



## Improving Quality, Safety, & Dignity in America's Nursing Homes

Presentation to the NASEM Committee on the Quality of Care in Nursing Homes

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## + The Long Term Care Community Coalition

- **LTCCC** is a nonprofit, nonpartisan organization dedicated to improving care & quality of life for the elderly & adult disabled in long term care (LTC).
- **What we do:**
  - Policy research & analysis;
  - Systems advocacy;
  - Public education;
  - Home to two local LTC Ombudsman Programs.
- **Richard Mollot**: Joined LTCCC in 2002. Executive director since 2005.

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My presentation....

- The foundations of nursing home care in the United States.
- Dispelling the myths...
  - **Myth #1**: Nursing homes are underpaid.
  - **Myth #2**: Nursing homes are over-regulated.
- Recommendations.

# + The Nursing Home Reform Law

- The federal law requires that every nursing home resident is provided the care and quality of life services sufficient to attain and maintain their **highest practicable physical, emotional, & psycho-social well-being**.
- The law emphasizes **individualized, patient-centered care**.
- Importantly, the law lays out specific resident rights, from **good care** and monitoring to a quality of life that maximizes **choice, dignity & autonomy**.
- The law passed in 1987. Regulatory standards have been in effect for 30 years.
- **Every** nursing home that participates in Medicaid/Medicare agrees to meet or exceed these standards.
- **Participation in Medicaid/Medicare is voluntary**. Nursing homes that do not wish to meet these standards are free to run private facilities.



## + Foundational Points

- We have a right to the integrity of the use of public funds.
- We have a right to expect – and receive – compliance with minimum standards of care.
- *Every* resident deserves treatment that is adequate & humane (at a minimum!).
- American taxpayers deserve to get value for money.

# + The Problem(s)

Federal data,  
our studies,  
and  
countless  
OIG and GAO  
reports  
indicate that  
these  
baseline  
tenets are  
largely  
unrealized.





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Myth #1

Nursing homes are underpaid

- + **Myth:** Nursing home payment is insufficient to provide good care.
- Reality:** Most U.S. nursing homes are run for-profit and are seen as attractive investments.
- The industry's longstanding argument that it does not get paid enough to provide sufficient staffing, baseline infection control protocols, etc... is unsubstantiated.
- In fact, nursing homes are increasingly operated by for-profit entities.
- Private equity and REITs have increasing, substantial investment in the sector.
- There are virtually no limitations on the use of public funds to pay for administrative staff or siphon off into profits.
- In addition, operators commonly use related party transactions to hide profits (and perpetuate the myth of "razor-thin margins").



# + Medicaid Funding

## LONG TERM CARE COMMUNITY COALITION

Advancing Quality, Dignity & Justice

### LTCCC POLICY BRIEF

#### NURSING HOME MEDICAID FUNDING: SEPARATING FACT FROM FICTION

**Background.** Medicaid is the primary funding source for the majority of nursing home services in the US. Managed by states using a mix of state and federal funding, Medicaid covers more than 60% of residents nationwide. Each state has broad flexibility to determine eligibility standards and payment methods and design reimbursement rates.

**Industry Claims vs. Facts.** Nursing home providers and trade associations claim that Medicaid rates are inadequate and less than the cost of actual care, which then leads providers to leverage other payor sources such as Medicare and private pay. The industry also blames low Medicaid rates for substandard care. However, recent studies suggest that for-profit facilities have maximized profits for owners and investors while skimping on resident care.

Medicaid rates have steadily increased in the past decade, rising 12.6% since 2012, according to the National Investment Center for Seniors Housing & Care (NIC).

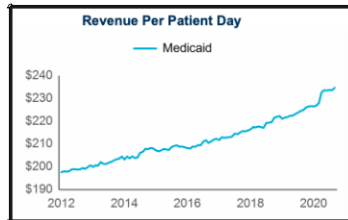
Nursing homes received an average of \$214 per resident per day in Medicaid funding in 2019, a 2.2% increase from 2018.

An NIC report with data through September 2020 shows a national average reimbursement rate of \$235, though this \$21 increase from 2019 is likely a COVID-related boost.

