

SUPPORTING YOUR CONSTITUENTS DURING A NURSING HOME STAY

A Guide for Legislators and Elected Officials



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Long Term Care Community Coalition

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Introduction

Chances are many of your constituents will experience a nursing home stay, either as a resident or as a loved one of a resident, during your term of office. And there is a good possibility that one of your constituents will reach out to your office for assistance related to that nursing home stay. When that happens, this guide can be a helpful resource for you and your staff.

This guidebook has two main goals:

1. To equip you with basic knowledge so you can assist your constituents during what is often a highly sensitive and challenging time; and
2. To help you identify areas for policy development to address these challenges systemically.

As an elected official, you are positioned to make a tangible and positive difference in the lives of your constituents who are dealing with nursing home issues. Your role is multifaceted, but in whatever capacity – Navigator, Expeditor, Advocate, Convenor/Educator, or Policymaker – you can help resolve the real-world challenges your constituents face, and ultimately drive legislative solutions and systemic reforms to benefit the broader population.



Note: This guidebook deals only with nursing homes, not assisted living facilities or other types of residences for seniors or persons with disabilities.

Multifaceted Roles

Navigator

One of the most helpful things you can do for your constituents during this stressful time is to provide them with basic information and help them navigate the bureaucratic hurdles of a severely disjointed long-term care “system.” Your constituent may be an older individual or a person with a disability acting on their own behalf, or they may be their spouse, child, or loved one. Whatever their relationship, they face a complex maze of federal, state, and local governmental agencies and organizations, each with its own funding streams, and more acronyms and bureaucratic jargon than one could imagine.

Providing your constituents with trusted information sources and helping them get to the right place, or even better yet, to the appropriate person, could save them hours of work and grief and help them resolve their problem.

Expeditor/Red Tape Cutter

Closely linked with the navigator function is your role as expeditor or red tape cutter. Often a call or written communication from your office to the right agency or individual can be the key to getting your constituent the timely response that they need.

Advocate

Elected officials acting on behalf of their constituents can have considerable sway when contacting governmental agencies that serve nursing home residents and/or regulate nursing homes. For example, your intervention may help prod somewhat recalcitrant regulators to act on behalf of the constituent who has reached out to you for assistance. In addition, a follow-up call to the agency can not only spur responsive action but can also inform you of existing systemic bureaucratic barriers or other reasons when governmental response has been inadequate or ineffective.

Convenor/Educator

In addition to efforts on behalf of a specific constituent, legislators and other elected officials can play a vital role in educating and engaging with their constituents on important nursing home issues. (Remember that a hefty percentage of voters will themselves enter a nursing home or have someone close to them who will.)

Opportunities to raise awareness about nursing home issues include the typical in-person or virtual town hall meetings, newsletters, and social media outreach. However, specific to the nursing home arena, legislators (or their staff) can seek and/or accept opportunities to participate in events and meetings of nursing home resident or family councils,¹ as well as local, regional, or statewide nursing home citizen advocacy groups.² (More on these later.)

This type of frequent, two-way communication with constituents will enable you to identify common problems and pinpoint systemic issues of concern with nursing homes in your jurisdiction (or more broadly), which can help you develop meaningful policy responses.

Policymaker

Systemic issues of concern call out for new policies, and effective legislative, regulatory, or other fixes. The insights you may have gained through advocacy on behalf of a particular constituent or through ongoing constituent engagement can serve as a call for action – for a new nursing home policy, better implementation, improved enforcement, or stronger accountability measures.

As you develop and work to advance these measures, do not hesitate to reach out to your constituents, including any nursing home citizen advocacy groups (CAGs), elder law bar associations, your state or local Long-Term Care Ombudsman Program (hereinafter “LTCOP” or

¹ Federal law establishes the rights of nursing home residents to organize and participate in resident groups in the facility. For more information, see <https://nursinghome411.org/wp-content/uploads/2017/05/LTCCC-Factsheet-Resident-Family-Councils.pdf>.

² Citizen advocacy groups (CAGs) are groups of concerned citizens who work to improve the quality of care for long-term care residents in their locality, state, or region. These groups can be well established organizations with budgets, staff people, and offices or they can be as small as a group of concerned citizens who meet around the kitchen table to share information and strategize about how they can work to improve the quality of care in their community. For more information, see https://theconsumervoive.org/uploads/files/advocate/CAG_Description_NCCNHR.pdf.

“Ombudsmen”),³ or your state’s Medicaid Fraud Control Unit.⁴ Each of these can be an invaluable source of expertise as you draft your own legislation or consider others’. Often constituents with personal experience and/or professional expertise can pinpoint a key issue you might have missed or add something to make a proposal stronger. You may also wish to consider an advisory council/committee or group of stakeholders or experts to offer guidance when developing policy.

