

February 11, 2014

The Honorable Bill Haslam, Governor
Tennessee State Capitol
Nashville, TN 37243-0001

Dear Governor Haslam:

As you know the Tennessee Department of Health through the Division of Health Care Facilities licenses and inspects 2,636 health care facilities of which **322 are nursing home facilities**. 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 2013.

Key points include:

- **The average number of health deficiencies were 6.5 within the 322 licensed nursing home facilities.**
- **The number of providers in substantial compliance¹ were 17 (5.0%); 305 (95%) were not in substantial compliance.**
- **Twenty-six (26) providers (8.0%) had zero health deficiencies and fifteen providers (5.0%) were cited for substandard quality of care².**
- **The number of nursing homes with at least one substantiated complaint has increased from 97 in 2009 to 132 in 2013.**
- **The average number of life safety deficiencies were 3.5 - below the national average of 4.6, and slightly above the regional average of 3.4. Thirty facilities (9.3%) had zero life safety code deficiencies.**
- **2013 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.

February 11, 2014

The Honorable Ron Ramsey
Speaker of the Senate
1 Legislative Plaza
Nashville, TN 37243

Dear Lt. Governor Ramsey:

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February 11, 2014

The Honorable Beth Harwell
Speaker of the House of Representatives
19 Legislative Plaza
Nashville, TN 37243

Dear Speaker Harwell:

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

A Report to the 2014 108th Tennessee General Assembly

**Tennessee Department of Health
February 3, 2014**

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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 322 state licensed nursing homes, of which 310 are federally certified, are monitored and maintained on a federal proprietary software program.

- **In 2013, among all facility types, approximately 63% (784) of 1,239 total complaints were complaints against nursing homes.**
- **The percentage of nursing homes with at least one substantiated complaint increased by approximately 10% over the previous years to 40.9% .**
- **The average number of health deficiencies were 6.5.**
- **The number of providers in substantial compliance⁷ were 17 (5.0%); 305 (95%) were not in substantial compliance.**
- **Twenty-six (26) providers (8.0%) had zero health deficiencies and 15 providers (5.0%) were cited for substandard quality of care⁸.**
- **2013 budgeted expenditures for nursing home inspection and enforcement activities were 8.2M, with 1.8M (25%) being the State's share.**

Deficiencies

Deficiencies cited in nursing home facilities in the state of Tennessee for 2013 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.**
- **The two most frequently cited facility life safety code deficiencies were electrical wiring and equipment, and sprinkler system maintenance. These remain basically unchanged from 2012 reported data.**

⁷ 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

⁸ 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.

Nursing Home Collaborative

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 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 continues to be 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 50.5% (161) 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.

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. **Tennessee nursing homes had 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, saw a first phase (Q4 2012) initiative reduction of 9.9% with continued reductions in Q1 through Q2 2013 of 16.8% and 20.6% respectively. Q3 2013 saw a slight uptick of 0.3% in antipsychotic drug use. This uptick returned Tennessee to a rank of 47th nationally from a ranking of 43rd in Q2 2013.**

The Tennessee Advancing Excellence Coalition (TN-AEC), a coalition of healthcare stakeholders which includes TDH, QSource (State Quality Improvement Organization), Tennessee Health Care Association and State Medicaid Agency (TennCare), in addition to other provider types, will convene in the month of February to discuss these findings and potential next steps.

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 322 nursing homes that were licensed in Tennessee in 2013, 310 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 2013, there were 322 licensed nursing homes in the state of Tennessee.
- The Department investigated a total of 1,239 complaints during 2013 for all health care facilities. Overall, the Department conducted 4,674 surveys for all health care facilities in 2013, which includes annual, complaint, and unusual incident and revisit surveys. This compliment of 2013 surveys is somewhat less than the 5,221 surveys conducted for all health care facilities in 2012 by approximately 10%. Complaints against nursing homes totaled 784, or 63.3% of the 1,239 total complaints, all facility types, which is approximately a 1.2% decrease from 2012⁹ and an overall 10.5% decrease since 2009.
- There were 235 nursing homes with at least one complaint filed, constituting 73.0 % of the total nursing homes.
- There were 26 nursing homes with ten or more complaints filed, constituting 8.0% of the total nursing homes; an increase of 2.8% from 2012.
- The number of nursing homes with at least one substantiated¹⁰ complaint:
 - 2009 – 97 nursing homes or 30% of the 323 nursing homes
 - 2010 – 98 nursing homes or 30% of the 327 nursing homes
 - 2011 – 103 nursing homes or 31.6% of the 326 nursing homes
 - 2012 – 100 nursing homes or 31.1% of the 322 nursing homes
 - 2013 – 132 nursing homes or 40.9% of the 322 nursing homes

The 2013 nursing home data shows a significant decline in both the number of complaints and the number of complaint surveys conducted from the previous year – a total of approximately

⁹ Decrease in complaint investigations against nursing homes from 2012 to 2013 may be attributed to a number of factors, key of which is a continued TDH concerted effort to work with provider associations and other stakeholders in conducting joint provider educational seminars.

¹⁰ Onsite investigation verification of associated regulatory standard not met.

300 in each above group. There was a significant percent increase in both the number and percentage of nursing homes with at least one substantiated complaint in 2013.

