

Holding Illinois Nursing Homes Accountable and Strengthening Government Oversight

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How are nursing homes regulated?

- Complex federal enforcement scheme administered by the Centers for Medicare & Medicaid Services (CMS) of the U.S. Department of Health and Human Services (HHS):
 - Nursing Home Reform Act ("OBRA '87), 42 U.S.C. §1396r, 42 U.S.C. §1395i-3
 - Federal regulations, 42 C.F.R. §483.1 et seq.
 - State Operations Manual, Appendix PP (Surveyors' Guidelines)

How are nursing homes regulated?

- Additional state regulations and procedures administered by the Illinois Department of Public Health:
 - Nursing Home Care Act, 210 ILCS 45
 - Illinois Administrative Code, Title 77, Part 300

Nursing Home Survey Process

- Standard surveys
 - Team of surveyors review home, usually over a several day period
 - Surveys are unannounced and occur every 6 to 15 months, with an average frequency of every 12 months
 - Surveyors review records, conduct interviews, and inspect all areas of the facility

Nursing Home Survey Process

- Complaint surveys
 - Generally of shorter duration than standard surveys
 - Focus only or primarily on issue raised in the complaint
 - May spark a larger survey if serious issues are revealed.

Nursing Home Survey Process

- If deficiencies are found, surveyors write detailed summaries of the violation.
- Deficiencies are cited as "F-tags." Each F-tag has a number that corresponds to a specific federal requirement.
- F-tags are rated according to their scope and severity; A level citations are the least serious while L level citations are the most serious.

Immediate jeopardy	J F-224	K	L
Actual harm	G F-241	H F-325	I
No actual harm; potential for more than minimal harm	D	E	F F-371
No actual harm; potential for minimal harm	A	B	C
	Isolated	Pattern	Widespread

Nursing Home Enforcement

- When deficiencies are alleged, facilities may challenge them.
- If deficiencies are cited, facilities must submit a plan of correction.
- In some cases, the Department will mandate specific corrective actions.

Nursing Home Enforcement

- Facilities may sometimes correct violations without incurring a penalty.
- A variety of penalties authorized by state and federal law may be imposed including:
 - Fines
 - Bans on admission or denial of payment
 - Appointment of temporary manager
 - Issuance of a provisional license or revocation of license
 - Closure of facility

Increasing opportunities for consumers to assess quality of facilities

- Nursing Home Compare (www.medicare.gov; click on "Facilities and Doctors on left side of home page) contains a wealth of information on every Medicare or Medicaid certified facility in the country.
- Surveys ("CMS-2567 Statement of Deficiencies and Plan of Correction") available at facilities.
- Consumer websites gather feedback, comments, and compile information on facilities

But...too many residents still experience profound lack of quality.

- Thousands of pages of carefully detailed deficiencies every year
- Significant racial disparities
- "Yo-yo" facilities that fail to make sustained improvements
- Byzantine corporate structures that hide assets and complicate efforts to hold owners and management responsible

Why?

- The U.S. Govt. Accountability Office and the HHS Office of Inspector General have noted problems including:
 - Surveys understate quality problems
 - Civil monetary penalties often imposed at the low end of the allowable range
 - Mandatory sanctions not imposed or delayed or threatened sanctions not implemented
 - Complex policies and incomplete and fragmented data
 - Homes rarely terminated from Medicare or Medicaid

Why?

- Letter and spirit of OBRA never fully implemented
- Budget cuts have led to reductions in surveyor staff and ombudsman program volunteers
- Facility staffing remains inadequate to meet residents' needs in many homes
- We have continued to accept the persistent occurrence of substandard quality of care and life in facilities

Federal efforts to improve quality

- Recent passage of federal health care reform law includes nursing home transparency and accountability provisions:
 - Requires more extensive disclosure of ownership
 - Provides additional and more reliable information on Nursing Home Compare
 - Mandates more specific reporting of expenditures

New federal requirements cont'd

- Requires submission of verifiable staffing data to federal government
- Creates demonstration project to permit independent monitors to oversee large chains
- Provides more protection when nursing homes close
- Requires training on dementia and abuse prevention

