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

A Report to the 2010 106th Tennessee General Assembly

Tennessee Department of Health

February 1, 2010

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 325 nursing homes that were licensed in Tennessee in 2009, 317 were also certified by CMS to participate in the Medicare/Medicaid reimbursement program. As with licensure surveys, the Department surveys 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 submitted to CMS, and CMS makes all 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.

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 2009, there were 325 licensed nursing homes in the state of Tennessee.
- The Department investigated a total of 3,798 complaints during 2009 for all health care facilities. Overall, the Department conducted 5,805 surveys for all health care facilities in 2009, which includes annual, complaint, and unusual incident and revisit surveys. This decline from the approximately 11,600 surveys conducted for all health care facilities in 2008, is attributable to two factors: a surveyor vacancy rate which fluctuated between 30 – 36 percent throughout 2009 (currently at 33%); and the amendment to the Health Data Reporting Act of 2002[1].
- Complaints against nursing homes totaled 2,791, or 73.8% of the total complaints, which is a 5.5% decrease from 2008[2].
- There were 303 nursing homes with one or more complaints filed, constituting 93% of the total nursing homes.
- There were 67 nursing homes with ten or more complaints filed, constituting 21% of the total nursing homes; a significant decrease of 32% from 2008.
- The number of nursing homes with substantiated complaints:

  -2005 – 144 nursing homes or 43% of all nursing homes

  -2006 – 141 nursing homes or 42.7% of all nursing homes

  -2007 – 125 nursing homes or 37.5% of all nursing homes

  -2008 – 111 nursing homes or 33.6% of all nursing homes

  -2009 – 97 nursing homes or 30% of all nursing homes

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[1] Effective May 27, 2009, the Health Data Reporting Act of 2002 was amended by Public Chapter 318 which provides that all licensed health care facilities are required to only report incidents of abuse, neglect, and misappropriation that occur at the facility to the Department.

[2] Decrease in complaints against nursing homes from 2008 to 2009 may be attributed to an amendment to the Health Data Reporting Act of 2002 that more narrowly defined complaint reporting requirements by the facility.

The 2009 nursing home data shows a decline in both the number of complaints and the number of complaint surveys conducted from previous years (see footnote[1] p.4), and a continuing downward trend in both the number and percentage of nursing homes with substantiated complaints.

DEFICIENCIES CITED IN NURSING HOMES:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2009 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 6.7, compared to 5.2 within CMS region IV and 4.9 in Tennessee, below both the nation and the region. The percentage of immediate jeopardy (IJ) [3] citations to resident health and safety nationally was at 6% of the total number of nationwide health citations. The percentage of IJ citations in Tennessee was higher than the nation at 18%. Four of the eight CMS Region IV states were above the national IJ citation percentage, with one having an IJ citation percentage above that of Tennessee.

Of the 325 licensed nursing homes in Tennessee in 2009, the following was ascertained:

- There were no nursing homes in bankruptcy in 2009.
- Nineteen nursing homes were cited with Immediate Jeopardy substandard level of care, which is a 38% decrease from 2008.
- Seventeen nursing homes were cited with substandard level of care.
- Nineteen nursing homes were cited with Federal Civil Monetary Penalties for a total assessed amount of $ 5,638, 150.
- Twelve nursing homes were cited with state Civil Penalties for a total assessed amount of $37,200.00.
- Twelve nursing homes had admissions suspended in 2009.

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[3] "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 2009 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. F0323[4] Facility is free of accident hazards
2. F0371 Store/prepare/distribute food under sanitary conditions
3. F0309 Provide necessary care for highest practical well-being
4. F0279 Develop comprehensive care plans
5. F0253 Housekeeping & maintenance services
6. F0281 Services provided meet professional standards
7. F0441 Facility establishes infection control program
8. F0329 Regimen is free from unnecessary drugs
9. F0315 Resident not catherized unless unavoidable
10. F0431 Proper labeling of drugs & biologicals
11. F0465 Environment is safe/functional/sanitary/comfortable
12. F0314 Proper treatment to prevent/heal pressure sores
13. F0241 Dignity
14. F0425 Facility provides drugs & biologicals
15. F0272 Comprehensive assessments

The top fifteen life safety code deficiencies were the following:

1. K0029 Hazardous areas-separation
2. K0018 Corridor Doors
3. K0025 Smoke Partition Construction

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[4] The "F" and "K" designations refer to "Tag numbers", which correspond to the deficiency citation format used by the Centers for Medicare and Medicaid Services in its survey procedures.

