



The National  
**CONSUMER VOICE**  
for Quality Long-Term Care  
formerly NCCNHR

# PROTECTING SENIORS

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By Improving – Not Eroding –  
Nursing Home Quality Standards

Consumer Voice Member Call

June 21, 2018

# Agenda

I. Introductions & Opening

II. Resident story and background

III. Nursing Home Quality,  
Oversight & Staffing

IV. Enforcement of Nursing Home  
Standards & Federal/State

Role in Ensuring Competent,  
Financially Sound Owners/Managers

V. Nursing Home and Financial  
Accountability Issues

VI. Policy Recommendations &  
What You Can Do

- Q&A
- Closing

Robyn Grant, Consumer Voice

Janet Wells, California Advocates for  
Nursing Home Reform

Richard Mollot, Long Term Care  
Community Coalition

Toby Edelman, Center for Medicare  
Advocacy

Charlene Harrington, University of  
California - San Francisco

Robyn Grant, Consumer Voice

Washington Post, May 1, 2018

*She modeled in New York and worked for the Navy. At 93, parasites ate her alive at a nursing home.*



## Rebecca Zeni's Life

*"Her beauty could capture a room."*

- Rebecca Zeni was described as a "modern-day woman of the 1940s and 1950s. Headstrong, career-oriented and hard-working."
- After high school, she became a Navy employee at the Norfolk naval base.
- Later she moved to New York City and became a model.
- In New York, she also worked as an assistant to Mike Wallace at CBS News.
- Then she became a mother and homemaker.
- At 93, she had Alzheimer's disease and had been living for 5 years in a Georgia nursing home that was undergoing repeated outbreaks of scabies.



## Rebecca Zeni's Death

*“an agonizing death . . . in constant pain”*

- Scabies is highly contagious. Parasites burrow under the skin and lay eggs – in Ms. Zeni's case, throughout her body. Her family's lawyer said she was “literally being eaten alive.”
- Scabies spreads through human contact or touching surfaces handled by someone who has it. Residents with scabies at Ms. Zeni's nursing home weren't quarantined. Staff who had it weren't required to stay home. Sheets slept on by infected residents were washed with the rest of the linens.
- As many as 20 residents and staff may have been infected. During another scabies outbreak at the facility, a total of 35 staff and residents contracted the disease.

Kaiser Health News – Dec. 22, 2017

*Infection lapses are rampant in nursing homes, but punishment is rare.*

Infections are a dangerous problem throughout the healthcare system. They are especially prevalent in nursing homes.

- Basic steps to prevent infections – such as handwashing – are routinely ignored.
- 74% of nursing homes have been cited for infection control lapses.
- Only 1 in 75 received high-level citations that would lead to penalties.

# Resources

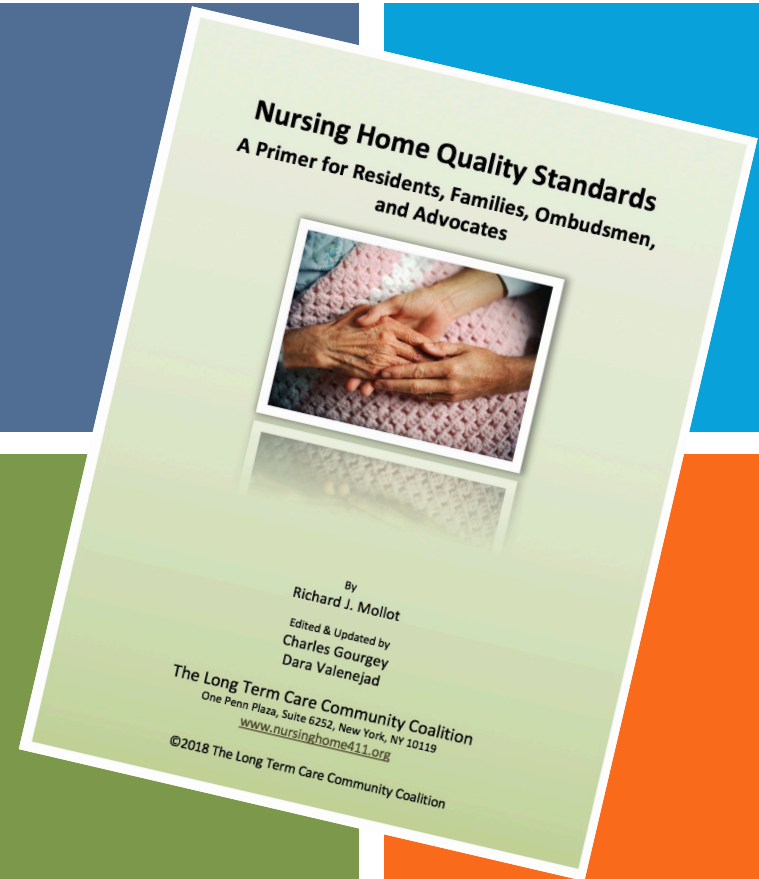
- **She modeled in New York and worked for the Navy. At 93, parasites ate her alive at a nursing home**, Washington Post, May 1, 2018, by Kristine Phillips. (Photos courtesy of Lance Lourie) [https://www.washingtonpost.com/news/to-your-health/wp/2018/05/01/she-modeled-in-new-york-and-worked-for-the-navy-at-93-parasites-ate-her-alive-at-a-nursing-home/?utm\\_term=.127108c00269](https://www.washingtonpost.com/news/to-your-health/wp/2018/05/01/she-modeled-in-new-york-and-worked-for-the-navy-at-93-parasites-ate-her-alive-at-a-nursing-home/?utm_term=.127108c00269)
- **'Eaten Alive' | Woman known for beauty suffers horrific death at nursing home**, 11Alive Atlanta, April 28, 2018, by Andy Pierrotti. <https://www.11alive.com/article/news/investigations/eaten-alive-woman-known-for-beauty-suffers-horrific-death-at-nursing-home/85-545635219>
- **NEGLECT UNCHECKED: Infection Lapses Rampant In Nursing Homes But Punishment Is Rare**, Kaiser Health News, Dec. 22, 2018, by Jordan Rau. <https://khn.org/news/infection-lapses-rampant-in-nursing-homes-but-punishment-is-rare/>

# Nursing Home Reform Law & the ACA

- The 1987 Nursing Home Reform Law (OBRA 87) is the main authority for nursing home regulation and enforcement.
- Select Committee on Aging hearings and a 1986 study by the Institute of Medicine showed that strong federal regulation and enforcement were needed to ensure quality.
- The study was the impetus for the new law, which established: Residents' Rights. Quality Standards for Participation in Medicare and Medicaid. Regular Inspections. Penalties for Noncompliance.
- In 2010, the Affordable Care Act added mandatory reporting of suspected crimes and greater transparency about nursing home ownership, compliance and staffing levels on Nursing Home Compare. In April, a major improvement was made in the Nursing Home Five Star Quality Rating System with the addition of nurse staffing hours per day based on auditable payroll records.