Although industry leaders claim that nursing homes are losing money on Medicaid residents and blame closures and financial struggles on low reimbursement rates, typical nursing home profits are in the 3 to 4 percent range, according to Bill Ulrich, a nursing home financial consultant.

In fact, most nursing homes "outsource a wide variety of goods and services to companies in which they have a financial interest or that they control." This practice, called related-party transactions, can be used to "siphon off higher profits, which are not recorded on the nursing home's accounts," giving the false impression that a nursing home has low profits or is losing

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*Medicaid rates have steadily increased in the past decade...*

*More financial accountability for facilities would decrease the likelihood of facilities funneling cash to owners and investors at the expense of better resident care.*

[nursinghome411.org/ltc-medicaid-funding/](http://nursinghome411.org/ltc-medicaid-funding/)

# + Medicare Funding

According to the Medicare Payment Advisory Commission...

- The marginal profit from Medicare nursing home patients in 2018 was about 10.3%.
- The average Medicare profit margin has been above 10% for over 19 years.
- For-profit facility profits averaged 13% profit margins, with one-quarter having margins of 19.7%.\*

Unfortunately, the focus of Medicare rate setting has been almost entirely on controlling costs rather than ensuring quality. Medicare prospective payments are based on estimated costs and not on actual expenditures. This system allows nursing homes to keep staffing and operating expenses low in order to maximize profits.

**NOTE:** These profit margins do not take into account profits hidden in administrative costs or related-party transactions.

\* Medicare Payment Advisory Commission. *Report to the Congress: Medicare Payment Policy*. Chapter 8. Washington, D.C. March 2020, p.219-244.

## + Funding is NOT the Problem

### **OIG: *Adverse Events in Skilled Nursing Facilities: National Incidence Among Medicare Beneficiaries***

- OIG found that **one-third of residents who were in a nursing home for short-term care were harmed w/in an average of 15.5 days.**
- **Almost 60 percent of the injuries were preventable and attributable to poor care.**
- Much of the **preventable harm was due to substandard care**, inadequate resident monitoring, and failure or delay of necessary care.
- As a result, six percent of those who were harmed died, and more than half were rehospitalized.
- “Because many of the events that we identified were preventable, our study confirms the need and opportunity for SNFs to significantly reduce the incidence of resident harm events.”

Even when profits are high, nursing homes fail to provide adequate care, safety, or treat residents humanely.



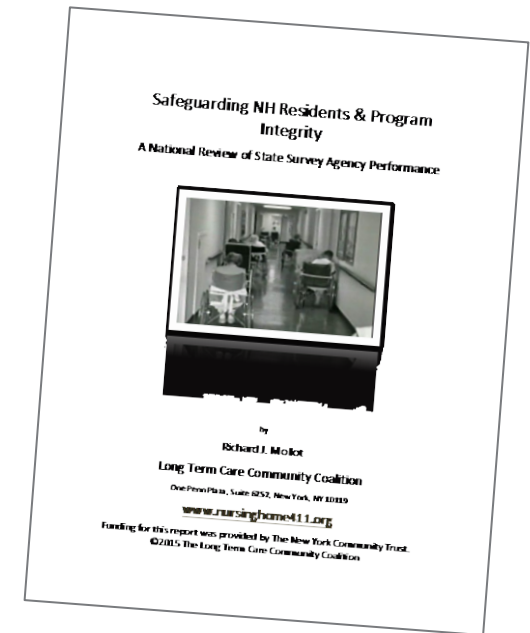
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Myth #2

Nursing homes are over-regulated

## + LTCCC: *Safeguarding Residents & Program Integrity in US Nursing Homes*

- **Failure to identify resident harm.** States rarely classify violations of minimum health standards as causing harm or putting residents in immediate jeopardy. Because, generally speaking, only findings of harm result in a penalty against the nursing home, this means that **penalties for substandard care are exceedingly rare.**
- **Widespread use of antipsychotics** to chemically restrain residents persists, despite CMS's "Partnership to Improve Dementia Care in Nursing Homes."
- **Persistently high rates of pressure ulcers.** Though pressure ulcers are largely preventable, States cite nursing homes the equivalent of less than 3% of the time that a resident has a pressure ulcer. **Even when States *do* cite a facility for inadequate pressure ulcer care or prevention, they only identify this as harmful to residents about 25% of the time.**