Some Nursing Home Basics

Almost two out of every three Americans will need some type of assistance with their activities of daily living at some point in their lives because of advanced age, illness, or disability. Long-term care is a term used to describe the variety of services and supports designed to meet a person’s health or personal care needs when they can no longer perform everyday activities on their own. While most of this care is provided at home, it is estimated that about 58% of adults over the age of 50 will enter a nursing home at some point in their lives,⁵ most frequently for a short-term rehabilitative stay in a skilled nursing facility (SNF) following a hospitalization, or for a longer period of time in a nursing facility (NF), also known as a nursing home.

Let’s talk demographics:

- ⇒ Most people who enter a nursing home are over 65 years old, but a notable proportion of younger individuals enter for short-term (18.9%) or long-term (15.4%) stays generally due to disability.
- ⇒ The most common diagnoses for residents are Alzheimer’s or related dementias, depression, diabetes, and heart disease (including coronary artery disease, congestive heart failure and stroke).
- ⇒ Women comprise 59% of short-stay residents and 66.6% of long-stay residents.
- ⇒ Predominantly, nursing home residents are white (73.3% for short-stay; 74.4% for long-stay), although the number of white residents is decreasing while Black and Hispanic individuals are increasing their utilization.
- ⇒ Studies indicate that 40% of Black residents receive care in low-performing nursing homes, compared to 9% of white residents.

³ Long-Term Care Ombudsmen are advocates for residents of nursing homes, board and care homes, and assisted living facilities. Under the federal Older Americans Act, every state is required to have a Long-Term Care Ombudsman Program that addresses complaints and advocates for improvements in the long-term care system. For more information, see https://theconsumervoice.org/get_help.

⁴ Every state has a Medicaid Fraud Control Unit (MFCU) which is responsive to allegations of nursing home abuse, neglect, and fraud. For contact information, visit <https://www.naag.org/about-naag/namfcu/reporting-fraud-and-abuse/>.

⁵ <https://aspe.hhs.gov/reports/what-lifetime-risk-needing-receiving-long-term-services-supports-0#:~:text=More%20recent%20studies%20provide%20an,home%20care%20after%20age%2050>.

- ⇒ Low-performing nursing homes, where a significant number of minority residents receive care, exhibit poorer quality, more serious deficiencies, financial instability, and lower staffing levels compared to high-performing facilities.⁶

Nursing homes are regulated by both the federal government and state governments. There are many strong federal rules on who can provide care, who qualifies for nursing home care, how care is paid for, resident rights, and more. And while there is a comprehensive enforcement system designed to monitor and ensure compliance with federal and state requirements, oversight and accountability is often weak and ineffective.

Nursing homes are increasingly for-profit entities, operated by multi-state or national chains or owned by private investment firms. As a result, the ever-growing complexity of nursing home ownership and financial structures have made it exceedingly challenging for regulators and the public to ascertain a nursing home's true ownership and its using the public dollars it receives to provide care that meets or exceeds federal minimum standards.⁷

Virtually all nursing homes participate in the Medicaid and/or Medicare programs, meaning that they receive Medicaid or Medicare funding for some or all of their residents. Nursing homes do this because these programs make billions of dollars of steady income available to the industry. In order to participate in Medicaid or Medicare, a facility agrees to meet the standards set forth in the federal Nursing Home Reform Law ("Reform Law").⁸ States may have additional resident protections, but no state can have fewer. Importantly, federal nursing home protections apply to all residents in a facility, whether their care is paid for by Medicare, Medicaid, or private pay. The federal agency overseeing nursing homes, the Centers for Medicare & Medicaid Services (CMS), contracts with the states' regulatory agency, usually the Department of Health (DOH), to inspect nursing homes and to ensure residents are protected and receive the services they need and deserve.

The Reform Law, which passed in 1987, requires that every nursing home resident is provided with the care and quality of life services sufficient to attain and maintain his or her highest practicable physical, mental, and psychosocial well-being.⁹ It requires nursing homes to "promote and protect the rights of each resident" and emphasizes each resident's dignity and self-determination.

⁶ Mor V, Zinn J, Angelelli J, Teno JM, Miller SC. Driven to tiers: socioeconomic and racial disparities in the quality of nursing home care. *Milbank Q.* (2004) 82:227-56. Doi: 10.1111/j.0887-378X.2004.00309.x.

⁷ For more information these issues and on efforts to improve ownership transparency, see <https://nursinghome411.org/transparency>.

⁸ The Nursing Home Reform Act passed into law as part of H.R.3545 - Omnibus Budget Reconciliation Act of 1987. On 12/22/1987 it became Public Law No: 100-203. Available at <https://www.congress.gov/bill/100th-congress/house-bill/3545/text>. Henceforth, "Nursing Home Reform Law" or "Reform Law."

⁹ See LTCCC's fact sheet on the fundamentals of resident rights, <https://nursinghome411.org/wp-content/uploads/2017/05/LTCCC-Factsheet-Resident-Rights-Dignity-Respect.pdf>, as well as the *LTCCC Primer: Essential Nursing Home Quality Standards*, <https://nursinghome411.org/ltccc-primer-nursing-home-quality-standards/>.