# Requirements of Participation

- The Requirements are the regulatory standards for nursing homes that participate in Medicare and Medicaid.
- In September 2016 -- after a 4-year review and public comment -- the Obama administration issued new regulations that updated federal requirements for the first time since 1995.
- The Trump administration says it plans to “*reform*” the requirements to remove the burden from providers.



# Nursing Home Quality, Oversight & Staffing

Presented by Richard Mollot  
Long Term Care Community Coalition  
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[www.nursinghome411.org](http://www.nursinghome411.org)

## + Though Care Has Improved, Serious Problems Persist – and Need Our Attention

- While nursing home care has improved since the scandalous conditions that led to the 1987 Nursing Home Reform Law, abuse, neglect, and substandard care persist.
- Hundreds of thousands of residents, in facilities across the country, are impacted every day.
- New research and public data indicate that substandard care, resident abuse, and neglect may be more serious and widespread than previously understood.
- Congressional action is needed to...
  - ⇒ Stop further degradation of nursing home safety standards;
  - ⇒ Ensure that CMS and the State Agencies are fulfilling their mission to protect residents and hold providers accountable for substandard care; and
  - ⇒ Institute reasonable restraints to prevent bad actors from draining money and resources allocated to provide resident care.

*Too often, “Buyer Beware” Defines the Experience of Nursing Home Residents & Families.*



## + Nursing Home Quality and Enforcement

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2014

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

- An astonishing one-third of residents who went to a nursing home for short-term care were harmed within an average of 15.5 days.
- Close to 60% of that harm was preventable and likely attributable to poor care.

# + Nursing Home Quality and Enforcement

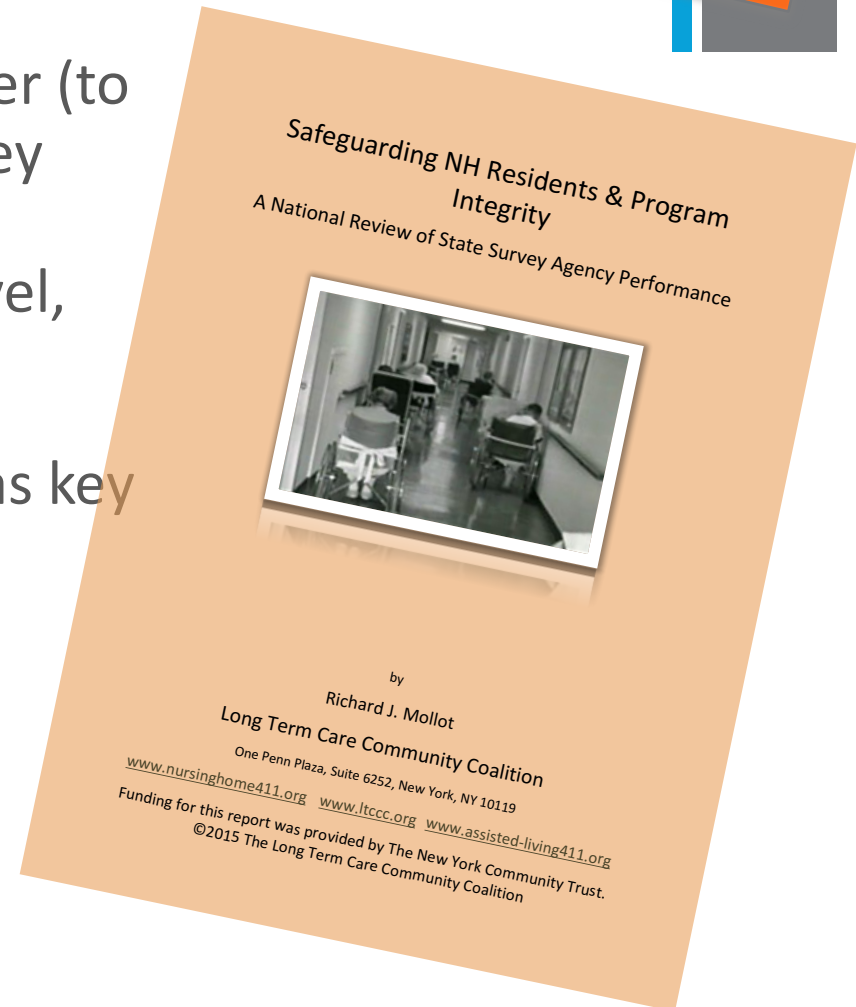
## LTCCC Study of State Survey Agency Performance

2015

In 2015, LTCCC published the first ever (to our knowledge) report on state survey agency performance that focused on resident-level, rather than facility-level, quality assurance.

We looked at three areas identified as key to quality and program integrity:

- Pressure Ulcers
- Antipsychotic Drugging
- Staffing



# + Nursing Home Quality and Enforcement

## Pressure Ulcers

- CDC: “[p]ressure ulcers are serious medical conditions and one of the important measures of the quality of clinical care in nursing homes.”
- Clinical Journal: While some pressure ulcers are unavoidable, research and experience indicate that, “[i]n the vast majority of cases, appropriate identification and mitigation of risk factors can prevent or minimize pressure ulcer (PU) formation.”
- Nevertheless, pressure sores remain a significant, often horrifying, problem for too many of our nursing home residents.
  - 7.5% of residents (over 95,000 individuals) have unhealed pressure ulcers (2018).
  - 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.
  - 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.

# + Nursing Home Quality and Enforcement

## Antipsychotic Drugging

- Inappropriate antipsychotic drugging is a serious and widespread problem in nursing homes across the United States. Antipsychotics are extremely dangerous, particularly for elderly individuals with dementia. They are indicated only for certain clinical conditions. They are not indicated for so-called dementia behaviors.
- Too many residents receive these drugs as a form of chemical restraint, and as a substitute for good care.
- In 2012, the HHS Inspector General stated, in regard to the “overmedication of nursing home patients” that the “[g]overnment, taxpayers, nursing home residents, as well as their families and caregivers should be outraged - and seek solutions.”
- Nevertheless, inappropriate antipsychotic drugging continues to be a significant and acute problem in too many nursing homes:
  - 20% of residents (over 250,000 individuals) are currently receiving these drugs.
  - Less than 2% of the population will ever have a diagnosis for which CMS risk-adjusts for potentially appropriate use of antipsychotic drugs.
  - 0.31% – the average state citation rate for inappropriate drugging (2015).
  - 2% – the percent of these citations identified as causing resident harm.

