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2016 Report to the General Assembly: Nursing Home Inspection and Enforcement Activities

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Recommended Citation

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

A Report to the 2016 109th Tennessee General Assembly

Tennessee Department of Health

February 25, 2016

TABLE OF CONTENT:

Executive Summary.....6

Background and Summary of the Law.....9

Complaint Activity.....10

Deficiencies Cited in Nursing Homes.....11

Top 15 Most Frequently Cited Deficiencies in Nursing Homes.....12

Nursing Home Quality Initiative Update 2015.....13

Executive Summary:

This report addresses activities and outcomes under both state and federal laws and rules. The Division of Health Care Facilities (HCF) for the Department of Health, through the Board for Licensing Health Care Facilities, annually licenses nursing homes, among other facility types. As the contracted survey agency for the Center's for Medicare and Medicaid Services (CMS), HCF also federally certifies health care facilities currently participating or seeking participation in the CMS program. In that role, the Division of Health Care Facilities conducts annual or initial surveys and complaint investigations to ensure compliance with state and federal statutes and regulations.

Complaints

All complaints received by HCF for the 326 state licensed nursing homes, of which 321 are federally certified, are monitored and maintained on a federal proprietary software program.

- **In 2015, among all facility types, approximately 67.1% (1538) of 2,292 total complaints were complaints against nursing homes.**
- **The percentage of nursing homes with at least one substantiated complaint decreased by 1.3% over the previous years to 38.6%.**
- **The average number of health deficiencies were 5.0.**
- **The number of providers in substantial compliance⁴ upon standard survey were zero.**
- **Zero (0) providers had zero health deficiencies and 9 providers (2.7%) were cited for substandard quality of care⁵.**
- **2015 budgeted expenditures for nursing home inspection and enforcement activities were 8.0M, with 1.7M (21%) being the State's share.**

Deficiencies

Deficiencies cited in nursing home facilities in the state of Tennessee for 2015 were relatively consistent with the pattern of deficiencies cited across our eight southeastern states (CMS Region IV which include AL, FL, GA, KY, MS, NC, SC, and TN) and the nation.

- **The two most cited direct care related deficiencies were: 1- infection control, 2- sanitary storage and preparation of food.**

⁴ A level of compliance with the requirements of participation such that any identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm

⁵ Deficiencies related to participation requirements under, resident behavior and facility practices (42 CFR 483.13), quality of life (42 CFR 483.15), or quality of care (42 CFR 483.25), constituting either immediate jeopardy; a pattern of or widespread actual harm; or widespread potential of more than minimal harm.

- **The two most frequently cited facility life safety code deficiencies were electrical wiring and equipment, and sprinkler system maintenance. These remain unchanged from 2012 reported data.**

Nursing Home Collaborative

From its beginning in 2006, the National Nursing Home Quality Improvement Initiative continues to receive CMS support through The Advancing Excellence in America's Nursing Homes Campaign, a major initiative of the Advancing Excellence in Long Term Care Collaborative. Advancing Excellence is an ongoing, voluntary campaign to help nursing homes become person-centered, high-performance organizations. It aims to make nursing homes good places to live, work, and visit by achieving measurable improvement and systemic change in the quality of care and quality of life for residents and staff. The Collaborative assists all stakeholders of long term care supports and services to achieve the highest practicable level of physical, mental, and psychosocial well-being for all individuals receiving long term care services. The Campaign also helped establish Local Area Networks for Excellence (LANE), a coalition of nursing home stakeholders within every state. This year the NNHQII continues, refocusing on nursing home quality of care, quality of life for residents, with nine goals, four (4) Organizational, five (5) Clinical, with mechanisms available to support NH quality improvement projects. **The four organizational focus goals are: (1) consistent staff assignment; (2) reducing unneeded hospitalizations; (3) person centered care; and (4) staff stability. The five clinical focus goals are: (1) reducing facility acquired infections; (2) appropriate antipsychotic medication use; (3) enhancing mobility; (4) reducing pain; (5) reducing pressure ulcers.**