Common Nursing Home Challenges

Below we will discuss some of the common nursing home problems faced by your constituents. We will also offer helpful information and recommendations to help you resolve immediate concerns of your constituents and inform your potential policy responses.

Selecting a Nursing Home

Most people enter a nursing home directly from a hospital after a hospital stay. As such, the selection of a nursing home generally occurs in the hospital as part of the discharge plan. While hospital discharge planners are charged with assisting patients in obtaining nursing home placement, most patients receive only a list of facilities that may or may not have an “open bed” with limited information about the quality of those facilities.

Individuals entering a nursing home from the community rely mostly on word of mouth, a recommendation from a relative, friend or neighbor. Their decisions may be made after a quick tour, based primarily on the facility’s appearance and location.

Helping your constituents access the unbiased information and assistance they need to choose the best possible nursing home for a loved one’s rehab may improve the chances of that person’s successful recovery and return home. Or, in the case of a long-term placement, a greatly enhanced quality of care and quality of life.

Frequently Asked Questions About Discharge from Hospital to a Nursing Home

Q: The hospital is discharging my loved one soon and tells me I need to select one of the nursing homes on a list they have given me. Can you help with any recommendations or advice?

A:

Recommendations:

- Share one of the following guides to choosing a nursing home:
 - [A Consumer Guide to Choosing a Nursing Home](#)ⁱ
 - [Your Guide to Choosing a Nursing Home](#)ⁱⁱ
- Make sure the individual is aware of the federal [Care Compare website](#)ⁱⁱⁱ which helps someone find and compare information about nursing homes. Note: This is the best resource for finding and evaluating nursing homes. Though it has shortcomings, it is far better, in our view, than “A Place for Mom” and similar services, for which nursing homes pay to get listed.
 - Suggest they pay close attention to the staffing measures that are based on auditable payroll data. Higher staffing generally results in better care and conditions for residents.
 - Caution the constituent about nursing homes designated as [Special Focus Facilities](#)^{iv} – nursing homes that have a history of serious quality issues.

- Similarly, call the constituent’s attention to facilities that have a [red abuse icon](#)^v next to their listing on Care Compare. **Note:** Regulators often miss cases of abuse and/or fail to cite them, so the absence of the abuse icon does not necessarily mean abuse has not occurred.
- Suggest the individual contact their local [Long-Term Care Ombudsman Program \(LTCOP\)](#).^{vi} Ombudsmen can provide information on how to choose a nursing home and help locate and “translate” information from the Care Compare website as well as from state inspection reports. Also, ask the Ombudsmen about any helpful state-specific tools or websites.
- Contact the state agency charged with overseeing nursing homes in the state (often the state health department) to find out more about the nursing home.
- Refer the constituent to the Eldercare Locator for help connecting to services, including long-term care services and supports. Visit [eldercare.gov](#) or call 1-800-677-1116.
- Refer them to a checklist to be used during a nursing home tour. Two good ones are:
 - [Your Guide to Choosing a Nursing Home](#)^{vii}
 - [Nursing Home Evaluation Checklist](#)^{viii}
- Provide a list of other helpful resources such as:
 - [NursingHome411.org](#) provides a range of resources, including user-friendly information on nursing home staffing, citations, and ratings. These resources are searchable by state, county, city, zip code, and nursing home name.
 - [TheConsumerVoice.org](#) provides a range of resources, including contact information for local nursing home citizen advocacy groups.
 - [Nursing Home Inspect](#), a project of the nonprofit investigative news outlet ProPublica, provides a searchable database of more than 80,000 nursing home inspection reports.

Q: The hospital wants to send my loved one to a nursing home that is miles away from me. They say this is the only home that has a bed available. How can I challenge that?

A: It is generally a good idea to choose a nursing home that is convenient to the person who will be visiting. People in a nursing home for rehabilitation who have frequent visitors tend to recover faster and have better health outcomes. For those in nursing homes for long-term stays, regular and frequent visitors can help monitor care, bring concerns or suggestions to staff, identify problems, and generally improve the resident’s quality of care.

There are, however, instances where someone might sacrifice convenience to get a bed in a higher quality nursing home. People who have Medicare (Medicare beneficiaries) have important rights while they are in the hospital, whether they are enrolled in a traditional Medicare plan or in a Medicare Advantage plan. Generally, someone with traditional Medicare may choose to be discharged to any facility that accepts Medicare and has an open bed. Those in Medicare Advantage plans may have to select from a list of facilities in the plan’s network.