# + Nursing Home Quality and Enforcement

## Staffing

- Though sufficient staff is acknowledged as critical to good care, and insufficient staffing is known to be a widespread problem, insufficient staffing is rarely cited.
- The annual rate of staffing deficiencies per resident is infinitesimal: 0.036%.
- Less than 5% of those deficiencies are identified as having caused resident harm.

The benefits of higher staffing levels, especially RNs, include lower mortality rates; improved physical functioning; less antibiotic use; fewer pressure ulcers, catheterized residents, and urinary tract infections; lower hospitalization rates; and less weight loss and dehydration.

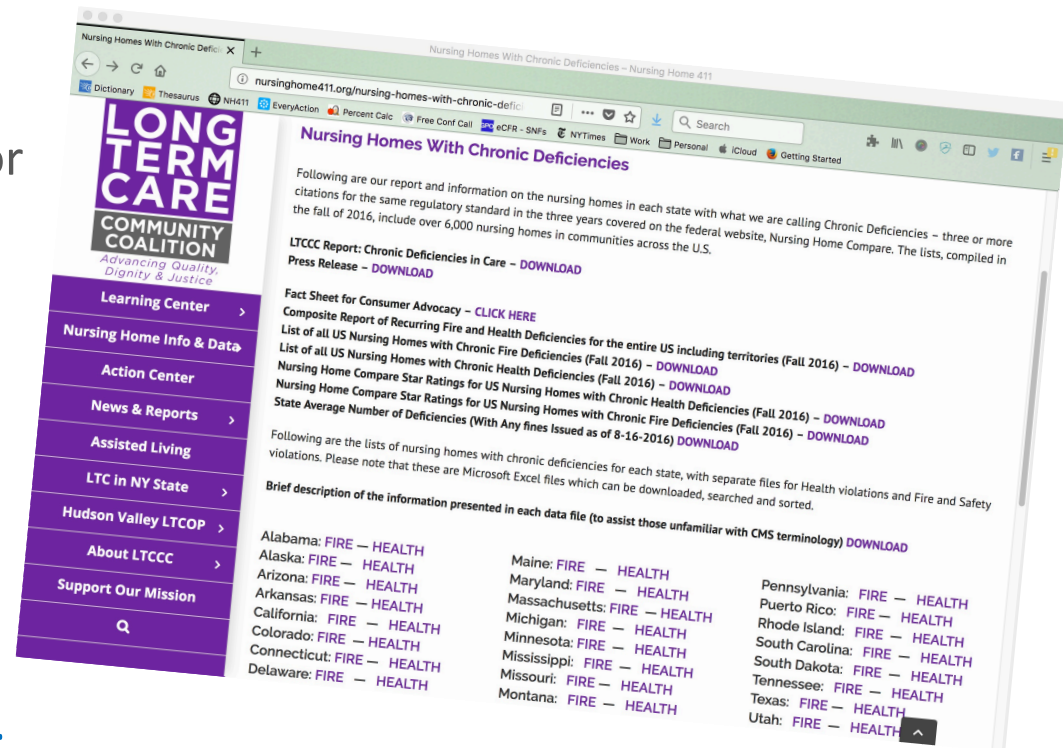
- Nursing Facilities, Staffing, Residents and Facility Deficiencies, 2009 Through 2016.

# + Nursing Home Quality and Enforcement

## LTCCC Report: *Chronic Deficiencies in Care: The Persistence of Recurring Failures to Meet Minimum Safety & Dignity Standards in U.S. Nursing Homes*

2017

- “Chronic deficiencies” -- three or more citations for the same health or safety standard in a three-year period.
- Our analysis of three years’ of data posted on Nursing Home Compare found that an astonishing 42% of nursing homes had chronic deficiencies.



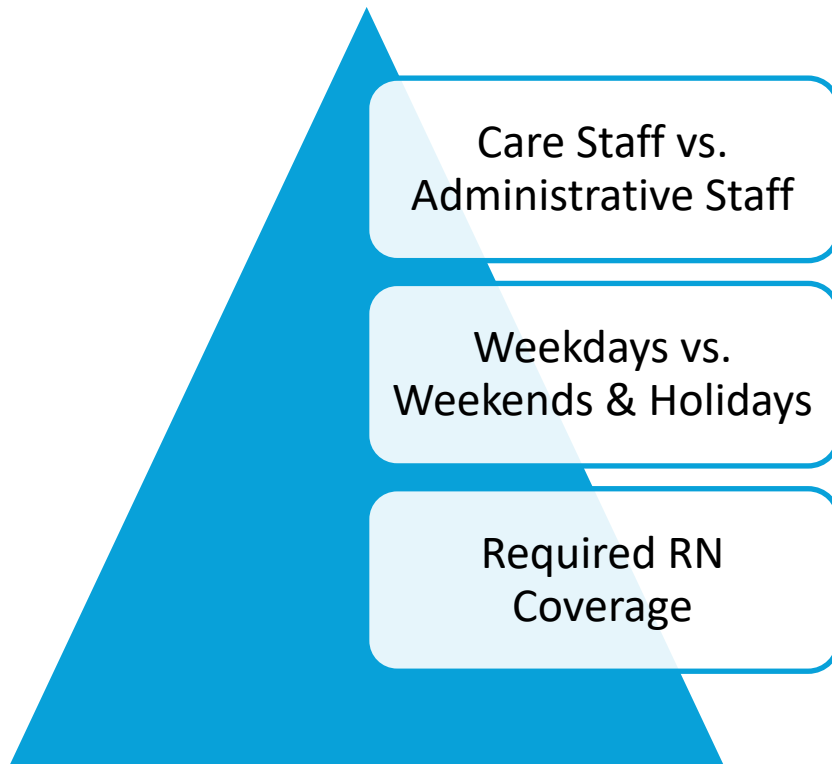
**Too often, serious problems continue for years while residents, rather than operators, pay the price for substandard care.**

# + Nursing Home Staffing

In November 2017, fulfilling an Affordable Care Act mandate, CMS made available, for the first time, auditable, payroll-based data on nursing home staffing.