<https://nursinghome411.org/national-report-safeguarding-nursing-home-residents-program-integrity/>

# + GAO: *Better Oversight Needed to Protect Residents from Abuse*

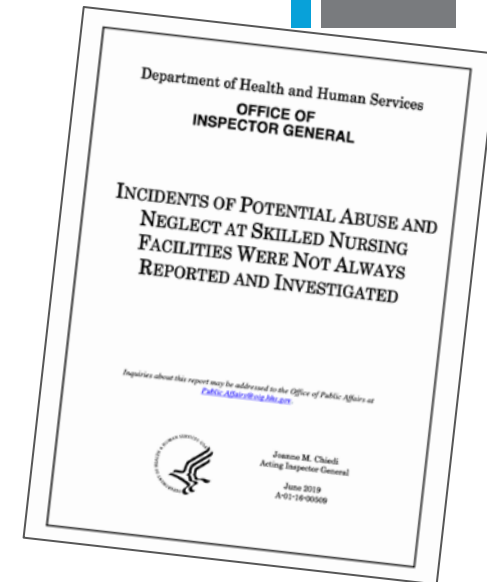
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- *Nursing home residents often have physical or cognitive limitations that can leave them particularly vulnerable to abuse.*
- *Abuse of nursing home residents can occur in many forms—including physical, mental, verbal, and sexual—and can be committed by staff, residents, or others in the nursing home.*
- *Any incident of abuse is a serious occurrence and can result in potentially devastating consequences for residents, including lasting mental anguish, serious injury, or death.*
- **GAO Identified “Oversight Gaps”:**
  - *Information on abuse and perpetrator types is not readily available.*
  - *Facility-reported incidents lack key information.*
  - *Gaps exist in the CMS process for state survey agency referrals to law enforcement.*



## + **OIG: *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated***

- *[A]n estimated one in five high-risk hospital ER Medicare claims for treatment provided in calendar year 2016 were the result of potential abuse or neglect, including injury of unknown source, of beneficiaries residing in a SNF [skilled nursing facility].*
- *SNFs failed to report many of these incidents to the Survey Agencies in accordance with applicable Federal requirements.*
- *[S]everal Survey Agencies failed to report some findings of substantiated abuse to local law enforcement.*
- **OIG Recommendations:**
  - Action is needed “to ensure that incidents of potential abuse or neglect... are identified and reported.”
  - Recommended actions include: (1) training of nursing home staff to i.d. abuse and neglect and (2) “requiring the Survey Agencies to record and track all incidents of potential abuse or neglect in SNFs and referrals made to local law enforcement and other agencies.”



## + **OIG: Trends in Deficiencies at Nursing Homes Show That Improvements Are Needed To Ensure the Health & Safety of Residents**

- **OIG analyzed nursing home deficiencies that were identified by State survey agencies (State agencies) across the Nation for calendar years 2013 through 2017.**
- **OIG Findings:**
  - The number of nursing home surveys and deficiencies slightly increased each year from 2013 through 2016, then slightly decreased in 2017.
  - Ninety-four percent of deficiencies had less serious ratings, and six percent of deficiencies had more serious ratings.
  - **About 31 percent of nursing homes had a repeat deficiency** (i.e., a deficiency type that was cited at least 5 times in separate surveys). Most of these (71%) were for:
    - 1) ensuring that nursing homes are free of accident hazards, provide adequate supervision of residents, and provide adequate assistance devices for residents and
    - 2) providing care & services for the highest well-being of residents.