Some research has found that people in traditional Medicare are more likely to be admitted to high quality nursing homes than those with Medicare Advantage. In addition, people enrolled in lower quality Medicare Advantage plans are most likely to receive care in the poorest quality nursing homes.¹⁰ It also appears that persons with Alzheimer’s Disease and Related Dementias (ADRD) are more likely to be discharged to lower-quality SNFs.¹¹

Recommendations:

- Let your constituent know that Medicare gives beneficiaries the right to object to and appeal hospital discharge decisions. The appropriateness of a proposed discharge can be challenged by contacting and lodging a complaint with the local Quality Improvement Organization (QIO). The hospital discharge notice should provide the name, address, and phone number of the QIO serving the hospital in question, along with instructions on how to file a complaint (See 42 C.F.R. §§412.42-412.48). It’s important to follow these instructions carefully. QIOs are required to assist Medicare beneficiaries in completing and filing a written complaint.
 - For additional help in filing a complaint with the QIO, suggest contacting the Elder Care Locator for their local Health Insurance Counseling Program (HICAP) (sometimes called State Health Insurance Counseling Programs (SHIPs) or Insurance Counseling Assistance (ICAs)) or legal assistance funded by Older Americans Act, the Legal Services Corporation, or private attorneys.
 - If the complaint to the QIO is not successful, the constituent may ask the QIO to reconsider its decision. Again, it is important to follow all instructions and adhere to strict timeframes.
 - For more information, see the [Center for Medicare Advocacy’s Self-Help Packet for Hospital Discharge](#).^{ix}
- Elected officials can play an important role in discerning patterns of inappropriate discharges: Are these discharges coming from a particular hospital? Is a particular Medicare Advantage plan involved? Are the better quality nursing homes in your jurisdiction not being offered to patients being discharged? Are individuals with Alzheimer’s Disease or other dementias being steered to lower quality facilities?
 - Consider convening constituents, legal aid providers, citizen advocacy organizations, and Ombudsmen to discuss the issue and potential policy responses, including improving financial and other incentives.

Quality of Care Concerns

Individuals in a Medicare and/or Medicaid certified nursing home (the vast majority of nursing homes) have many important rights under federal and state law. The 1987 Reform Law requires

¹⁰ <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0714>

¹¹ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2801101>

nursing homes to ensure that their residents receive quality care that will result in their achieving or maintaining their highest practicable physical, mental, and psychosocial well-being.

The Reform Law defines the services nursing homes must provide to residents and establishes standards for these services. Nursing homes receive Medicaid and Medicare payments for long-term care of residents only if they are certified by the state to be in substantial compliance with the requirements of the Reform Law.

To monitor compliance,¹² state survey agencies (often the state's health department) are required to conduct surveys at irregular intervals on a nine to 15-month survey cycle. The surveys, which are supposed to be unannounced, generally focus on residents' rights, quality of care, quality of life, and the services provided to residents. Surveyors also conduct more targeted surveys, or complaint investigations, in response to complaints they receive.

If a survey finds that a nursing home is out of compliance with minimum standards, the facility receives a citation, also known as a deficiency. Typically, nursing homes are allowed to correct the deficiency without facing a penalty. However, the state has a range of penalties at its disposal, which are generally imposed only when resident harm or immediate jeopardy have been identified. These penalties include:

- Directed in-service training of staff;
- Directed plan of correction;
- State monitoring;
- Civil monetary penalties (fines);
- Denial of payment for all new Medicare or Medicaid admissions;
- Denial of payment for all Medicaid or Medicare patients;
- Imposition of temporary management; and
- Termination from the Medicare and Medicaid programs.

Because nursing home profits depend on public funding via the Medicare and Medicaid programs, termination from those programs usually results in the sale or closure of the facility. For this reason, it is rarely imposed.

Frequently Posed Questions Related to Quality of Care Problems

Q: When I visit mom, I often find her dirty, or sitting in soiled clothes and bed sheets. No one answers her call bell when she needs help. The facility says they are doing their best, but they are understaffed.

A: Sufficient staffing is one of the most important indicators of a nursing home's ability to provide its residents with quality care. Chronic understaffing has been a serious problem in

¹² See LTCCC's Guide to Nursing Home Oversight and Enforcement. Available at <https://nursinghome411.org/reports/survey-enforcement/guide-oversight/>.

nursing homes for decades and inadequate staffing is one of the most common complaints received by regulators about nursing home care.

While there are many reasons for poor staffing levels, too often, nursing home owners and operators deliberately understaff their facilities to increase profits. Regardless of staffing levels, nursing homes are required by law to meet each resident's care needs. Nursing homes that do not have sufficient staff should not admit new residents for whom they cannot properly provide care.