New  
Data

## What do the data show?



## What do the data indicate?

### *Insufficient Staffing Widespread:*

- **82% of nursing homes report total direct care staffing at 4.0 hours per resident day or less.** A landmark federal study in 2001 indicated that 4.1 hours of direct care staff time is typically needed to meet a resident's clinical needs.
- **30% of nursing homes report total direct care staffing of 3.0 hours per resident day or less.**



# + Nursing Home Staffing

New  
Data

## *RN Staffing of Particular Concern:*

- Registered nurses are critical to the safety and quality of care provided in a nursing home. They are the only care staff with the licensure and skills to assess residents and provide appropriate supervision of care and services provided to residents.
- **70% of nursing homes report RN care staffing at 0.5 hours per resident day or less.** The 2001 federal study indicated that 0.55 -0.75 is typically needed to meet a resident's needs.
- CMS “concerned with **recurring instances or aberrant patterns of days with no RN onsite.**”
  - 6% of facilities have 7 or more days where no hours for RNs were reported.
  - 80% of all days with no RN hours were weekend days.
- Hundreds of nursing homes have the equivalent of **zero hours of RN care staff per resident per day – every day.**

## *Appropriate staffing is possible!:*

- 25% nursing homes – including for-profit and not-for-profit facilities – provide .55+ hours of RN care staff time per resident day.

# + Nursing Home Staffing

*Useful Information is Available...*

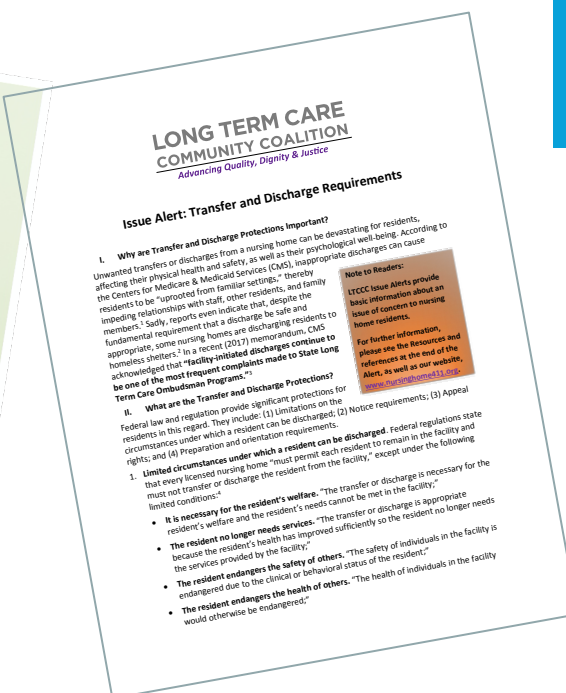
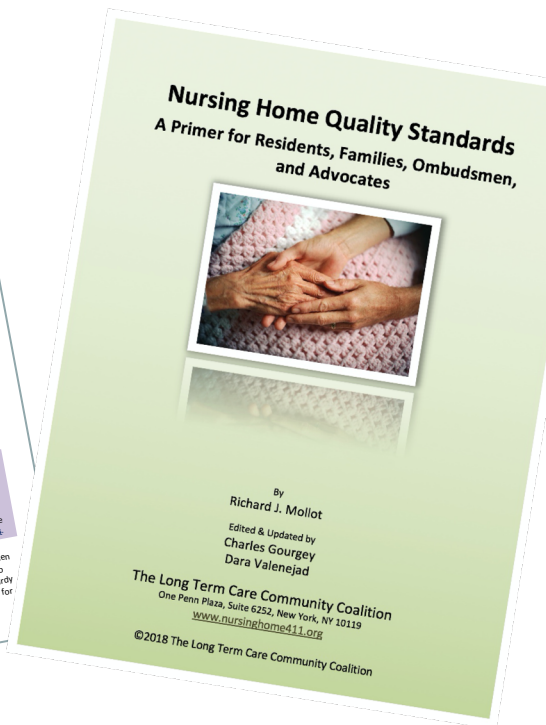
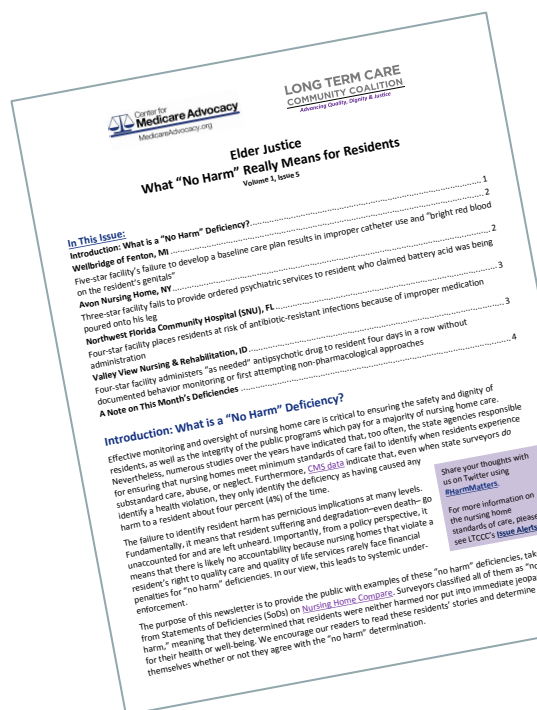
State	Provider Name	Resident Census	RN Hours	LPN Hours	CNA Hours	Total Direct Care Staff Hours	Avg Staffing Hours Per Resident Day	Avg RN Hours Per Resident Day
TX	GRACE CARE CENTER OF HENRIETTA	49	4.8	38.7	64.6	108.1	2.2	0.1
TX	PARK VALLEY INN HEALTH CENTER	97	9.6	71.7	135.4	216.7	2.2	0.1
CA	ATTERDAG CARE CENTER	44	4.4	37.5	140.0	181.8	4.1	0.1
CA	VERNON HEALTHCARE CENTER	113	11.1	83.7	219.8	314.7	2.8	0.1
IL	PARK VIEW REHAB CENTER	122	12.1	69.3	146.7	228.1	1.9	0.1
AR	LAKE HAMILTON HEALTH AND REHAB	67	6.6	80.7	170.9	258.3	3.9	0.1
NC	BRIAN CENTER HEALTH & REHAB/YA	117	11.6	69.3	228.0	308.8	2.6	0.1
FL	LAURELLWOOD NURSING CENTER	49	4.8	43.5	133.3	181.7	3.7	0.1
LA	JOHN J HAINKEL JR HOME AND REHABILIT	84	8.3	85.5	187.5	281.3	3.4	0.1
OK	VILLAGE HEALTH CARE CENTER	59	5.8	44.3	106.6	156.8	2.7	0.1
NJ	SOUTH JERSEY EXTENDED CARE	114	11.3	93.6	198.5	303.5	2.7	0.1
LA	WILLOW RIDGE NURSING AND REHABILIT/	113	11.2	107.0	269.2	387.3	3.4	0.1
OH	PARKVUE HEALTH CARE CENTER	72	7.1	67.7	183.7	258.5	3.6	0.1
TN	CUMBERLAND HEALTH CARE AND REHABI	102	10.2	90.3	194.3	294.8	2.9	0.1
MO	PUXICO NURSING AND REHABILITATION C	28	2.8	25.1	44.9	72.8	2.6	0.1
KS	COUNTRY CARE, INC	36	3.6	31.7	80.6	115.9	3.2	0.1

