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### 2015 Report to the General Assembly: Nursing Home Inspection and Enforcement Activities

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

**A Report to the 2015 109<sup>th</sup> Tennessee General Assembly**

**Tennessee Department of Health**

**March 17, 2015**

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## **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 323 state licensed nursing homes, of which 314 are federally certified, are monitored and maintained on a federal proprietary software program.

- **In 2014, among all facility types, approximately 51.5% (760) of 1,473 total complaints were complaints against nursing homes.**
- **The percentage of nursing homes with at least one substantiated complaint decreased by 1.0% over the previous years to 39.9% .**
- **The average number of health deficiencies were 5.4.**
- **The number of providers in substantial compliance<sup>1</sup> were 17 (5.0%); 306 (95%) were not in substantial compliance.**
- **Four (4) providers (1.2%) had zero health deficiencies and 14 providers (4.3%) were cited for substandard quality of care<sup>2</sup>.**
- **2014 budgeted expenditures for nursing home inspection and enforcement activities were 8.2M, with 1.7M (21%) being the State's share.**

## **Deficiencies**

Deficiencies cited in nursing home facilities in the state of Tennessee for 2014 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.**

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<sup>1</sup> 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

<sup>2</sup> 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. 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 new 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) hospitalizations; (3) person centered care; and (4) staff stability. The five clinical focus goals are: (1) infection; (2) medications; (3) mobility; (4) pain; (5) pressure ulcers.**

While participation in a LANE is voluntary, Tennessee has approximately 54.8% (103) of its nursing homes participating in the LANE coalition. The level of nursing home participation in Tennessee is approximately 12% higher than the national average.

### **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 30.1% compared to 23.9% nationwide. TDH, in partnership with Advancing Excellence coalition stakeholders** which include QSource (State Quality Improvement Organization), Tennessee Health Care Association (THCA) and State Medicaid Agency (TennCare) as principal partners **saw an overall 2013 reduction in antipsychotic drug use of 22.2%. As of Q2 2014, currently the last quarter of available data, antipsychotic medication use in Tennessee has been reduced by 24.6%** since the implementation of the national initiative. In comparison, the national reduction rate for the same period of time is 17.8%.

## **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 323 nursing homes that were licensed in Tennessee in 2014, 314 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 2014, there were 323 licensed nursing homes in the state of Tennessee of which 314 are federally certified.
- The Department investigated a total of 1,473 complaints during 2014 for all health care facilities, of which 227 (15%) were substantiated. Overall, the Department conducted 5,204 surveys for all health care facilities in 2014, which includes annual surveys, complaint investigations and unusual incidents, and revisit surveys. This compliment of 2014 surveys *exceeds* the 4,674 surveys conducted for all health care facilities in 2013 by approximately 11%. Complaints against nursing homes totaled 760, or 51.5% of the 1,473 total complaints, all facility types, which is approximately a 3.0% *decrease* from 2013<sup>3</sup> and an overall *51% decrease* since 2010<sup>4</sup>.
- There were 241 nursing homes with at least one complaint filed, constituting 74.6 % of the total nursing homes.
- There were 10 nursing homes with ten or more complaints filed, constituting 3.0% of the total nursing homes; a *decrease of 5.0%* from 2013.
- The number of nursing homes with at least one substantiated<sup>5</sup> complaint:
  - 2010 – 98 nursing homes or 30% of the 327 nursing homes
  - 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

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<sup>3</sup> Decrease in complaint investigations against nursing homes from 2013 to 2014 may be attributed to a number of factors, key of which is a continued TDH concerted effort to work with provider associations and other stakeholders in conducting joint provider educational seminars.

<sup>4</sup> Legislative amendment to the Health Date Reporting Act via PC 318

<sup>5</sup> Onsite investigation verification of associated regulatory standard not met.

The 2014 nursing home data shows a significant percent increase (18.8%) in the total number of complaints investigated from the previous year, with only as small percent substantiated (15.0%), and a continuing downward trend in the number of complaints against nursing homes.

