

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

**A Report to the 105<sup>th</sup> Tennessee General Assembly**

**Tennessee Department of Health  
March 2008**



STATE OF TENNESSEE  
**DEPARTMENT OF HEALTH**  
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PHIL BREDESEN  
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SUSAN R. COOPER, MSN, RN  
COMMISSIONER

March 14, 2008

The Honorable Phil Bredesen, Governor  
The Honorable Ron Ramsey, Lieutenant Governor and Speaker of the Senate  
The Honorable Jimmy Naifeh, Speaker of the House of Representatives  
State Capitol  
Nashville, Tennessee 37243

Dear Governor Bredesen, Lieutenant Governor Ramsey, and Speaker Naifeh:

Transmitted herewith is the Department of Health's report of the nursing home inspection and enforcement activities for calendar year 2007. The Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act of 2003 (codified at Tenn. Code Ann. § 68-1-120) requires the filing of this report each year.

Thank you for your consideration of this report, and please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Susan R. Cooper, MSN, RN".

Susan R. Cooper, MSN, RN  
Commissioner

## **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 333 nursing homes that were licensed in Tennessee in 2007, 323 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 at the same time 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 could violate conditions of participation in the Medicare/Medicaid reimbursement program.

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 2007, there were 333 licensed nursing homes in the state of Tennessee.
- The Department investigated a total of 4,043 complaints during 2007 for all health care facilities. Overall, the Department conducted approximately 15,400 surveys for all health care facilities in 2007, which includes annual, complaint, unusual incident and revisit surveys.
- Complaints against nursing homes totaled 3,033, or 74% of the total complaints, which is a 5% increase from 2006.
- There were 317 nursing homes with one or more complaints filed, constituting 95% of the total nursing homes.
- There were 122 nursing homes with ten (10) or more complaints filed, constituting 37% of the total nursing homes.
- The number of nursing homes with substantiated complaints:

- 2003 – 165 nursing homes or 40% of all nursing homes
- 2004 – 134 nursing homes or 39% of all nursing homes
- 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

In 2007, the Department received more complaints and conducted more complaint surveys in nursing homes than in previous years. Although the number of complaints rose (from 1,453 in 2005 and 1,516 in 2006 to 3,033 in 2007), the percentage of substantiated complaints decreased from 19% in 2005 and 17% in 2006 to 8% in 2007.

### **DEFICIENCIES CITED IN NURSING HOMES:**

Deficiencies cited in nursing home facilities in the State of Tennessee for 2007 are relatively consistent with the pattern of deficiencies cited across the eight southeastern states (CMS Region IV) and the nation, with the exception of Scope and Severity of “J” and “K” (which are two distinct delineations of immediate jeopardy (IJ)<sup>1</sup> to resident health and safety; “J” delineates an

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<sup>1</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

isolated IJ situation and “K” delineates a pattern of IJ) for both Standard and Complaint Surveys. However, based solely on the data, it is not clear at present whether the higher number of cited deficiencies at the stated scope and severity is a result of a larger number of facilities having been cited or rather a few facilities cited with a high number of these “J – K” deficiencies. The overall results would suggest the latter. The average number of health deficiencies cited in Tennessee per nursing home was 5.5, compared to 7.0 nationwide and 6.1 within CMS Region IV.

Of the 333 licensed nursing homes in Tennessee in 2007, the following was ascertained:

- Nine (9) nursing homes were free of both health and life safety deficiencies.
- The year started with nine (9) nursing homes in bankruptcy; December ended with two (2).
- Thirty-nine (39) nursing homes were cited with Immediate Jeopardy substandard level of care, which is a 70 % increase from 2006.
- Forty-four (44) nursing homes were cited with substandard level of care.
- Seventy-Two (72) nursing homes were cited with Federal Civil Monetary Penalties for a total assessed amount of \$9,875,775.00
- Thirty-eight (38) nursing homes were cited with State Civil Penalties for a total assessed amount of \$56,610.00.

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

The most common deficiencies cited in nursing homes in 2007 is divided into two (2) groups – those cited in areas related to health (quality of care of residents) and life safety (construction code compliance). The top 15 health and quality of care deficiencies were the following:

1. F-280<sup>2</sup> Develop Prepare and Review of Comprehensive Care Plans
2. F-323 Facility is free of Accident Hazards
3. F-281 Services provided meet Professional Standards of quality
4. F-309 Quality of Care
5. F-315 Resident not catheterized unless unavoidable
6. F-332 Medication error rates of less than 5%
7. F-431 Proper labeling of drugs and biologicals

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<sup>2</sup> 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.

8. F-371 Store prepare and distribute food under sanitary conditions
9. F-444 Wash hands when indicated
10. F-441 Facility establishes infection control procedures
11. F-282 Services provided must be provided by qualified persons in accordance with plan of care
12. F-157 Notification of physician and family of changes of conditions of residents
13. F-514 Clinical Records meet professional standards
14. F-246 Accommodations of needs
15. F-278 Accuracy of assessments

The top 15 life safety code deficiencies were the following:

1. K-018 Corridor Doors
2. K-130 Other
3. K-067 Ventilating Equipment
4. K-062 Sprinkler system maintenance
5. K-050 Fire Drills
6. K-052 Testing of Fire Alarms
7. K-064 Portable Fire Extinguishers
8. K-029 Hazardous areas-separation
9. K-147 Electrical wiring and equipment
10. K-038 Exit access
11. K-066 Smoking regulations
12. K-025 Smoke partition construction
13. K-141 No smoking signs when oxygen used
14. K-056 Automatic sprinkler system
15. K-072 Furnishing and decorations

#### **UPDATE ON SPRINKLERED NURSING HOME STATUS:**

In 2004, the General Assembly enacted Public Chapters 590 and 856 (codified at Tenn. Code Ann. § 68-11-235), which required generally that any licensed nursing home that was not fully sprinklered as of July 1, 2004 was to become sprinklered within twelve (12) months or eighteen (18) months (depending on whether the facility provides patient care above or below the ground floor or on the ground floor only) after July 1, 2004 or the date of the Department's approval of the facility's sprinkler plan, whichever date was later. Alternatively, a nursing home could comply with the law by replacing its existing facility, so long as the new facility was approved by the Health Services and Development Agency and was in construction beyond the footing stage no later than July 1, 2007.