Recommendations:

Assuming your constituent has tried and has not been successful working with the nursing home, the following are some steps to suggest:

- Contact the Long-Term Care Ombudsman Program.
- File a complaint with the state regulatory agency (usually the health department). These agencies have primary responsibility for ensuring nursing home residents receive quality care. Make sure they have received the complaint and ask about what happens next. There likely will be an investigation that includes an interview with the complaining party, the resident in question if appropriate, other residents, staff, etc. Be sure to ask about the timeline and when you will receive the results of the investigation. If desired, you may ask that the complaint be made confidentially and that the nursing home not be informed about who filed the complaint.
- If the nursing home stay is covered by Medicare (generally for a short-term rehabilitation stay), contact the QIO, the organization with whom Medicare contracts to handle complaints from Medicare beneficiaries. They may be able to assist or may ask your constituent to file a complaint.
- File a file a complaint directly with the regional office of the federal Centers for Medicare and Medicaid Services that serves your region.
 - ROATLHSQ@cms.hhs.gov: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
 - RODALDSC@cms.hhs.gov: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
 - ROPHIDSC@cms.hhs.gov: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, New York, New Jersey, Puerto Rico, Virgin Islands, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
 - ROCHISC@cms.hhs.gov: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
 - ROkcmSCB@cms.hhs.gov: Iowa, Kansas, Missouri, and Nebraska.
 - DenverLTC@cms.hhs.gov: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

- ROSFOSO@cms.hhs.gov: Alaska, Idaho, Oregon, Washington, Arizona, California, Hawaii, Nevada, and the Pacific Territories.
- Consider contacting your state Medicaid Fraud Control Unit (MFCU). The MFCU is charged with combatting Medicaid provider fraud and protecting nursing home residents from neglect and abuse. All 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have a MFCU. All but five of the MFCUs are housed in the state's Office of the Attorney General. To find your MFCU, see <https://www.naag.org/about-naag/namfcu/state-medicaid-fraud-control-units>.
- Elected officials and other policymakers can assist constituents by ensuring that government agencies respond in a timely fashion and that care concerns are being effectively addressed. Lawmakers and other elected officials may wish to send a formal letter of inquiry to the agency and provide updates to their constituent as appropriate. Constituents are grateful for your assistance and appreciative of your follow-up call.
- Look for care problems that are occurring frequently and try to discern patterns. Is a particular nursing home or chain involved? Are there owners in common? How are regulatory agencies responding? Discuss these patterns with your experts or kitchen cabinet and brainstorm what policy responses might be needed. For more information on federal efforts to improve nursing home ownership transparency and accountability, See <https://nursinghome411.org/transparency>.
- Check out detailed staffing information for nursing homes in your jurisdiction. The Long Term Care Community Coalition (LTCCC) publishes quarterly reports on staffing for every nursing home in the country. The reports include nursing and non-nursing staffing levels, turnover rates, weekend staffing levels, and other data. The interactive staffing dashboard can be used to identify nursing homes in a particular state and/or county. See <https://nursinghome411.org/data/staffing/>.
- Review your state's staffing standards and consider policies that will ensure appropriate staffing levels. Most nursing home experts agree that specific minimum staffing requirements are needed to ensure that basic needs are met. While many states have some staffing requirements, very few meet the minimum levels identified in 2001 by the Centers for Medicare and Medicaid Services.¹³ In addition, enforcement of existing staffing standards is lacking. Consider whether legislation to improve quality and/or financial integrity of nursing homes might be helpful.¹⁴

Q: I visit my dad at his nursing home every day. Today I noticed he had a black eye and multiple bruises around his wrist. He also complained that his wrist hurt, and when I asked the nurse what had happened, she said she didn't know. I asked that they send him for an x-

¹³ CMS recommended a daily minimum standard of 4.1 hours of total direct care nursing time per resident: 2.8 hours from certified nursing assistants; 0.75 hours from RNs; and 0.55 hours from licensed practical/vocational nurses.

¹⁴ See, for example, legislation in New Jersey, Massachusetts and New York described in <https://nursinghome411.org/wp-content/uploads/2022/04/Policy-Brief-Direct-Care-Min.-Spending-Laws.pdf>.

ray, and it was determined he had a spiral fracture, possibly caused by someone twisting his wrist. What should I do?

A: Each year, many thousands of nursing home residents experience abuse by facility staff or fellow residents. Signs of abuse may include unusual bruising, injuries for which there are no explanations, and sudden changes in a resident’s behavior or activities. Factors that can lead to abuse are low staffing levels, insufficient staff training, inadequate supervision, lack of risk assessment, negligent hiring, and ineffective care planning.

The Elder Justice Act – enacted in 2010 with the passage of the Affordable Care Act – is the federal law that deals with reporting suspicion of crimes against nursing home residents. [Federal law requires everyone who works in a nursing home \(including administrative staff, care staff, owners, and contractors\) to report any suspicion of a crime against a resident.](#)^x If the crime involves serious bodily injury, the report must be made immediately – no later than two hours after forming the suspicion. In the absence of serious bodily injury, the report must be made within 24 hours. The law provides for significant penalties for failure to report, including hefty fines and exclusion from federal health programs such as Medicare and Medicaid.

