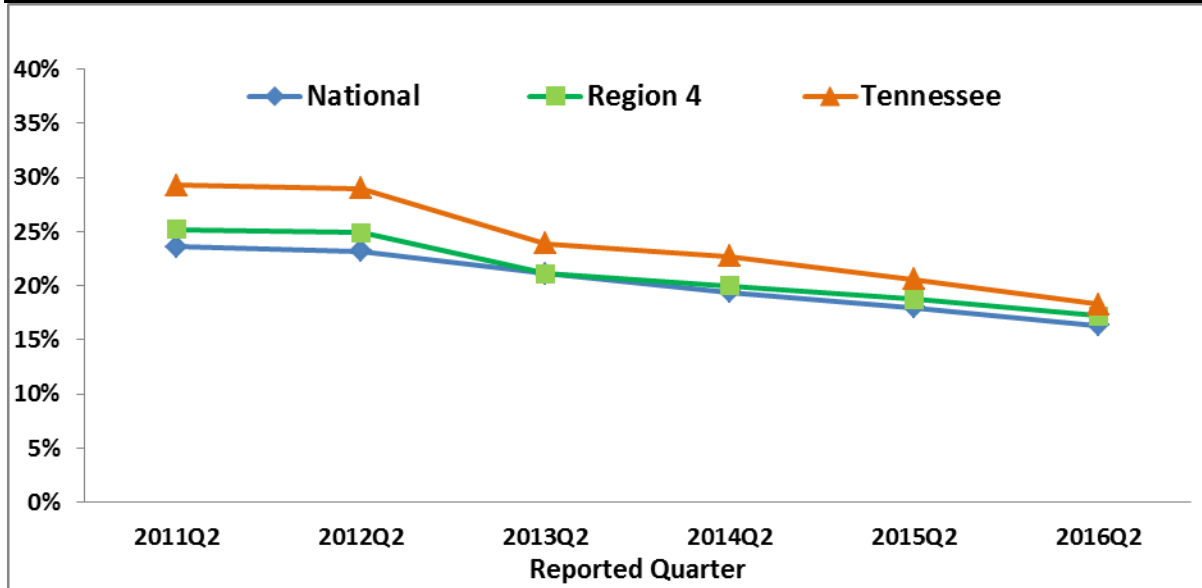
As of Q2 2016,the national reduction rate of antipsychotic medication use in nursing homes since initiative implementation is 30.9%. Over the same period of time Region IV reduction rate has been 31.7%, and **that of Tennessee has been 37.5% which exceeds both the region and the nationwide percent reduction**, and has already achieved the Q4 2016 reduction goal. (see Fig.1). All 50 states and every CMS region showed at least some improvement toward meeting Partnership reduction goal.

Additional federal funding resources through the Civil Monetary Penalty (CMP) funds program have been awarded to Tennessee nursing homes during 2015 – 2016 to educate and train facility staff in best practices for quality of care and quality of life without the use of antipsychotic medication. This has furthered the continued steady decline in unnecessary antipsychotic use prevalence in Tennessee nursing homes and hospitals.

Current data trends (Fig 1)

**Antipsychotic Drug Use in Nursing Homes Trend Update\***  
**Quarterly Prevalence of Antipsychotic Use for Long-Stay Residents**  
 (Southeast Region 4 [AL, FL, GA, KY, MS, NC, SC, TN] 2011Q2-2014Q2)

	2011Q2	2012Q2	2013Q2	2014Q2	2015Q2	2016Q2
National	23.6	23.2	21.1	19.4	18.0	16.29
Region 4	25.2	24.9	21.1	20.0	18.8	17.23
Tennessee	29.3	29.0	23.9	22.7	20.6	18.26



\* The percent of long-stay nursing home residents who are receiving an antipsychotic medication, excluding those residents diagnosed with schizophrenia, Huntington's Disease or Tourette's Syndrome.