LTCCC collects and publishes, on a quarterly basis, information on care staff for every nursing home that has reported to CMS. Individual state files can be downloaded and are easily searchable and sortable at [www.nursinghome411.org](http://www.nursinghome411.org).



# Thank You For Your Time

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**CENTER FOR MEDICARE ADVOCACY, INC.**

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**ENFORCEMENT OF NURSING HOME  
STANDARDS & FEDERAL/STATE  
ROLE IN ENSURING COMPETENT,  
FINANCIALLY SOUND OWNERS &  
MANAGERS**

**June 21, 2018**

# ENFORCEMENT

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- Nursing Home Reform Law (1987) requires
  - Range of remedies/sanctions (civil money penalties, denial of payment for new or all admissions, directed plan of correction, monitor, termination from Medicare and Medicaid programs).
  - Use of more significant remedies for more serious, uncorrected, and repeated deficiencies.

# IMPLEMENTATION OF ENFORCEMENT

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- Historically, enforcement has been weak.
- Regulations categorize deficiencies by scope (number of residents affected) and severity (seriousness).
- More than 95% of deficiencies are called “no-harm.”
- The result: Financial remedies are rarely imposed.

# MYTH OF BURDENSOME REGULATIONS

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- Most problems in care (deficiencies) are not cited and, if cited, are not enforced with financial penalties. Generally, only the most serious deficiencies are likely to have any sanctions imposed.
- Small penalties are “cost of doing business.”
- When enforcement is so rare, the regulations cannot fairly or accurately be described as burdensome.



# TRUMP ADMINISTRATION WEAKENED ENFORCEMENT

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- Through subregulatory guidance (Survey & Certification Letters addressed to state survey agencies); no public notice or comment
  - Per instance CMPs made default (reversing Obama Administration guidance, 2014, that made per day CMPs the default) (Jul. 2017)
  - Maximum per instance CMP is \$20,965; per day CMPs have no dollar limit.

# SMALLER AND FEWER CIVIL MONEY PENALTIES IMPOSED

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- 2016 (full fiscal year, Oct. 2015-Sep. 2016):
  - 1728 per day CMPs (average \$53,845.66)
  - 942 per instance CMPs (average \$3,161.93)
- 2017 (full fiscal year (Oct. 2016-Sep. 2017):
  - 1923 per day CMPs (average \$71,581.52)
  - 2147 per instance CMPs (average \$6,969.83)
- 2018 (Oct. 1, 2017 - May 7, 2018)
  - 310 per day CMPs (average \$84,887.71)
  - 721 per instance CMPs (average \$10,057.49)

# OTHER CHANGES TO ENFORCEMENT

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- Begin fines at time of survey (not earlier, even when noncompliance began earlier).
- QSO 18-18-NH (June 15, 2018) includes:
  - Limiting mandatory CMPs for immediate jeopardy to deficiencies where there is “serious injury, harm, impairment or death”
  - Directs Regional Offices, in selecting remedies, to consider whether noncompliance results from “one time mistake, larger systemic concerns, or an intentional action of disregard for resident health and safety”

# CHANGING NURSING HOME INDUSTRY

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- Originally, individually and locally owned
- With Medicare and Medicaid reimbursement, shift to for-profit ownership
- Multi-state chains
- Private equity firms bought chains
  - Chains and private equity firms separated ownership and management; multiple companies involved.

# RECENT UPHEAVALS IN NURSING HOME INDUSTRY

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- Landlords (real estate investment trusts) forced chains into bankruptcy (e.g., HCR ManorCare)
- Chains shifting their focus, owning the property and buildings, but transferring management to unknown operators

# SKYLINE

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- Unknown New Jersey company; bought 110 facilities in 6 states since 2015.
- Between end of March 2018 and end of April 2018, Skyline stopped meeting payroll and paying vendors.
- States went to court to take over the facilities to protect residents.

# CONCERNS ABOUT SHIFTS IN OWNERSHIP/MANAGEMENT

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- Insufficient state and federal oversight of new owners/managers
  - California State Auditor's recent report finds state does not follow its own rules on relicensing facilities.
  - Vermont law calls for review of state oversight, especially financial issues and owners of real estate.



# CENTER FOR MEDICARE ADVOCACY, INC.

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[www.medicareadvocacy.org](http://www.medicareadvocacy.org)