Unfortunately, due to a lack of enforcement, fear of retaliation,¹⁵ and ignorance of the law, many incidents of abuse are not reported or are grossly underreported and therefore never investigated.

Background checks for nursing home employees are an important safety measure that can help protect vulnerable residents. These checks can prevent individuals with disqualifying histories (e.g., convictions for patient abuse, patient neglect, and theft from patients) from being hired as direct caregivers. The National Background Check Program (NBCP) was enacted in 2010 to help participating states develop and improve systems for conducting federal and state background checks. As of 2023, 28 states have been awarded a total of more than \$65 million to modernize and improve their background check infrastructure.¹⁶ While a final evaluation report has not been released (as of August 2024), a 2019 interim report by the HHS Office of Inspector (OIG) found that nearly 80,000 individuals with disqualifying backgrounds were screened out in eight states alone. In an earlier (2011) interim report, OIG published an evaluation of individuals with criminal convictions employed in nursing homes “found that that 92 percent of nursing facilities employed at least one individual with at least one criminal conviction. Overall, five percent of nursing facility employees had at least one criminal conviction.”¹⁷

States participating in the NBCP were required to include several types of background checks in their program implementation: (1) a search of any databases and abuse registries of all known states in which the prospective employee has lived (2) a check of state criminal history records; (3) a fingerprint-based check of Federal Bureau of Investigation (FBI) criminal history records;

¹⁵ See LTCCC’s project, “They Make You Pay”: How Fear of Retaliation Silences Residents in America’s Nursing Homes. Available at <https://nursinghome411.org/retaliation/>.

¹⁶ List of states can be found here: <https://www.cms.gov/medicare/provider-enrollment-and-certification/surveycertificationgeninfo/downloads/nbcp-state-award-chart.pdf>

¹⁷ <https://oig.hhs.gov/oei/reports/OEI-07-20-00181.pdf>

and (4) a search of the records of any proceedings in the state that may contain disqualifying information about the prospective employee.

For a list of state agencies and their respective laws regarding background screening for long term care direct access employees, see [Background Screening Laws for Long-Term Care Providers by State](#).¹⁸

Recommendations:

- Urge your constituent to call 911 if they feel their loved one is in imminent danger.
- Provide your constituent with the following helpful tip sheet which provides a list of contacts for reporting the suspected abuse: [Nursing Home Abuse: How to Spot it and How to Get Help](#).^{xi}
- With the constituent's consent, determine if a report of suspected abuse was made by the nursing facility to state licensing agency or other authority.
- Recommend reaching out to your state Medicaid Fraud Control Unit.
- Consider convening roundtables or other forums to educate consumers, law enforcement, adult protective services, oversight agency, LTCOP, and nursing facility staff about nursing home abuse, prevention, and reporting requirements.
- Determine what gaps exist in enforcement of reporting requirements and identify corrective policy responses.
- Determine what other opportunities exist for policy development to prevent abuse such as required minimum staffing levels and improved training.
- Become familiar with your state laws on background screening of nursing home employees. See whether your state has participated in the NCBP and inquire how they are using the funding to improve the system. Determine whether your state law requires continuous monitoring, meaning that if an employee is criminally convicted after a background check is completed, that conviction is reported to the regulatory agency and in turn to the facility that hired the employee.
- Be aware of legislative efforts designed to relax state hiring or background check requirements that could place nursing home residents at risk. Resist false arguments that relaxed hiring practices and background checks are needed to address worker shortages.

¹⁸ This information was gathered through public web sites and documentation available to the National Background Check Program (NBCP) is dated and may not be all inclusive of the entirety of state laws, processes, or recent updates. Available at https://www.bgcheckinfo.org/sites/default/files/public/2018_State_Background_Screening_Laws_and_Rules.pdf.

- Ascertain to what extent resident-on-resident abuse is a problem in facilities within the jurisdiction and determine what policy measures (i.e., improved staffing levels, targeted training requirements, and resident background checks) are needed.
- Review funding levels and support increased funding for Long-Term Care Ombudsman Programs and state licensing agencies to improve effectiveness of investigative and enforcement actions.

Visitation

Under federal nursing home law, residents of nursing facilities that receive Medicare or Medicaid payment have the right to have family and friends visit at any time of day or night. Residents also have the right to speak privately with Ombudsmen and legal advocates.

During the COVID-19 public health emergency (PHE), the Centers for Medicare and Medicaid Services (CMS) permitted facilities to restrict or prohibit in-person visits. However, these restrictions have been greatly relaxed and in-person visitation is currently permitted unless there is a “reasonable clinical or safety” reason for restrictions.

The bottom line: visitation is the resident’s right and must always be permitted with very limited and rare exceptions. Note that the resident may also choose not to have visitors or certain visitors. See: [Nursing Home Visitation Frequently Asked Questions \(FAQs\)](#).^{xii}

Frequently Asked Questions About Visitation

Q: I work full-time and by the time I can get to my dad’s nursing home it is about 8 pm. The nursing home tells me I cannot visit at that time, as it is after visiting hours and/or that it is inconvenient to staff and other residents.