DEFICIENCIES CITED IN NURSING HOMES¹¹:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2013 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 6.4, compared to 4.8 within CMS region IV and 6.5 in Tennessee; consistent with the nation and significantly above the region with by far the largest average number of citations per survey occurring at scope and severity of “D” at 73.6%; (67.8% for CMS region IV and 56.3% for the nation respectively)¹². The percentage of immediate jeopardy (IJ)¹³ citations to resident health and safety nationally was at 1.9 % of the total number of nationwide health citations an increase of 0.2% above 2012. The percentage of IJ citations in Tennessee was higher than the nation at 6.3%, an increase from 2012 by 2.9%, and above the region by 1.1%. Seven of the eight CMS Region IV states were above the national IJ citation percentage, with one state having an IJ citation percentage above that of Tennessee.

Of the 322 licensed nursing homes in Tennessee in 2013, the following was ascertained:

- **There were no nursing homes in bankruptcy in 2013.** Eleven nursing homes were cited with Immediate Jeopardy substandard level of care, which is an 45% decrease from 2012.
- Fifteen nursing homes were cited with substandard level of care.
- Eleven nursing homes were cited with Federal Civil Monetary Penalties for a total *assessed* amount of \$ 4,1M.
- Five nursing homes were cited with state Civil Penalties for a total assessed amount of \$12, 500.

¹¹ Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (01/22/2013)

¹² 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.

¹³ “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

- Three nursing homes had admissions suspended in 2013, for a total of three suspension of admissions.

TOP 15 MOST FREQUENTLY CITED DEFICIENCIES IN NURSING HOMES:

The most common deficiencies cited in nursing homes in 2013 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. F0371 – Food Procure, Store/Prepare/Serve – Sanitary
3. F0280 – Right to Participate Planning Care – Revise CP
4. F0323 – Free of Accident Hazards/Supervision/Devices
5. F0309 – Provide Care/Services for Highest Well Being
6. F0431 – Drug Records, Label/Store Drugs & Biologicals
7. F0279 – Use Assessments to Develop Resident’s Care Plan
8. F0241 – Promote Resident Care That Enhances Resident Dignity
9. F0514 – Res Records – Complete/Accurate/Accessible
10. F0278 – Resident Assessment Must Accurately Reflect Resident’s Status
11. F0282 – Services by Qualified Persons/Per Care Plan
12. F0314 – Pressure Sores
13. F0315 – No Catheter, Prevent UTI, Restore Bladder
14. F0167 - - Resident Right to Examine Facility Survey Results
15. F0281 – Services Provided Meet Professional Standards

The top fifteen life safety code deficiencies were the following:

1. K0147 – Electrical wiring and equipment
2. K0062 – Sprinkler system maintenance
3. K0067 – Ventilating equipment
4. K0038 – Exit access
5. K0831 – Assure Building Standards to Maintain Safety
6. K0018 – Corridor doors
7. K0029 – Hazardous areas - separation
8. K0848 – Air pressures (negative/positive) appropriately maintained as required
9. K0045 – Means of egress illumination maintained
10. K0066 – Smoking regulations are adopted and included in all provisions
11. K1410 – Physical facility and community emergency plans
12. K0130 – Miscellaneous
13. K0050 – Fire drills
14. K0052 – Testing of fire alarm
15. K0144 – Generators inspected/tested

NURSING HOME QUALITY INITIATIVE UPDATE 2013:

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 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. 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 seven 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) -- to ensure 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 -- and reduce unnecessary and unwarranted antipsychotic

medication use, particularly in people living with dementia, all of which make for higher quality of care and quality of life in this population ..

For Q2 (April – June) 2013 participation in this program, there were 9,598 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) 2013 progress results¹⁴ 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, 2013.

Results: The prevalence of high-risk pressure ulcers has decreased nationally from the September 2006 campaign start of 12.8% through the June 2013 Q2 average of 6.2%. The Q2 2013 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, 2013.

Results: Nationally, the use of restraints in nursing homes decreased continually from the September 2006, campaign start of 6% through the Q2, June 2013, average of 1.5%. The Q2, June 2013, data shows Tennessee nursing homes still above the national average at 2.9%, but continuing to decline.

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

¹⁴ 2013 Quarter 2 campaign progress results last updated November 2013, and reflects the target quarter, April through June 2013, quality measure data.

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, 2013.

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 8.1% by December 31, 2013, finds the state of Tennessee, having met the goal at 7.1 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 18.9% by December 31, 2013.

Results: Tennessee nursing homes were at 17,3%, slightly below the Q2 2013 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. Sixty-one percent (61.3%) of nursing homes in the nation have registered for campaign participation as of December 31, 2013. 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 2014, Tennessee nursing homes' participation in the coalition was lower than that of the nation by 10.8%.

| | Tennessee | Nation |
|---|------------------|---------------|
| Participating nursing homes¹⁵: | 161 | 9,598 |
| Percentage of participating nursing homes: | 50.5% | 61.3% |

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

¹⁵ 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

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 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. 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.

At the commencement (March 2012) 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 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 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. 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. Tennessee at that time went from being ranked 47th nationally to 43rd in antipsychotic medication usage. As of the last reported data, Q3 2013, Tennessee saw a slight increase in antipsychotic medication usage – 23.98 – a 0.3% usage increase, returning us to a 47th place national ranking. We will necessarily track and trend this over the next couple of quarters to determine if there is a return to previous practices in antipsychotic medication use.