4. K0062 Sprinkler System Maintenance
5. K0066 Smoking Regulations
6. K0147 Electrical wiring and equipment
7. K0050 Fire drills
8. K0052 Testing of fire alarm
9. K0064 Portable fire extinguishers
10. K0045 Exit lighting
11. K0067 Ventilating equipment
12. K0069 Cooking equipment
13. K0144 Generators inspected/tested
14. K0017 Corridor walls
15. K0038 Exit access

NURSING HOME QUALITY INITIATIVE UPDATE 2009:

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. 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.

In September 2006 a new coalition based, two-year campaign—Advancing Excellence in America's Nursing Homes—was launched. This campaign is designed to improve the quality of

care and quality of life for those living or recuperating in America's nursing homes. The campaign identified four clinical quality goals and four organizational improvement goals. 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. From data collected during the first twenty-four months, the campaign announced that:

> ...data show a reduction in the use of physical restraints for nursing home residents. Forty states have now met or exceeded the Campaign's goals of less than five percent of residents in nursing homes restrained. In addition, the nation has also met the goal of successfully reducing the number of nursing homes residents suffering from chronic pain to four percent or less. To date, 32 states have met that goal.[5]

The Advancing Excellence campaign has worked diligently over the past three years to encourage improvements in care for nursing home residents across the country. The Campaign, having achieved its national objective for reducing physical restraint, will set a lower rate as a new goal for the coming year.

For phase 2 participation in this program, October 22, 2009 – December 31, 2011, 4,807 nursing homes have 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 phase 2 progress results for the campaign's four clinical quality goals:
Goal 1: Reducing high-risk pressure ulcers.

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[5] July 22, 2009 Press Release – Advancing Excellence in America's Nursing Homes (page 1, paragraph 1) http://www.nhqualitycampaign.org/files/AE-FINAL_Q4_Data_Press_Release_07.pdf

Objective A: The national average for high-risk pressure ulcers will be below 9% by December 31, 2011.

Results: The prevalence of high-risk pressure ulcers has decreased nationally from the September 2006 campaign start of 12% through the June 2009, second quarter average of 11%. The June 2009 state average for Tennessee mimics the national average at 11%.

Goal 2: Reducing the use of daily physical restraints.

Objective A: The national average for physical restraints will be at or below 2% by December 31, 2011.

Results: Nationally, the use of restraints in nursing homes decreased continually from the September 2006, campaign start of 6% through the second quarter, June 2009 average of 3%. The percentage of restraint usage in Tennessee nursing homes during the phase 1 period ending September 2008, was above the national average at 7%. However, a continued decline in restraint usage into the second quarter, June 2009 (phase 2 period) shows Tennessee nursing homes mirroring the national average of 3%.

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

Objective A: The national average of moderate or severe pain experienced by long-stay residents will be at or below 2% by December 31, 2011.

Results: The campaign's national objective to improve pain management for long-term nursing home residents was at 3% by second quarter, June 2009 both for the nation and the state of Tennessee.

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

Objective A: The national average of moderate or severe pain experienced by post-acute residents will be at or below 16% by December 31, 2011.

Results: The average for post acute care pain nationally, as of second quarter, June 2009, was above the objective at 19%. Tennessee nursing homes were at 15%, below the overall phase 2 objective of 16% during this same period.

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. Almost 48% of nursing homes in the nation have registered for phase 2 campaign participation (October 22, 2009 – December 31, 2011). 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 October 2009, Tennessee nursing homes' participation in the coalition was somewhat lower than that of the nation by 2.2%.

	Tennessee	**Nation**
Participating nursing homes[6]:	91	4,823
Percentage of participating nursing homes:	28.5%	30.7%

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 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.

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[6] 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