# Nursing Home Financial & Accountability Issues

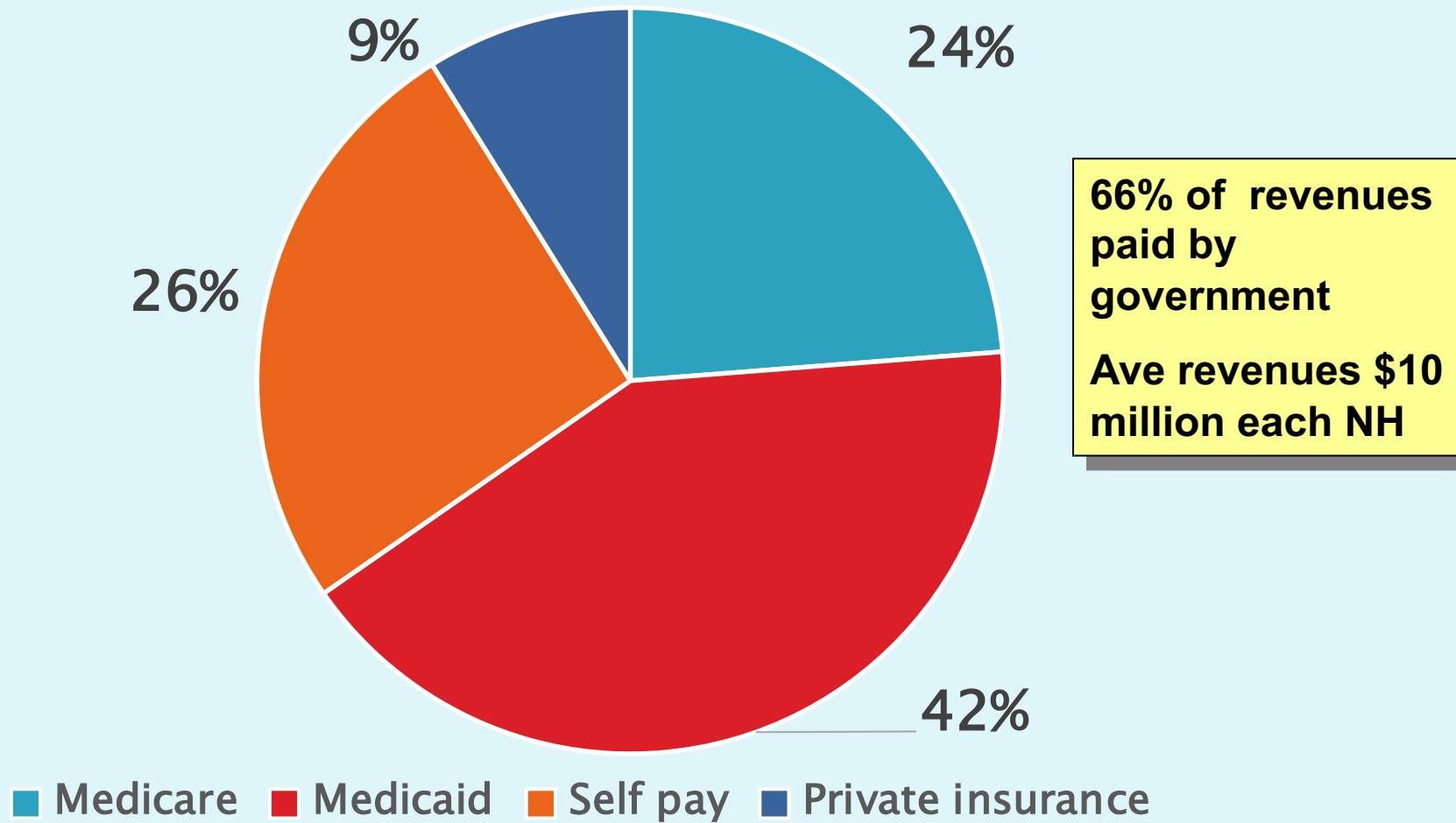
Charlene Harrington, Ph.D. Professor  
University of California San Francisco

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415-269-4080



# Who Pays for Nursing Home Care – \$192 Billion 2020



NCHS 2016 Payers in 2015

# **Myth: SNF payment rates are not high enough for good care**

**Medicare Payment Advisory Commission**

**Medicare rates are adequate for good care**

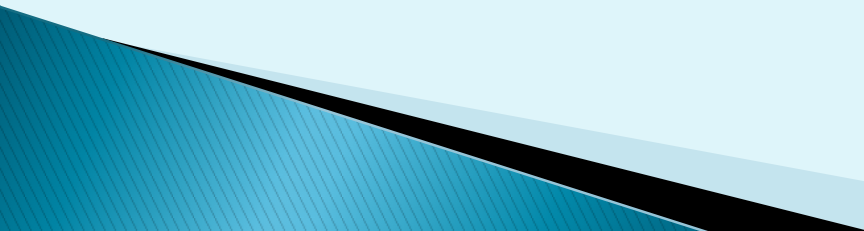
**Recommended no SNF increases 2018 & 2019**

**CMS announced**

**\$850 million increase in rates in 2018**

**\$2 billion in savings over next 10 years**

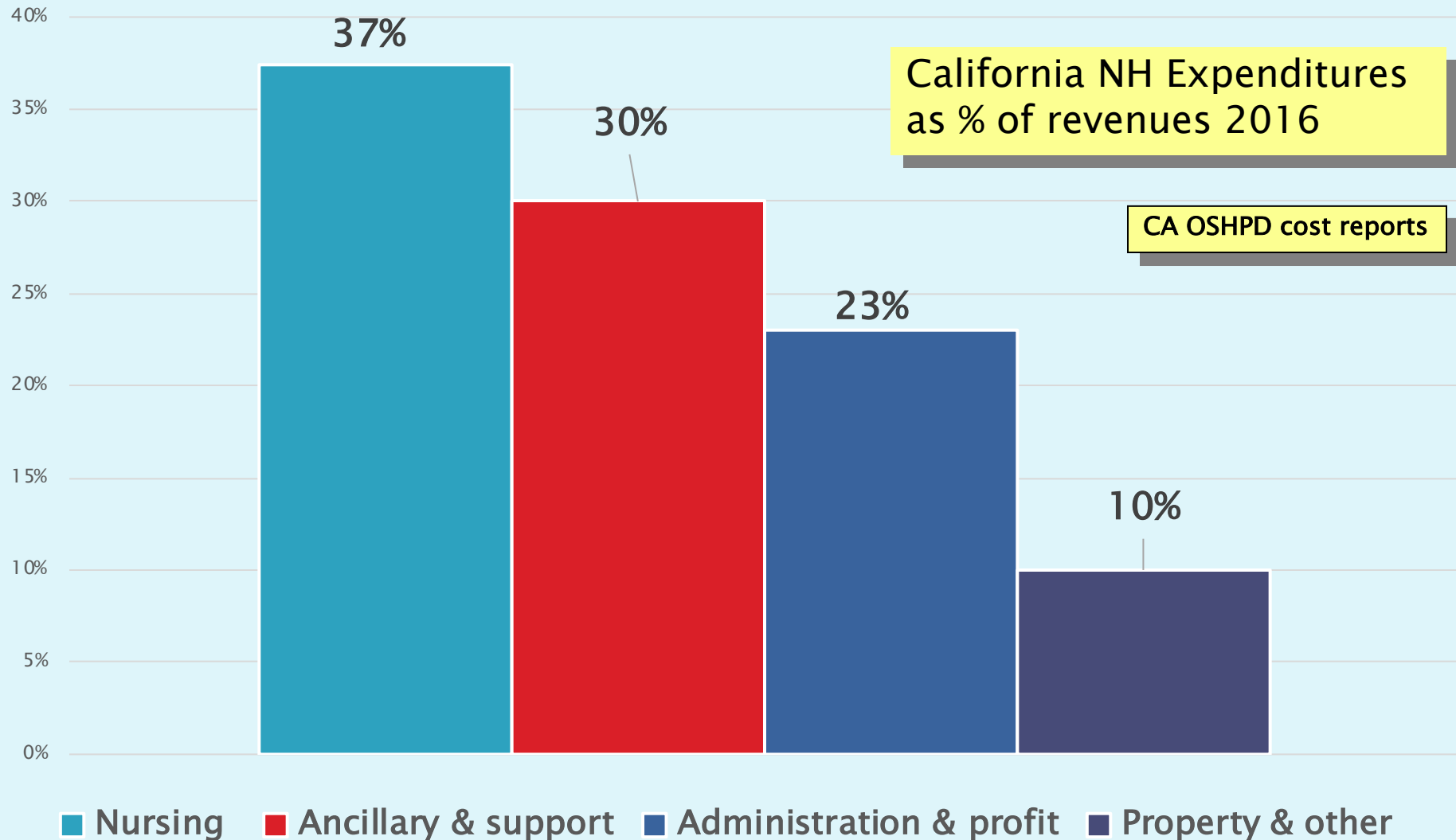
**For-profit nursing homes will reap windfall from tax reform law – (\$140,000 in savings for every \$1 million in revenue)**