A:

Recommendations:

- Suggest your constituent speak with the facility and assert their loved one’s right to visitation under 42 C.F.R. section 483.10(f). Under these federal regulations, imposing visiting hours upon nursing home residents who wish to meet with their family members (or advocates) is not permissible. Residents have the right to have visitors at any time as long as the visit does not impose on the rights of another resident. If the resident is in a shared room, let the facility know, if necessary, that the family member is willing to have the visit in an alternative private space in the nursing home.
- If that is unsuccessful, suggest constituent contact the LTCOP for assistance.
- Constituents may also wish to file a complaint with the state survey agency.
- As an elected official or other policymaker, you may wish to follow up with constituent to determine if situation has been resolved. If not, with the permission of the constituent, you may wish to follow up, as appropriate, with the facility, the LTCOP, or state survey agency to prompt resolution and advocate on your constituents’ behalf.

- Elected officials can educate the public on nursing home visitation issues through regular constituent communication vehicles and/or by holding town halls on the subject. This is a particularly timely subject, since COVID-19 visitation restrictions are being reimposed by some nursing homes.
- If a pattern of visitation irregularities or violations is uncovered, consider developing new public policies to ensure effective enforcement of resident rights, including the right to visitation.

Voting

One of the many important rights established by the Nursing Home Reform Law is the right of nursing home residents to exercise their rights as citizens of the United States, including the right to vote. In exercising their right to vote, the “resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility...” Unfortunately, residents’ ability to exercise this right is sometimes hampered by lack of mobility, accessible transportation, and other factors.

Nursing homes are required to help residents exercise their right to vote by, for example, assisting with absentee or mail-in ballots or transporting residents to polls and ballot drop boxes. Nursing homes must also ensure that residents can receive and cast their ballots by mail by providing residents with access to postage and writing implements.

Nursing homes must have a plan to ensure residents can vote, whether in person, by mail, absentee or another authorized process. Some states have specific programs to assist residents in voting, or with registration, requesting an absentee ballot, or completing a ballot with help from a family member, Ombudsmen, or other individuals as permitted by state law.

For more information, see [LTCCC’s Voting Resources for Long-Term Care Residents](#).^{xiii}

Frequently Asked Question Related to Voting

Q: In the last presidential election, my dad was devastated that he was unable to vote. This was the first time he had not cast a ballot since he was eligible. He’s always spoken about voting as his solemn duty and privilege. The nursing home claimed that because of COVID restrictions they could not help him get to the polls. How do I make sure that he can vote next election?

A: Even during the COVID public health emergency, nursing homes were required to ensure residents were able to exercise their Constitutional right to vote. It is wrong that your father’s right to vote was impeded.

Recommendations:

- Suggest the constituent or nursing home resident file a complaint with their state survey agency.
- Complaints about voting can also be referred to the Department of Justice, Civil Rights Division at 800-253-3931, or voting.section@usdoj.gov.

- Elected officials may wish to educate constituents on issues related to the voting rights of long-term care residents. Roundtables with Ombudsmen, citizen advocacy groups, nursing home family and resident councils can also help identify and resolve facility or statutorily created voting challenges experienced by residents.
- Elected officials should examine current and/or proposed state laws to determine whether they impose onerous restrictions or otherwise create barriers to voting by nursing home residents. Voter identification laws, proof requirements for obtaining mail-in ballots, and requirements for a witness or notary public place undue burdens on residents and impede their ability to exercise their right to vote, unless assistance is provided.
- Elected officials may wish to review laws and practices that have proven successful in other states or jurisdictions for replication.
- For more information, see:
 - [LTCCC’s Voting Resource Center](#)^{xiv}
 - [The Challenges of Voting for Persons in Long Term Care](#)^{xv}
 - [American Bar Association: Voting & Cognitive Impairments](#)^{xvi}
 - [Defending Voting Rights in Long-Term Care Institutions](#)^{xvii}

Improper Evictions (Involuntary Discharges and Transfers)

Improper evictions are one of the most frequent complaints received by Long-Term Care Ombudsmen. Under federal law, there are only six valid reasons a nursing home resident can be required to leave a nursing home:

1. The transfer or discharge is necessary for the resident’s welfare and the resident’s needs cannot be met in the facility;
2. The resident’s health has improved enough and no longer needs the facility’s services;
3. The safety of individuals in the facility is endangered;
4. The health of individuals in the facility would otherwise be endangered;
5. The resident has failed to pay despite reasonable and appropriate notice; or
6. The facility ceases to operate.

The relevant federal regulations can be found at Section 483.15(c) of Title 42 of the Code of Federal Regulations. See also [LTCCC’s fact sheet, Transfer & Discharge Rights](#).^{xviii}

Frequently Asked Question on Nursing Home Evictions

Q: The nursing home where my dad has lived the past two years just told me that he will have to leave because he keeps complaining about the food and the lack of staff. Can they actually evict him for complaining? His care is covered by Medicaid.