With LANE participation being fully voluntary, Tennessee has approximately 64% (206) of its nursing homes participating in the LANE coalition. **The level of nursing home participation in Tennessee has increased by approximately 16% above 2014.**

Nursing Home Initiative

In March 2012, CMS implemented a new national nursing home initiative to reduce by 15% psychotropic drug use in nursing home facilities by December 31, 2012. Prior to the start of the initiative, **Tennessee nursing homes had the highest psychotropic drug use in the Southeast region, at 30.3% compared to 22.2% nationwide.** TDH, in partnership with Advancing Excellence coalition stakeholders which include QSource (State Quality Improvement Organization), Tennessee Health Care Association and State Medicaid Agency (TennCare) as principal partners **saw an overall 2014 reduction in antipsychotic drug use of 23.1%. As of Q2 2015, currently the last quarter of available data, antipsychotic medication use in**

Tennessee nursing homes is at 20.5% and has been reduced by 31.4% since the implementation of the national initiative. In comparison, the reduction rate nationally for the same period of time is 24.8%. As such, Tennessee is closing the gap between its current Q2 2015 rate of 20.5% and the national antipsychotic medication use rate of 17.9%.

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 326 nursing homes that were licensed in Tennessee in 2015, 321 were also certified by CMS to participate in the Medicare/Medicaid reimbursement program.** Similar to state licensure surveys, the Department surveys the federally certified facilities on an annual basis (every 9-15 months) as well as in response to complaints.

If a nursing home is both licensed and certified, Department surveyors will conduct the licensure and certification surveys concurrently to promote efficiency in the survey process. When Department surveyors complete a survey conducted pursuant to the federal laws and rules, the findings are reported to CMS. CMS makes the final deficiency determinations. This report addresses enforcement activities under both state and federal laws and rules.

The Department is required to investigate complaints filed by the public and any incidents that a facility reports to the Department that constitute abuse, neglect, or misappropriation of residents property (Tenn. Code Ann. § 68-11-210 (4) (b) (2) (D) (E) and § 68-11-211).

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 2015, there were 326 licensed nursing homes in the state of Tennessee of which 321 are federally certified.
- The Department investigated a total of 1,144 complaints during 2015 for all health care facilities, of which 284 (24.8%) were substantiated; an increase of approximately 10% in the percentage of investigated complaints substantiated in 2014. Overall, the Department conducted 5,367 surveys for all health care facilities in 2015, which includes annual surveys, complaint investigations, and unusual incident and revisit surveys. This compliment of 2015 surveys conducted is 3% higher than surveys conducted for all health care facilities in 2014. Complaints against nursing homes totaled 1,538, or 67.1% of the 2,292 total complaints, all facility types, which is approximately a 26.4% **increase** from 2014 and an overall **50.1% increase** since 2012.
- There were 276 nursing homes with at least one complaint filed, constituting 84.6 % of the total nursing homes.
- There were 3 nursing homes with ten or more complaints filed, constituting approximately 1.0% of the total nursing homes; a **decrease of 2.0%** from 2014.
- The number of nursing homes with at least one substantiated⁶ complaint:
 - 2011 – 103 nursing homes or 31.6% of the 326 nursing homes
 - 2012 – 100 nursing homes or 31.1% of the 322 nursing homes
 - 2013 – 132 nursing homes or 40.9% of the 322 nursing homes
 - 2014 – 129 nursing homes or 39.9% of the 323 nursing homes
 - 2015 – 126 nursing homes or 38.6% of the 326 nursing homes

⁶ Onsite investigation verification of associated regulatory standard not met.

The 2015 nursing home data show a significant percent decrease (22.3%) in the total number of complaints investigated from the previous year; a significant percent increase (10%) in complaints substantiated; and a continuing upward trend in the number of complaints and incidents reported against nursing homes since 2012⁷.

