

The Challenges of Regulation in Long-Term Care

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Regulatory oversight of long-term care services has evolved over the past 20 years to include a matrix of activities focused on the safety and well-being of those served by an array of long-term care providers. Basic oversight involves regular survey visits of providers and investigation of complaints, both of which are carried out by the state agency responsible for the licensing of the various long-term care providers. In North Carolina that responsibility resides with the Division of Health Service Regulation (DHSR) in the Department of Health and Human Services.

The survey process for residential providers is very similar in that surveys are conducted annually, are focused on compliance with rules and regulations, and, to a large extent, determine whether the care systems that providers have in place are meeting the health and safety needs of the residents they serve. The three types of long-term care providers that fall under DHSR's oversight authority include skilled nursing homes, adult care homes—including assisted living facilities and family care homes—and residential facilities for people who are mentally ill, developmental disabled, and/or substance abusers. Each of the oversight programs are discussed in more detail below.

Skilled Nursing Homes

The oversight of 423 of the 436 nursing homes in North Carolina is governed by federal regulations. Under these regulations, nursing homes that are certified to receive Medicare or Medicaid reimbursement must be surveyed annually and complaints, depending on the severity, must be investigated within certain timeframes that are determined by the severity or the complaint allegation. If noncompliance is identified in either process, the state must notify the provider and if noncompliance is at such a level to put residents at risk of harm—or if harm occurs—the state may recommend monetary penalties as well as other actions to the federal Centers for Medicare and Medicaid

Services which has the authority to impose penalties and/or termination from the Medicare and Medicaid program. States are required to follow-up after the survey to assure that the facility has corrected its deficient practices. A portion of every penalty imposed is returned to the state for use in enhancing resident health and safety.

Required nursing home staffing includes a medical director, a licensed administrator, dietary staff, licensed nurses, nurse aides, and other staff as necessary to meet the needs of the resident population. Providers are required to

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obtain criminal background checks on all unlicensed direct care employees and must also check the Nurse Aide I and Health Care Personnel Registries to determine if an applicant for employment is either currently under investigation for allegations of abuse, neglect, or misappropriation of resident property, or has a substantiated finding for the same on either of the registries. If an applicant has a substantiated finding the provider is barred from employing the applicant.

Adult Care Homes

The monitoring of adult care homes is a shared responsibility between DHSR and each county's department of social services. Like the nursing home oversight program, adult care homes are required to be surveyed annually by DHSR. Additionally, counties are required to

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complete monitoring visits of all adult care homes in their respective counties at least quarterly. Counties are also required to investigate complaints or refer them to DHSR for investigation. If a home is found to have violated rules, DHSR has several options for how to address these deficient practices. A plan of correction is always required. This plan illustrates how the home will correct its problems and must include a timeframe for completion of these steps. If serious harm has occurred or if the risk is high that harm will occur, the home may be cited for an "A type" violation, which usually results in a recommendation for monetary penalties and may include other actions such as suspension of admissions or provisional license, or, in more extreme cases, revocation of a home's license.

All recommendations for monetary penalties must be sent through DHSR's Penalty Review Committee, which has the responsibility of recommending specific penalty amounts. DHSR has the responsibility of assessing the penalty and is not bound by the Committee's recommendation. The North Carolina Constitution requires that penalty monies collected be forwarded to the public education system.

As adult care homes are considered a social model provider, where the residents' needs are primarily in the areas of activities of daily living and not medical or nursing needs, the staffing requirements do not include licensed nurses or medical directors. The adult care homes are required to have a certified administrator, personnel care aides that have between 40 and 80 hours of training, medication technicians who have successfully passed the state medication technician exam, and dietary and housekeeping staff. Adult care homes also have required staff-to-resident ratios. Providers are required to obtain criminal background checks on all unlicensed direct care employees and must also check the Health Care Personnel Registry to determine if an applicant for employment is either currently under investigation for allegations of abuse, neglect, or misappropriation of resident property, or has a substantiated finding for the same on the Registry. If an applicant has a substantiated finding the provider is barred from employing the applicant.

Mental Health, Developmental Disabilities, and Substance Abuse Residential Facilities

This category of long-term care covers a broad spectrum of providers who serve an even broader spectrum of clients. However the oversight of these providers is carried out in a relatively consistent manner. All providers in this category are required to be inspected annually. Complaints are received through DHSR's consolidated Complaints Intake Unit where they are triaged and forwarded to the Mental Health Licensure Section for investigation. Like adult care homes, when violations occur, plans of corrections are required by the provider and, based on the seriousness of the violations, may result in monetary penalties being assessed against the providers. If, as a result of a required follow-

up survey, it is determined that the provider has failed to correct their violation, DHSR has the option to assess daily monetary penalties of up to \$1,000 per day for each day the provider has remained out of compliance from the initial citation. Licensure actions such as suspension of admissions up to revocation of a provider's license may be imposed if it is determined that the provider is experiencing difficulty in meeting their current resident needs or if residents are in danger.

Basic staffing requirements are consistent across providers with specialized training required for the specific type of residential setting licensed. The competency of each staff member to perform the required functions must be determined prior to performing the various required care duties. Providers are required to obtain criminal background checks on all unlicensed direct care employees and must also check the Health Care Personnel Registry to determine if an applicant for employment is either currently under investigation for allegations of abuse, neglect, or misappropriation of resident property or has a substantiated finding for the same on the Registry. If an applicant has a substantiated finding the provider is barred from employing the applicant.

Future Regulatory Challenges

As North Carolina and the nation begin to see the impact of the first ripples of the "graying of America" we must be prepared to address the challenges this impact will present. Current and future consumers of long-term care are demanding changes in the system to move care settings away from institutional models to more home-like environments. In addition, providers of care are seeking new and more effective ways of meeting their clients' needs. As new ideas are being developed and tested, the challenge to the regulatory community is to maintain an open and flexible process that allows for changes that will result in better living environments and services to residents. As the state's primary regulatory agency for oversight of long-term care services, the Division of Health Service Regulation must maintain a balance that does not hinder the development of new and exciting ways of providing care as well as the development of more home-like and "green" facilities for our long-term care resident populations. We must ensure our regulations are consistently reviewed with changes implemented when needed to encourage these positive changes while at the same time assuring that health and safety standards are firmly in place.

Other challenges facing the regulatory system center on the impending growth of the long-term care system as a result of the aging of America and how agencies will meet the demand for more oversight with little or no new resources. New ways of doing business are currently under discussion, including the introduction of "Just Culture" models into long-term care systems (which are the adoption of approaches to foster active learning wherein the staff of a

organization is encouraged to openly discuss errors without the fear of reprisal) along with modified survey processes that reward providers with proven track records of providing excellent care with shorter streamlined surveys. Other changes include:

- focusing more oversight resources on providers whose track records show continuing problems
- encouraging self assessments where providers identify deficient practices or systems
- taking immediate corrective action to correct any issues that arise
- maintaining compliance and documenting these actions without fear of regulatory cites or penalties for these corrected past noncompliance

- more aggressive enforcement of continued noncompliance when providers fail to correct identified problems within the timeframes established by DHSR
- allowing more use of directed staff training in lieu of penalties and fines to correct past problems and improve the overall care to residents.

The challenges facing the regulatory system will require new ways of doing business. Providers, advocates, and state regulatory agencies must work together to assure that our citizens in need of long-term care services receive the highest quality services possible. This can only be accomplished through a balanced approach where providers of excellent care are rewarded, providers who have continuous problems are more aggressively regulated, and where new and innovative approaches to care are encouraged and supported. **NCMJ**



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