### **DEFICIENCIES CITED IN NURSING HOMES<sup>6</sup>:**

Deficiencies cited in nursing home facilities in the state of Tennessee for 2014 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 5.8, compared to 4.1 within CMS region IV and 5.4 in Tennessee; consistent with the nation and significantly above the region with by far the largest average number of citations per survey occurring at scope and severity of “D” at 68.5%; (68.2% for CMS region IV and 55.1% for the nation respectively)<sup>7</sup>. The percentage of immediate jeopardy (IJ)<sup>8</sup> citations to resident health and safety nationally was at 1.0 % of the total number of nationwide health citations a decrease of 0.9% below 2013. The percentage of IJ citations in Tennessee was higher than the nation at 5.1%, a decrease from 2013 by 1.2%, and above the region by 2.7%. Six of the eight CMS Region IV states were above the national IJ citation percentage, with one state (KY) having an IJ citation percentage above that of Tennessee.

Of the 323 licensed nursing homes in Tennessee in 2014, the following was ascertained:

- **There were no nursing homes in bankruptcy in 2014.** Seventeen (17) nursing homes were cited with Immediate Jeopardy substandard level of care, one less than the (18) cited in 2013.
- Fifteen nursing homes were cited with substandard level of care.
- Twelve nursing homes were cited with Federal Civil Monetary Penalties for a total *assessed* amount of \$ 3.3M; \$800K below 2013 CMP total.
- Five nursing homes were cited with state Civil Penalties for a total assessed amount of \$10, 500; \$2K less than 2013 state cited monetary penalties.

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<sup>6</sup> Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (01/26/2014)

<sup>7</sup> 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.

<sup>8</sup> “Immediate Jeopardy” is defined as “a situation in which the provider’s noncompliance with one or more requirements of participation [in the Medicare/Medicaid reimbursement program] has caused, or is likely to cause serious injury, harm, impairment, or death to a resident.” 42 CFR Part 489.3



- Five nursing homes had admissions suspended in 2014, for a total of five suspension of admissions.

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

The most common deficiencies cited in nursing homes in 2014 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. F0323 - FREE OF ACCIDENT HAZARDS/SUPERVISION/DEVICES
4. F0431 - DRUG RECORDS, LABEL/STORE DRUGS & BIOLOGICALS
5. F0280 - RIGHT TO PARTICIPATE PLANNING CARE-REVISE CP
6. F0514 - RES RECORDS-COMPLETE/ACCURATE/ACCESSIBLE
7. F0241 - DIGNITY AND RESPECT OF INDIVIDUALITY
8. F0309 - PROVIDE CARE/SERVICES FOR HIGHEST WELL BEING
9. F0278 - ASSESSMENT ACCURACY/COORDINATION/CERTIFIED
10. F0282 - SERVICES BY QUALIFIED PERSONS/PER CARE PLAN
11. F0279 - DEVELOP COMPREHENSIVE CARE PLANS
12. F0225 - INVESTIGATE/REPORT ALLEGATIONS/INDIVIDUALS
13. F0315 - NO CATHETER, PREVENT UTI, RESTORE BLADDER
14. F0157 - NOTIFY OF CHANGES (INJURY/DECLINE/ROOM, ETC)
15. F0253 - HOUSEKEEPING & MAINTENANCE SERVICES

The top fifteen life safety code deficiencies were the following:

1. K0147 – ELECTRICAL WIRING AND EQUIPMENT
2. K0062 – SPRINKLER SYSTEM MAINTENANCE
3. K0067 – VENTILATING EQUIPMENT
4. K0018 – CORRIDOR DOORS
5. K0130 – MISCELLANEOUS
6. K0029 – HAZARDOUS AREAS – SEPARATION
7. K0025 – SMOKE PARTITION CONSTRUCTION
8. K0069 – COOKING EQUIPMENT
9. K0038 – EXIT ACCESS
10. K0052 – TESTING OF FIRE ALARM
11. K0066 – SMOKING REGULATIONS
12. K0064 – PORTABLE FIRE EXTINGUISHERS
13. K0076 – MEDICAL GAS SYSTEM
14. K0144 – GENERATORS INSPECTED/TESTED
15. K0050 – FIRE DRILLS

## **NURSING HOME QUALITY INITIATIVE UPDATE 2014:**

### **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 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 Phase I, the Campaign continues its quality improvement efforts. – The newly launched Phase II 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				
<b>Organizational:</b>				
<b>Consistent Assignment</b>	<b>Hospitalizations</b>	<b>Person Centered Care</b>	<b>Staff Stability</b>	
<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>	
<b>CLINICAL:</b>				
<b>Infection</b>	<b>Medications</b>	<b>Mobility</b>	<b>Pain</b>	<b>Pressure Ulcers</b>
<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 nine years encouraging all nursing homes in the country to register through their website<sup>9</sup>, 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-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