As of December 2007, three (3) nursing homes were not fully in compliance:

- East Tennessee Region – One nursing home must still install sprinklers in the outdoor canopies; the interior of the building is fully sprinklered
- Middle Tennessee Region – All nursing homes are in compliance
- West Tennessee Region – One nursing home is not yet sprinklered; the Department has approved plans for the replacement of this nursing home; a second nursing home has completed the installation of its sprinkler system and is expected to be fully compliant.

## **NURSING HOME QUALITY INITIATIVE UPDATE 2007:**

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

In 2006, the Centers for Medicare and Medicaid Services (CMS) continued the National Nursing Home Improvement Coalition. In April of 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 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'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. Participating nursing homes began working on at least three of the following eight measurable goals:

**Goal 1:** Nursing home residents receive appropriate care to prevent and minimize pressure

ulcers.

Objectives: By September 2008:

- a) The national average for high risk pressure ulcers is below 10%.
- b) 30% of nursing homes will regularly report rates of high risk pressure ulcers below 6%.
- c) No nursing home will report a rate of high risk pressure ulcers that exceeds 24%.
- d) Compared to June 2006, approximately 50,000 fewer residents will have pressure ulcers.

**Goal 2:** Nursing home residents are independent to the best of their ability and rarely experience daily physical restraints.

Objectives: By September 2008:

- a) The national average of the daily use of physical restraints will be at or below 5%.
- b) 50% of nursing homes will regularly report rates of daily use of physical restraints below 3%.
- c) No nursing home will report a rate of daily use of physical restraints that exceeds 19%.
- d) Compared to June 2006, approximately 30,000 fewer residents will be physically restrained daily.

**Goal 3:** Nursing home residents who live in a nursing home longer than 90 days infrequently experience moderate or severe pain.

Objectives: by September 2008:

- a) The national average of moderate or severe pain experienced by long-stay residents will be at or below 4%.
- b) 30% of nursing homes will regularly report rates of moderate to severe pain for long-stay residents under 2%.
- c) No nursing home will report a rate of moderate or severe pain that exceeds 20%.
- d) Compared to June 2006, approximately 40,000 fewer long-stay residents will suffer from moderate or severe pain.

**Goal 4:** People who come to nursing homes after staying in the hospital only sometimes experience moderate to severe pain.

Objectives: By September 2008:

- a) The national average of moderate or severe pain experienced by post-acute residents will be at or below 15%.
- b) 30% of nursing homes will regularly report rates of moderate or severe pain for post-acute residents below 10%.



- c) No nursing home will report a rate of moderate or severe pain that exceeds 46%.
- d) Compared to June 2006, approximately 130,000 fewer post-acute care residents will suffer from moderate or severe pain.

**Goal 5:** Most nursing homes will set individualized targets for clinical quality improvement.

Objectives: By September 2008:

- a) 90% of nursing homes will set annual clinical quality targets using the target setting system at [www.nhqi-star.org](http://www.nhqi-star.org).
- b) 50% of nursing homes will set annual targets for clinical quality improvements that are at least 25% lower than their rate at that time.

**Goal 6:** Nearly all nursing homes assess resident and family experience of care and incorporate this information into their quality improvement activities.

Objectives: By September 2008:

- a) The national average of nursing homes that regularly assess resident experience of care and incorporate into their quality improvement activities exceeds 80%.
- b) 1.281 million residents will now be asked about their experience and satisfaction with the care provided to them in the nursing home.
- c) Regularly assessing family member experience of care and incorporating this information into nursing home quality improvement activities will be measured, and become the usual experience in nursing homes nationally.

**Goal 7:** Most nursing homes measure staff turnover and develop action plans as appropriate to improve staff retention.

Objectives: By September 2008:

- a) The national average of nursing homes that regularly measure staff turnover and develop action plans to reduce the rate of turnover (including setting targets for staff turnover) exceeds 80%.
- b) The national average for [measured] staff turnover (RN, LPN, CNA) will be reduced by 15%.
- c) Approximately 35,000 fewer nursing home nursing staff will leave their jobs each year.

**Goal 8:** Being regularly cared for by the same caregiver is critical to quality of care and quality of life. To maximize quality as well as resident and staff relationships, the majority of nursing homes will employ “consistent assignment”.

Objectives: By September 2008:

- a) One-third of nursing homes will have adopted “consistent assignment” among CNAs.
- b) 5,300 nursing homes will have adopted “consistent assignment” among CNAs.

In 2006 Tennessee nursing homes had a 1% lower participation rate than the nation in the then new coalition.

	<b>Tennessee</b>	<b>Nation</b>
<b>Participating nursing homes:</b>	81	4,103
<b>Percentage of participating nursing homes:</b>	24.8%	25.8%

The Quality Improvement Organization in Tennessee is currently working with the 81 nursing homes participating in this coalition. The QIO works with each nursing home by providing quality improvement tools and instructions that reflect the three 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. Health Care Facilities is a member of this coalition and participates both on the listserv and the teleconference calls.

Quality measures are utilized in public reporting on CMS’s nursing home compare website [www.medicare.gov](http://www.medicare.gov) and are available to the public.