DEFICIENCIES CITED IN NURSING HOMES⁸:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2015 are relatively consistent with the pattern of deficiencies cited across the eight southeastern states (CMS Region IV) and the nation. The average number of health deficiencies citations on a standard survey, per nursing home nationwide was 5.7, compared to 4.0 within CMS region IV and 5.0 in Tennessee; slightly below the nation and somewhat above the region with by far the largest average number of citations per survey occurring at scope and severity of “D” at 66.0%; (67.5% for CMS region IV and 56.1% for the nation respectively)⁹. The percentage of immediate jeopardy (IJ)¹⁰ citations to resident health and safety nationally was at 0.8 % of the total number of nationwide health citations a decrease of 0.2% below 2014. The percentage of IJ citations in Tennessee was higher than the nation at 3.8%, a continuing decline however by 1.3% below 2014, and above the region by 1.8%. Three of the eight CMS Region IV states were above the national IJ citation percentage. Of the 325 licensed nursing homes in Tennessee in 2015, the following was ascertained:

- **There were no nursing homes in bankruptcy in 2015.** Fifteen (15) nursing homes were cited with Immediate Jeopardy substandard level of care, three less than the (18) cited in 2014. There has been this continuing decline in number of nursing homes cited with immediate jeopardy since 2013.
- Fifteen nursing homes were cited with substandard level of care.

⁷ Staffing challenges continue to be a serious HCF concern, significantly hindering the ability to accomplish both state and federal annual recertification surveys and initial surveys, and timely state and federal complaint investigations.

⁸ Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (01/26/2015)

⁹ For deficiency citations at level “D”, its scope is isolated (affecting few residents), with a severity of no actual harm, and a potential for more than minimal harm that is not immediate jeopardy.

¹⁰ “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

- Eleven nursing homes were cited with Federal Civil Monetary Penalties for a total *assessed* amount of \$ 4.1M; \$800K above 2014 CMP total.
- Two nursing homes were cited with state Civil Penalties for a total assessed amount of \$7,001; \$3,500 less than 2014 state cited monetary penalties.
- Two nursing homes had admissions suspended in 2015, for a total of two suspension of admissions which is down from the 5 suspended in 2014.
- Two nursing homes were involuntarily terminated by the Centers for Medicare and Medicaid Services (CMS) from participation in the Medicare/Medicaid programs in 2015.
- One nursing home ceased (voluntarily terminated) its operations.

TOP 15 MOST FREQUENTLY CITED DEFICIENCIES IN NURSING HOMES:

The most common deficiencies cited in nursing homes in 2015 are divided into two groups – those cited in areas related to health (quality of care of residents) and life safety (construction code compliance).

The top fifteen health and quality of care deficiencies were the following:

1. F0441 – INFECTION CONTROL, PREVENT SPREAD, LINENS
2. F0371 – FOOD PROCURE, STORE/PREPARE/SERVE - SANITARY
3. F0309 – PROVIDE CARE/SERVICES FOR HIGHEST WELL BEING
4. F0323 – FREE OF ACCIDENT HAZARDS/SUPERVISION/DEVICES
5. F0278 – ASSESSMENT ACCURACY/COORDINATION/CERTIFIED
6. F0280 – RIGHT TO PARTICIPATE PLANNING CARE-REVISE CP
7. F0431 – DRUG RECORDS, LABEL/STORE DRUGS & BIOLOGICALS
8. F0282 – SERVICES BY QUALIFIED PERSONS/PER CARE PLAN
9. F0514 – RES RECORDS-COMPLETE/ACCURATE/ACCESSIBLE
10. F0241 - DIGNITY AND RESPECT OF INDIVIDUALITY
11. F0279 – DEVELOP COMPREHENSIVE CARE PLANS
12. F0314 – TREATMENTS/SVCS TO PREVENT/HEAL PRESSURE SORES
13. F0312 – ADL CARE PROVIDED FOR DEPENDENT RESIDENTS
14. F0315 – NO CATHETER, PREVENT UTI, RESTORE BLADDER
15. F0253 – HOUSEKEEPING & MAINTENANCE SERVICES

The top fifteen life safety code deficiencies were the following:

1. K0062 – SPRINKLER SYSTEM MAINTENANCE
2. K0147 – ELECTRICAL WIRING AND EQUIPMENT
3. K0130 – MISCELLANEOUS

4. K0018 – CORRIDOR DOORS
5. K0025 – SMOKE PARTITION CONSTRUCTION
6. K0038 – EXIT ACCESS
7. K0029 – HAZARDOUS AREAS – SEPARATION
8. K0067 – VENTILATING EQUIPMENT
9. K0144 – GENERATORS INSPECTED/TESTED
10. K0052 – TESTING OF FIRE ALARM
11. K0069 – COOKING EQUIPMENT
12. K0064 – PORTABLE FIRE EXTINGUISHERS
13. K0066 – SMOKING REGULATIONS
14. K0045 – ILLUMINATION OF MEANS OF EGRESS
15. K0076 – MEDICAL GAS SYSTEM

NURSING HOME QUALITY INITIATIVE UPDATE 2015:

HISTORY OF THE QUALITY INITIATIVE:

In April 2006, CMS was asked to develop a plan to implement the Government Performance and Results Act of 1993 (GPRA) Goals. A major focus in that implementation was the development of 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 State Ombudsman. The CMS Atlanta Regional Office convened conference calls with State Survey Agency Directors and Quality Improvement Organizations (QIOs). It was identified that a need existed for a face-to-face meeting to include Nursing Home Associations and Ombudsman representatives.

In September 2006 a new coalition based campaign—Advancing Excellence in America's Nursing Homes—was launched. This campaign, the first voluntary, national effort to help nursing homes to measurably improve the quality of care and quality of life for those living or recuperating in America's nursing homes, selected a total of eight goals, 4 clinical and 4 organizational. Technical assistance materials and other resources to help nursing homes achieve results on the goals were posted on the website. Webinars were held on each goal and made available to nursing homes. The first face-to-face meeting was held in Atlanta on December 12, 2006. Many success stories by the QIOs were given during this meeting that described the reductions of restraints and pressure ulcers in nursing homes – two of the targeted clinical goals. By 2009, with two full years of data available, almost half of all nursing homes in the nation participated in the

Phase 1 Campaign. The Campaign met two of its goals; nationally, the use of daily restraints was reduced to 5%, with 30% of nursing homes at 0%, and another quarter below 3% ,and symptoms of pain in the long-stay resident were reduced to 5%. By the end of the 2013, Tennessee was below the national average for prevalence of high risk pressure ulcers, and managed pain in long and short stay nursing home residents better than the national average. However, Tennessee was higher than the national average in use of daily physical restraints.

As a result of the success of initial campaign phases, the Campaign continues its quality improvement efforts. – The newly launched Campaign features an improved website with new and revised goals - (4) organizational goals and (5) clinical goals – see Table 1.

Table 1. Nursing Home Quality Improvement Project Goals

Organizational:				
Consistent Assignment	Hospitalizations	Person Centered Care	Staff Stability	
<i>Strengthens relationships between caregivers and residents and their family members</i>	<i>Avoid unnecessary hospitalizations and re-hospitalizations</i>	<i>Promotes choice, purpose and meaning in daily living</i>	<i>Increases competence and confidence in staff while buliding strong bonds between residents and</i>	
CLINICAL:				
Infection	Medications	Mobility	Pain	Pressure Ulcers
<i>Implementation of strategies to reduce the incident and spread of infection among NH residents</i>	<i>Only appropriate use of medications</i>	<i>Enhancing and maintaining mobility increases physical and psychological well being</i>	<i>Proper management to promote daily activity and quality of living (QoL)</i>	<i>Proper skin care to avoid/reduce skin breakdown, infection and other complications</i>

The national Advancing Excellence in America’s Nursing Home Campaign has worked diligently over the past ten years encouraging all nursing homes in the country to register through their website¹¹, use the Circle of Success for guidance and the data collection tools and resources for quality improvement, and enter their aggregate data in the secure website section, a required step for active participation.