# + **OIG: *CMS Guidance to State Survey Agencies on Verifying Correction of Deficiencies Needs To Be Improved To Help Ensure the Health and Safety of Nursing Home Residents***

- **OIG reviewed nine states' practices and found that seven of them (78%) "did not always verify nursing homes' correction of deficiencies as required."**
- *Specifically, for 326 of the 700 sampled deficiencies, State agencies did not obtain evidence of nursing homes' correction of deficiencies or maintain sufficient evidence that they had verified correction of deficiencies.*
- *For less serious deficiencies, the practice of six of the seven State agencies was to accept a nursing home's correction plan as confirmation of substantial compliance with Federal... requirements without obtaining from the nursing home the evidence of correction of deficiencies.*



<https://oig.hhs.gov/oas/reports/region9/91802000.pdf>

+ **GAO: *Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic***

- Infection prevention and control deficiencies were the most common type of deficiency cited in nursing homes.
- Most nursing homes had an infection prevention and control deficiency cited in one or more years from 2013 - 2017.
- Nearly all infection prevention and control deficiencies (about 99 percent in each year) were classified by surveyors as not severe. As a result, only about 1% resulted in any penalty whatsoever to the nursing homes.

**When there is no penalty, there is no reason for the nursing home to improve its practices.**

+ In sum...

1. We do *not* get value for the money spent on nursing home care.
2. Over credulity of the nursing home industry's arguments have served neither residents nor taxpayers well.
3. Perpetuation of the industry's myths has been particularly costly for residents and their families.

## + Baseline Recommendations: How can America address quality of care issues?

### 1. **We must have meaningful accountability when facilities fail to provide adequate and humane care:**

- ✓ CMS must improve enforcement of regulatory violations by adopting more specific guidelines for identifying harm and imposing penalties;
- ✓ Congress must increase the budget for federal and state regulatory oversight;
- ✓ Survey frequency should be increased to a 6–12-month period to improve resident safety and quality assurance;
- ✓ Independence and professionalism among state and federal survey staff must be safeguarded/improved. This includes continuing prohibitions on providing consultation and training for the nursing home industry and increasing expertise in geriatrics, pharmacy, chronic care management, dementia, mental health, and disability management.

## + Baseline Recommendations: How can America address quality of care issues?

### 2. **We must improve accountability for the use of public funds allocated for resident care.**

- ✓ A medical loss ratio ceiling should be placed on the combined administrative costs and profits of each nursing home, its related parties, and parent companies of 10 percent of net revenues;
- ✓ A combined financial and oversight system should be established by CMS to conduct annual joint Medicare and Medicaid audits, including home office and related party payer audits, in order to administer the medical loss ratio ceiling for administrative costs and profits;
- ✓ Congress must amend federal law (42 U.S.C. Section 1396r(a)) to remove the provision that allows facilities to establish a distinct part of an institution for Medicaid;
- ✓ Efforts to implement so-called value-based payment programs in the nursing home sector should be discontinued;
- ✓ Congress should require a redesign of the Medicare and Medicaid rate setting system into a blended rate established at the federal level in order to eliminate the cost shifting from Medicare to Medicaid.

+ Baseline Recommendations: How can America address quality of care issues?

### 3. **Transparency and accountability for nursing home ownership and management must be improved:**

- ✓ CMS should redesign its regulatory and enforcement approach to focus more on nursing home chains within and across states;
- ✓ CMS must establish an effective prior approval process and strong qualification criteria for changes in ownership or management;
- ✓ CMS should establish a national system to audit ownership reports;
- ✓ CMS must establish federal regulations to specify the minimum criteria for the purchase (or change of ownership) or management of any nursing home in order to receive approval to participate in Medicare and/or Medicaid. The criteria should prevent individual or corporate owners from the purchase, operation or management of another facility if they have a history of owning or operating facilities with low staffing, poor quality care (such as having immediate jeopardy citations, multiple harm citations in any facility, and/or deficiencies that include violations of infection control, abuse and neglect, and substandard care) in any state.