Illinois efforts to improve quality

- Media coverage about racial disparities, inappropriate placement of people with serious mental illness in nursing homes, abuse, and other issues brought quality issues to public attention.
- Gov. Pat Quinn formed Nursing Home Safety Task Force (Oct. '09)

Feb. 2010 Task Force Recommendations

- Enhance Pre-Admission Screening and Background Checks;
- Set and Enforce Higher Standards of Care;
- Expand Home and Community Based Residential and Service Options

SB 326

- Increases staffing ratios
- Creates disincentives for providing bad care
- Promotes resident safety
- Improves screening of potential residents
- Mandates sufficient numbers of surveyors
- Promotes transition of residents with mental illness to more appropriate community settings.

What can consumers and advocates do on the policy level?

- Don't lose momentum or focus! Ensure continued efforts to implement Task Force recommendations and statutory provisions, monitor progress, and refine solutions.
- Thank (publicly and repeatedly!) legislators and policymakers who show leadership, courage, and diligence.
- Track successes as well as challenges.
- Support adequate funding for the ombudsman program and surveyor staff.

What can consumers and advocates do on the local level?

- Ensure visitors have a frequent presence in the facility including on weekends and evenings.
- Participate in care planning.
- Form family and resident councils.
- Seek assistance from ombudsman staff when appropriate.

What can consumers and advocates do?

- Take complaints up the chain of command in the home and, if appropriate, to corporate headquarters. Be as specific as possible. Ensure promised solutions are implemented.
- If no result, file appropriate, detailed complaints with the Illinois Dept. of Public Health.
- Copy state legislators on serious complaints and keep them updated on the progress of the complaint investigation and resolution.

What can consumers and advocates do?

- Use the media judiciously as part of a larger advocacy strategy.
 - Use a range of media options including letters to the editor, op/ed pieces, and news stories.
 - Develop relationships with reporters, editors, and producers.
 - Be helpful and provide detailed, accurate information.
 - If you succeed in obtaining media coverage, know in advance how to capitalize promptly on that exposure.

What can consumers and advocates do?

- Consider legal remedies in serious cases of abuse or neglect.
 - Litigation brings the threat of significant financial consequences.
 - Litigation provides opportunities to shine light on poor providers and egregious practices.
 - Publicity regarding harrowing cases increases pressure for reforms and encourages others to seek redress in court.

What can consumers and advocates do?

- Learn about the culture change movement that enhances quality of life and care in facilities and empowers residents and caregivers.
- Support and demand true culture change in the facilities you encounter.
- Press for effective government incentives to promote culture change.

What can consumers and advocates do?

- Research providers carefully and use every forum and opportunity to share accurate information on poor performers:
 - Certificate of need proceedings
 - Professional licensure proceedings
 - Zoning hearings
 - Stockholder suits
 - Federal and state false claims acts or other litigation
 - Communications with current or prospective business partners of the poor performer

A final note: the importance of home and community based care

- Support the expansion of home and community based care for all consumers.
 - Few consumers *want* to go to a nursing home!
 - Even the best nursing home often can't replicate the comfort and connections of home.

How expanding home care options improves nursing home quality.

- If consumers have real choice and access, many will choose home care, leading to a likely decline in nursing home utilization.
- Decreased demand will force nursing homes to compete for residents by improving quality. High quality homes are likely to attract residents and survive while poor performers are more likely to fail.

How expanding home care can improve nursing homes

- Home care has been criticized as being largely unregulated and of vastly varying quality. By demanding quality across the long term care spectrum and ensuring public funds pay only for quality, advocates can avoid pitting home care against nursing home care and ensure quality and accountability for *all* long term care consumers.

Don't give up!

- Consumers and advocates have great allies in The Consumer Voice (formerly NCCNHR), Illinois' state and local ombudsman programs, and Illinois Citizens for Better Care.
- Fighting for nursing home quality requires passion, diligence, courage, creativity, and relentlessness.
- We will prevail!

Questions?

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