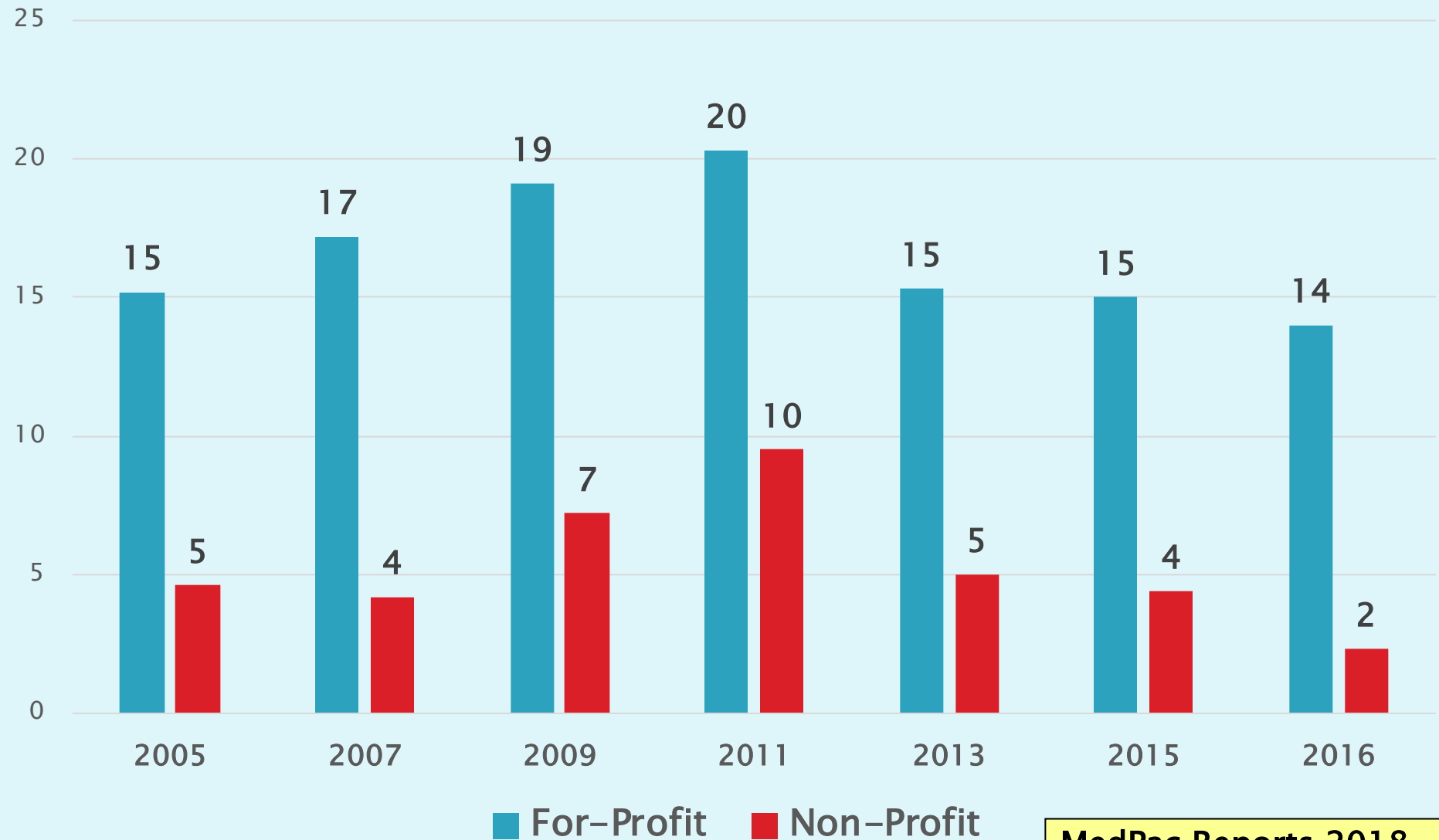
# Lack of Accountability with Medicare NH Prospective Payment

- ▶ Medicare prospective payment system pays higher rates based on self-reported resident acuity
- ▶ Encourages false inflation of acuity
- ▶ Audits of acuity and cost reports are not conducted by CMS
- ▶ SNFs are allowed
  - to cut staffing levels and labor costs
  - shift money from care to profits