Campaign participation helps nursing homes improve the quality of care and quality of life for the more than 1.5 million residents of America’s nursing homes. A well designed website with a rich array of goal related resources ensure that every nursing home can have easy access to free, evidence-

¹¹ <https://www.nhqualitycampaign.org/>

based practical materials to help with their quality improvement activities. To be an active participant in the Advancing Excellence Campaign, a nursing home must minimally during the first year:

1. Select two goals on which they will work.
 - Adopt one organizational goal (consistent assignments, staff stability, reducing hospitalizations or person-centered care) and enter monthly data on that goal.
 - Adopt a clinical goal (pain, pressure ulcers, mobility, infections or medications) for which monthly data entry is optional in the first year but **must** be worked on in the second year unless the nursing home felt it had the interest and capacity to move on the clinical goal sooner.
2. After the first year a nursing home can continue with the two goals of the first year, entering data for both, or adopt additional goals as desired. Active participant status on a goal will **require at least six consecutive months of monthly data submissions on the goal.**

Prior to the 2014 year it was possible for nursing homes to register and to be counted as “participating” without submitting outcomes data. This is no longer the case. Homes that register on the website, but do not select goals or do not enter aggregate data on the website are referred to as “registered homes”. This revision promotes data integrity and data extrapolation of participating homes only.

While the website captures Registration Statistics of each state as compared to the nation, it only provides the percent of registrants that are also participating (41.7% nursing home participation in TN). The post revision participation since 2014, show a 17% decline in number of participating nursing homes in TN as of January 2015, from 103 to 85 currently.

	Tennessee	Nation
Registrant nursing homes that have selected goals¹²:	203	9,680
Percentage of registrant nursing homes:	63.6%	61.8%

¹² Data found in this subsection for Advancing Excellence in America’s Nursing Homes campaign coalition may be viewed at https://www.nhqualitycampaign.org/Statistics.aspx?opt=QMS#bottom_anchor

Antipsychotic Drug Use Reduction Initiative:

In March 2012, The Centers for Medicare and Medicaid Services (CMS) launched a national initiative, the National Partnership to Improve Dementia Care, aimed at improving behavioral health and reducing the use of unnecessary antipsychotic medications, as well as other potentially harmful medications in nursing homes and eventually other care settings as well. The partnership catalyzed a broad range of activities by provider organizations and others, and ultimately led to the formation of state-based coalitions to improve dementia care in every state. Further, CMS partnered with the American Health Care Association (AHCA) in this nationwide initiative to reduce antipsychotic drug use among nursing home residents by 15% by December 31, 2012 and further reduce those rates in 2013. As part of the initiative, CMS developed a national action plan using a multidimensional approach to improve care for individuals with dementia that included public reporting, raising public awareness, regulatory oversight, technical assistance, provider and consumer education and research. The Partnership currently includes consumers, advocacy organizations, nursing home staff, and professional associations, such as The American Medical Director's Association (AMDA), The Society for Post-Acute and Long-Term Care Medicine, American Health Care Association (AHCA), LeadingAge, and Advancing Excellence in America's Nursing Homes.

Prior to the March 2012 commencement of this initiative, Tennessee had the highest usage of antipsychotic medications in the Southeast Region at 30.1% for long-stay residents, as compared to the national average of 23.8%. The Tennessee Department of Health Office of Health Care Facilities received grant approval from the federal Centers for Medicare and Medicaid Services to expend more than \$370,000 in federal civil monetary penalty funds collected from deficient nursing homes to provide special training for every certified nursing home in Tennessee in the reduction of antipsychotic drug use among nursing home residents, especially those with dementia.

The CMS funding enabled TDH, in partnership with the Tennessee Advancing Excellence Coalition (TN-AEC) members, to provide a three day symposium in each of the Grand Divisions of the state which focused on how to effectively reduce antipsychotic drug therapy, address the root cause of behaviors and improve quality of life for residents living with dementia. The educational sessions were facilitated by The Eden Alternative, a stakeholder in the TN-AEC. Educational sessions were conducted in Nashville, Knoxville and Memphis Tennessee.