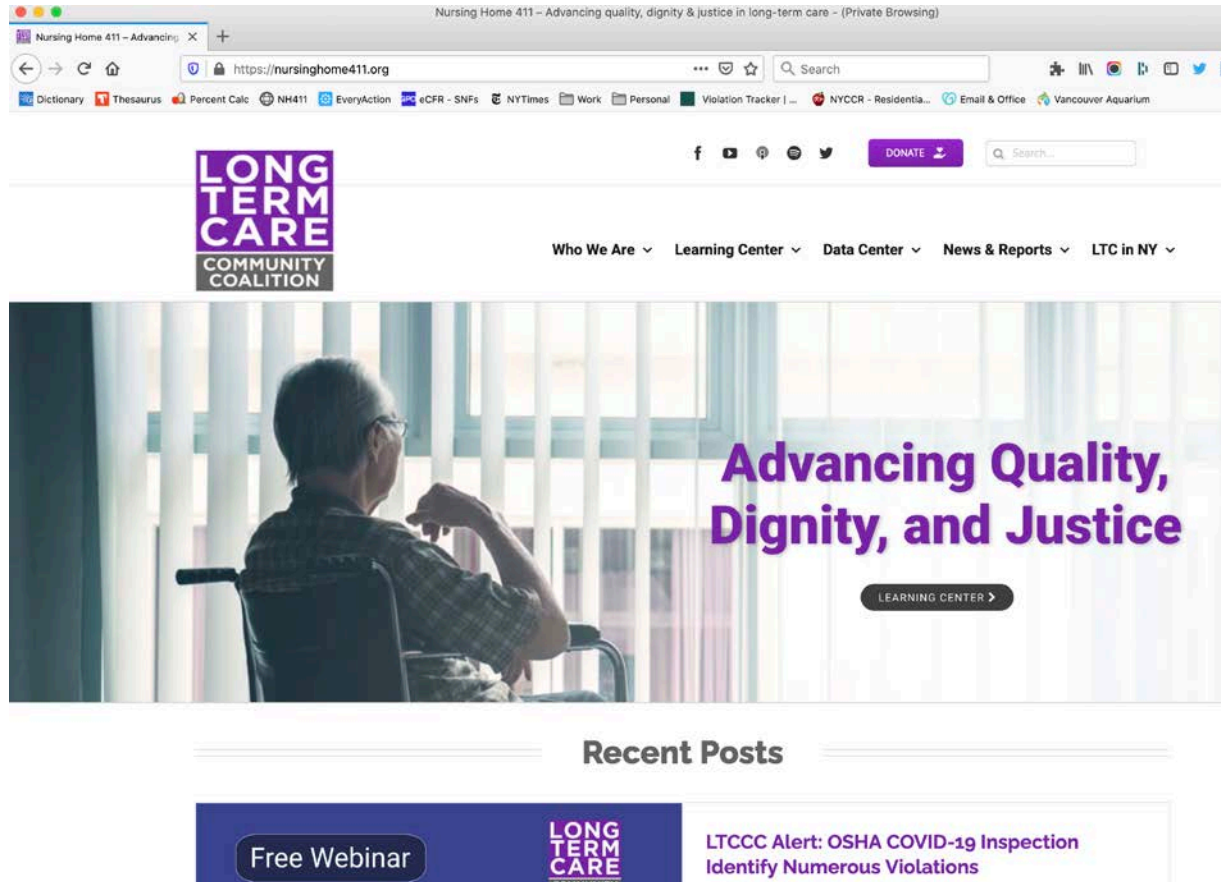
## + Baseline Recommendations: How can America address quality of care issues?

### 4. **Steps must be taken to ensure sufficient staffing to, at least, meet minimum standards of clinical care:**

- ✓ CMS must enforce existing staffing standards, which require that facilities have sufficient staff to meet the care and dignity needs of the residents they admit to their facility;
- ✓ CMS must immediately adopt numerical minimum staffing standards to truly meet the requirement for “sufficient” staffing in the 1987 Reform Law (The minimum standard should be 0.75 RN hours per resident day (hprd), 0.55 LVN/LPN hprd, and 2.8 CNA hprd, for a total of at least 4.1 nursing hprd);
- ✓ Every nursing home should be required to provide RN staffing on a 24-hour a day basis;
- ✓ Higher staffing standards and therapy standards should be required for Medicare sub-acute and post-acute units of nursing homes;
- ✓ Nursing homes must be required to provide adequate wages and benefits to recruit and retain nursing staff.

+ Thank you.

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