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<sup>9</sup> <https://www.nhqualitycampaign.org/>

**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 this 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.

The number of post revision participation as of January 2014, show a drop in number of participating nursing homes nationwide by 56.4%; less in TN, by 36%. However, this same revision shows an overall increase in the percentage of Tennessee participating NHs by 4.3%, while the national percent of participating NHs declined by 18.4%

	<b>Tennessee</b>	<b>Nation</b>
<b>Participating nursing homes that have selected goals<sup>10</sup>:</b>	103	4,177
<b>Percentage of participating nursing homes:</b>	54.8%	42.9%

Quality measures data specific to the revised initiatives are expected to be available following Q2 2015. These performance measures will be reported for Tennessee in the next (2016) annual nursing home report.

### **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

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<sup>10</sup> Data found in this subsection for Advancing Excellence in America’s Nursing Homes campaign coalition may be viewed at [http://www.nhqualitycampaign.org/star\\_index.aspx?controls=about](http://www.nhqualitycampaign.org/star_index.aspx?controls=about)

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 (at no cost) 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 three 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.

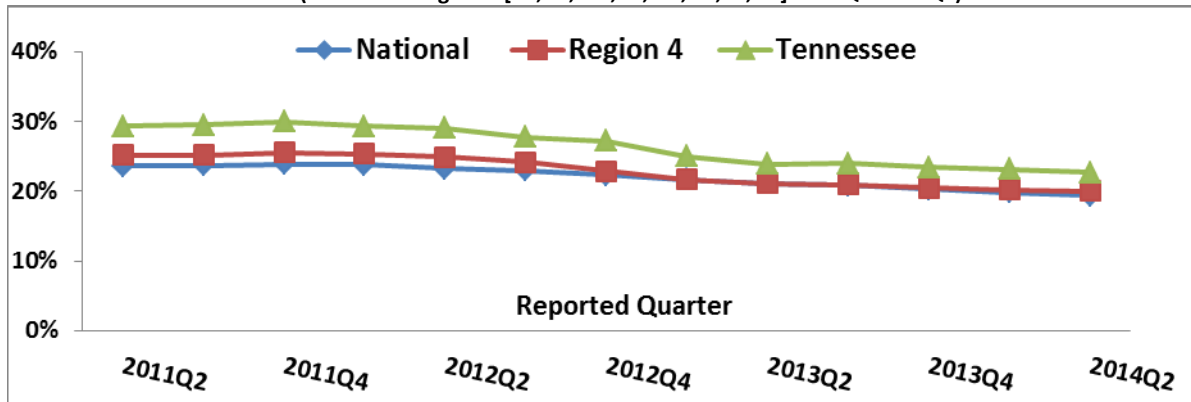
Tennessee nursing home's did not achieve the initial 15% reduction by the designated December 31, 2012 (Q42012), timeframe. However, by Q1 (January – March) 2013 antipsychotic medication usage rate in Tennessee dropped by 16.8% to 25.02, exceeding the initial (phase 1) 15% reduction target. Tennessee 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).

Over 21 months, the national prevalence of antipsychotic use by long-stay nursing home residents was reduced by 17.1 percent (from 23.8 percent to 19.8 percent). While over the same period of time, the prevalence of antipsychotic use by long-stay Tennessee nursing home residents dropped by 22.9% (see Fig.1). As such, Tennessee is well on target to meet the Partnership goal of a 25% reduction by the end of 2015. 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)



	2011Q2	2011Q3	2011Q4	2012Q1	2012Q2	2012Q3	2012Q4	2013Q1	2013Q2	2013Q3	2013Q4	2014Q1	2014Q2
National	23.6	23.7	23.9	23.8	23.2	23.0	22.3	21.7	21.1	20.8	20.3	19.8	19.4
Region 4	25.2	25.2	25.5	25.4	24.9	24.2	22.9	21.7	21.1	20.9	20.5	20.2	20.0
Tennessee	29.3	29.5	30.0	29.3	29.0	27.7	27.2	25.0	23.9	24.0	23.4	23.1	22.7

Start of Training in Tennessee, 2012Q4

\* 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.

Source: CMS Quality Measure, based on MDS 3.0 data.

Produced by: Tennessee Department of Health, Division of Health Care Facilities