# Where Does the NH Money Go?



# Percent Medicare Nursing Home Profit Margins By Ownership

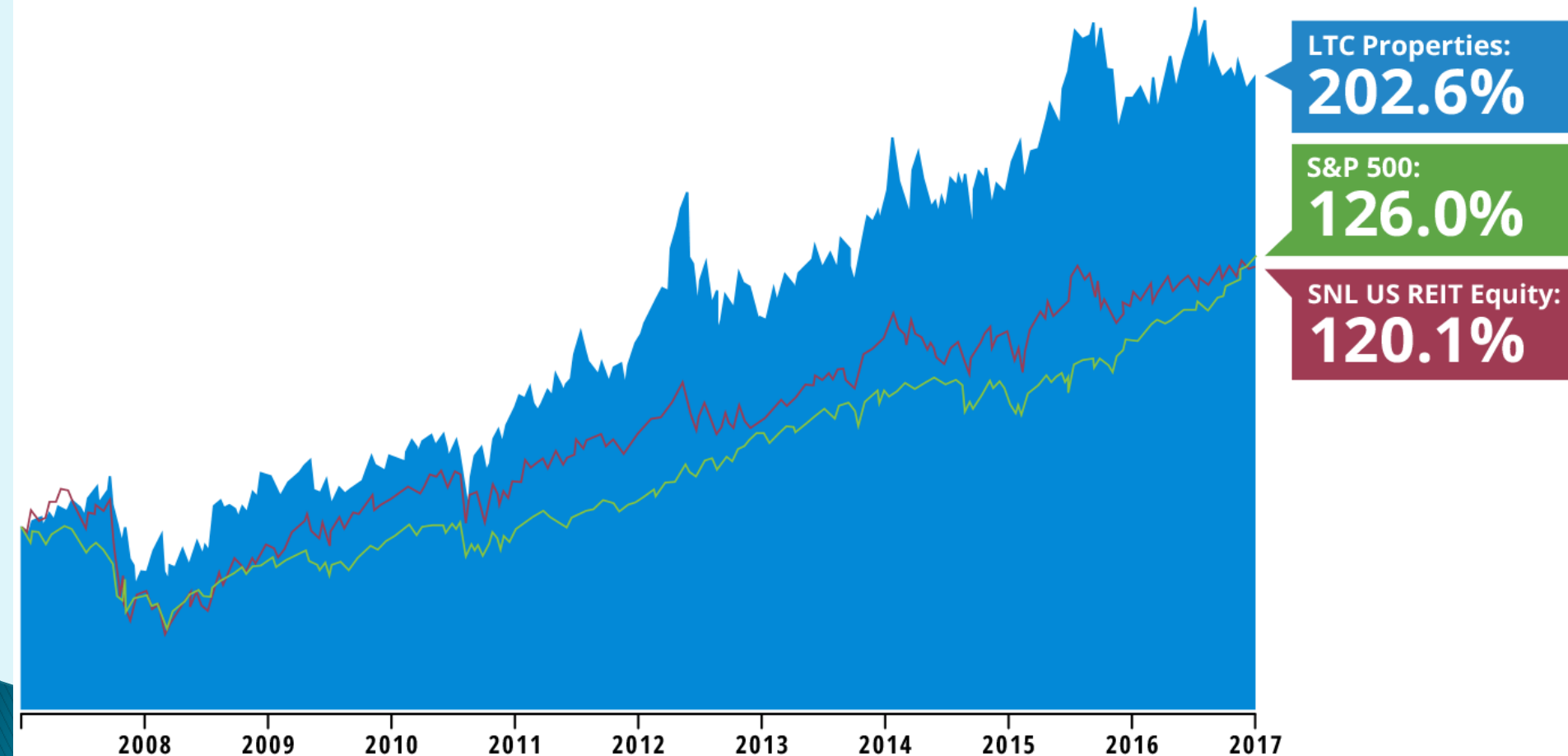


# Nursing Home Hidden Profits

- ▶ Leases to related party property companies
- ▶ Management company payments to related party owners
- ▶ Inflated payments to pharmacy, staffing, therapy, and other related party companies
- ▶ Interest rates on loans to owners
- ▶ Owner direct withdrawals
- ▶ Artificial reductions in taxes
- ▶ Related party transactions increased 66% in 3 yrs to over \$1 billion annually in CA



# Nursing home profits come from real estate investments



[www.LTCreit.com/shareholder-value/](http://www.LTCreit.com/shareholder-value/)

# Minimum Medical Loss Ratio

- ▶ MLR is the share of revenues spent on patient care as opposed to administration and profits
- ▶ Adopted for health plans in the ACA and saved billions
- ▶ Could adopt for nursing homes by requiring 80% of revenues be spent on nursing care and services (limit administration & profits to 20%)
- ▶ Recoup excess administrative expenses and profits

<http://kff.org/medicaid/report/improving-the-financial-accountability-of-nursing-facilities/>

**There is a clear need for greater  
nursing home financial  
accountability and limits on  
administrative costs and profits**



The National  
**CONSUMER VOICE**  
for Quality Long-Term Care  
formerly NCCNHR

# POLICY RECOMMENDATIONS: WHAT YOU CAN DO

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# #1 Protect regulatory standards and strengthen – not weaken – enforcement

A) Ask HHS Secretary Azar and CMS Administrator Verma to:

- **Retain** the federal nursing home regulations as issued in October 2016
- **Reverse:**
  - The moratorium on the complete enforcement of 8 vital nursing home regulations
  - The decision to set per-instance, rather than per-day, civil money penalties (CMPs) as the default financial remedy for violations
- **Strengthen** enforcement by ending the persistent under-identification of resident harm

# **#1 Protect regulatory standards and strengthen – not weaken – enforcement**

B) Ask your Senators and Congressperson to contact Secretary Azar and Administrator Verma with the same message!

# Send a letter



- See handout: **WHAT YOU CAN DO TO HELP SAVE NURSING HOME PROTECTIONS FOR RESIDENTS!**



## #2 Require financial stewardship – accountability and responsible use of public monies

**Talk with your members of Congress about the need for legislation requiring:**



**\$** Greater financial accountability and audits in Medicare nursing homes

**\$** Detailed financial reporting for related party companies on administrative costs and profits

**\$** A medical loss ratio on nursing homes to limit administrative costs and profits



# #3 Ensure owners/managers are competent/financially sound



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## Recent Headline News

*Skyline payroll issues force Kansas to seek its largest-ever nursing home takeover*

*Thousands of nursing home patients nationwide affected by NJ company's financial trouble*

**Talk with your members of Congress about the need for legislation requiring:**

- Development and state enforcement of procedures that assess purchasers before a transfer of ownership and management occurs, including their:
- Financial capacity to operate the facilities
- Compliance & quality of care history

# #4 Set minimum staffing standards



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**Talk with your members of Congress about supporting legislation requiring:**

- Minimum safe staffing for Medicare and/or Medicaid-funded nursing facilities



# Your Advocacy Matters!

- We are stronger and more powerful together
- If we don't speak up for residents, who will?





# Contact Information

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*Thank You!*