A: Simply complaining about the food and the lack of staff is not a valid reason for eviction. In any event, notices of discharge must be in writing and, with a few exceptions, must be given at least 30 days prior to the date of discharge. The resident has the right to appeal and remain in the facility pending the outcome of the appeal.

If the reason given by the facility for the involuntary discharge or transfer is that they cannot meet the resident's needs, the facility must explain in writing in the resident's clinical records what specific needs cannot be met, and what it has done to try to meet those needs. In addition, if the resident is being transferred, it must explain how that new facility will be able to meet those needs. The resident's needs for palatable foods and sufficient care staff are services that all facilities are required to provide.

Recommendations:

- Suggest constituent *immediately* contact the local LTCOP assigned to the nursing home. In many instances, Ombudsmen can resolve the situation.
- Counsel the resident/constituent to ask for the required notice in writing.
- Recommend the resident remain in the facility and file an appeal with the regulatory agency.
- Suggest contacting an attorney or legal services provider to represent the resident for the appeal.
- Under certain circumstances if the hearing decision is unfavorable to the resident, additional appeals can be taken.
- Offer the following resources and tip sheets:
 - [Consumer Voice: Nursing Home Discharges](#)^{xix}
 - [Justice in Aging: The Basics of Nursing Home Evictions](#)^{xx}
- Follow up with the constituent, and with permission of constituent, the regulatory agency to determine how the situation was resolved. Was the appeal successful? Did the resident remain in the facility? Were they or their family member(s) subject to or fearful of retaliation?
- Discuss with representatives of the LTCOP, legal aid providers and elder law attorneys, nursing home advocacy organizations, and other experts whether inappropriate evictions are a recurrent issue with nursing homes in the jurisdiction. Are there particular nursing homes or nursing home chains involved? What seem to be the most common reasons given for the eviction? How have the situations been resolved?
- Are nursing homes providing residents with the required notices within the required timeframes? If not, how is the state regulatory agency responding? What remedies if any, are being imposed for these failures?
- Determine what type of policy responses or legislative fixes might be needed.

Appendix

- **AARP**, <https://www.aarp.org/>
- **California Advocates for Nursing Home Reform**, <https://canhr.org/>
- **Center for Medicare Advocacy**, <https://medicareadvocacy.org/>
- **Justice in Aging**, <https://justiceinaging.org/>
- **Long Term Care Community Coalition**, <https://nursinghome411.org>
- **National Consumer Voice for Quality Long-Term Care**, <https://theconsumervoice.org/>

ⁱ <https://theconsumervoice.org/uploads/files/long-term-care-recipient/consumer-guide-to-choosing-a-nursing-home-final.pdf>

ⁱⁱ <https://www.medicare.gov/publications/02174-nursing-home-other-long-term-services.pdf>

ⁱⁱⁱ <https://www.medicare.gov/care-compare/>

^{iv} <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/Downloads/SFFList.pdf>

^v <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/QSO-20-01-NH.pdf>

^{vi} <https://ltcombudsman.org/about/about-ombudsman>

^{vii} <https://www.medicare.gov/publications/02174-your-guide-to-choosing-a-nursing-home>

^{viii} http://www.canhr.org/factsheets/nh_fs/html/fs_evalchecklist.htm

^{ix} <https://medicareadvocacy.org/self-help-packet-for-hospital-discharge>

^x See LTCCC's fact sheet, <https://nursinghome411.org/fact-sheet-requirements-for-nursing-homes-to-protect-residents-from-abuse-neglect-exploitation/>, and abuse/neglect/crime reporting page, <https://nursinghome411.org/learn/abuse-neglect-crime/>.

^{xi} https://theconsumervoice.org/uploads/files/issues/CV_NCEA_NHAbuse.pdf

^{xii} <https://www.cms.gov/files/document/nursing-home-visitation-faq-1223.pdf>

^{xiii} <https://nursinghome411.org/learn/voting/>

^{xiv} Id.

^{xv} https://www.americanbar.org/content/dam/aba/administrative/law_aging/2020-ltc-voting-article.pdf

^{xvi} https://www.americanbar.org/groups/law_aging/resources/voting_cognitive_impairments/

^{xvii} <https://www.bu.edu/bulawreview/files/2023/10/KOHN-SMITH.pdf>

^{xviii} <https://nursinghome411.org/wp-content/uploads/2017/06/LTCCC-Fact-Sheet-Nursing-Home-Transfer-Discharge1.pdf>

^{xix} <https://ltcombudsman.org/uploads/files/support/nursing-home-discharges-final.pdf>

^{xx} <https://justiceinaging.org/wp-content/uploads/2021/07/The-Basics-of-Nursing-Home-Evictions.pdf>