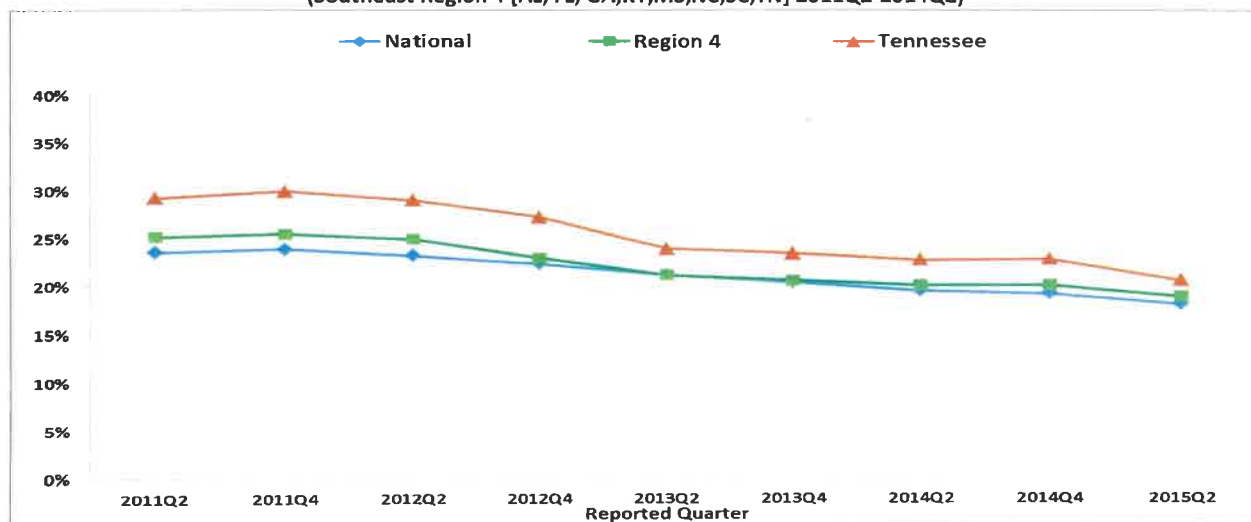
Tennessee nursing home's did not achieve the initial 15% reduction by the designated December 31, 2012 (Q42012), timeframe. However, during Q1 (January – March) 2013 antipsychotic medication usage rate in Tennessee dropped by 16.8% to 25.02, exceeding the initial (phase 1) 15% reduction target. Tennessee continued to experience a significant decline in antipsychotic medication use such that by Q2 2013 the antipsychotic usage rate was 23.87, a 20.6% usage decrease since the initiative began in March 2012.

In September 2014,, the National Partnership to Improve Dementia Care announced that it met its initial goal of reducing the national prevalence of antipsychotic use in long-stay nursing home residents by 15.1 percent. It also announced a new goal of a 25 percent reduction by the end of 2015, and a 30 percent reduction by the close of 2016, using the prior baseline rate (fourth quarter of 2011).

As of Q2 2015,the national reduction rate of antipsychotic medication use in nursing homes since initiative implementation is 24.8%. Over the same period of time Region IV reduction rate has been 26.4%, and **that of Tennessee has been 31.4% which exceeds both the region and the nationwide percent reduction**, and has already achieved the Q4 2016 reduction goal. (see Fig.1). All 50 states and every CMS region showed at least some improvement toward meeting Partnership reduction goal.

Current data trends (Fig 1)

Antipsychotic Drug Use in Nursing Homes Trend Update*
Quarterly Prevalence of Antipsychotic Use for Long-Stay Residents
 (Southeast Region 4 [AL, FL, GA,KY,MS,NC,SC,TN] 2011Q2-2014Q2)



* The percent of long-stay nursing home residents who are receiving an antipsychotic medication, excluding those residents diagnosed with schizophrenia, Huntington's Disease or Tourette's Syndrome.

	2011Q2	2011Q4	2012Q2	2012Q4	2013Q2	2013Q4	2014Q2	2014Q4	2015Q2
National	23.6	23.9	23.2	22.3	21.1	20.3	19.4	19.1	18.0
Region 4	25.2	25.5	24.9	22.9	21.1	20.5	20.0	20.0	18.8
Tennessee	29.3	30.0	29.0	27.2	23.9	23.4	22.7	22.8	20.6