

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

A Report to the 2018 110th Tennessee General Assembly

Tennessee Department of Health

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Executive Summary:

This report addresses activities and outcomes under both state and federal laws and rules. The Office of Health Care Facilities (OHCF) for the Tennessee 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 this role, OHCF conducts annual or initial surveys and complaint investigations to ensure compliance with state and federal statutes and regulations.

Complaints

All complaints received by OHCF for the 323 state licensed nursing homes, of which 321 are federally certified, are monitored and maintained on a federal proprietary software program.

- **In 2017, among all facility types, approximately 70.4% (2,035) of 2,889 total complaints were complaints against nursing homes.**
- **The percentage of nursing homes with at least one substantiated complaint increased by 2.1% over the previous years to 33.4%**
- **The average number of health deficiencies per standard annual survey was 4.2.**
- **The number of providers in substantial compliance¹ upon standard annual survey were zero.**
- **Zero (0) providers had zero health deficiencies and nine (9) providers (2.8%) were cited for substandard quality of care – down from 3.9% last year.²**
- **2017 budgeted expenditures for nursing home inspection and enforcement activities were approximately 9.14M, with 2.79M (30.5%) being the State's share.**

Deficiencies

Deficiencies cited in nursing home facilities in the state of Tennessee for 2017 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 the same, simply an inverse of last years top two: 2- infection control, 1- sanitary storage and preparation of food.**
- **The two most frequently cited facility life safety code deficiencies were sprinkler system maintenance, and corridor - doors.**

¹ 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

² 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.

Nursing Home Collaborative

From its beginning in 2006, the National Nursing Home Quality Improvement Initiative (NNHQII) 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 quality care 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) inappropriate medication use including antipsychotics; (3) enhancing mobility; (4) reducing pain; (5) reducing pressure ulcers.**

With LANE participation being fully voluntary, Tennessee has approximately 89% (287) of its nursing homes participating in the LANE coalition. **The level of nursing home participation in Tennessee has increased by approximately 0.5% above 2016.**

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 2017, currently the last quarter of available data, antipsychotic medication use in Tennessee nursing homes is at 16.5%, a 45.5% reduction since the implementation of the national initiative.** In comparison, the **reduction rate nationally** for the same period of time is

35.0%. As such, Tennessee is steadily closing the gap between its **current Q2 2017 rate of 16.5%** and the **national antipsychotic medication use rate of 15.5%**. In a February 5, 2018 associated press news article titled, “**TN, Arkansas nursing homes lead nation in reducing antipsychotic use**”, Tennessee’s reduction was compared to the nation as a whole and stated in the following way: “**..Decreases were reported in all 50 states, with the biggest in Tennessee...**”³

³ <http://wreg.com/2018/02/05/tn-arkansas-nursing-homes-lead-nation-in-reducing-antipsychotic-use/>

BACKGROUND AND SUMMARY OF THE LAW:

The Board for Licensing Health Care Facilities, which is administratively attached to the Department of Health's Office 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 2017, 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 2017, there were 323 licensed nursing homes in the state of Tennessee of which 321 are federally certified.
- The Department investigated a total of 2,889 complaints (including provider self reported incidents) during 2017 for all health care facilities, of which 304 (10.5%) were substantiated; a decrease of approximately 5.1% in the percentage of investigated complaints substantiated in 2016. Overall, the Department conducted 5,483 surveys for all health care facilities in 2017, which includes annual surveys, complaint investigations, and unusual incident and revisit surveys. This compliment of 2017 surveys conducted is 1.3% lower than surveys conducted for all health care facilities in 2016. Complaints against nursing homes totaled 2,035, or 70.4% of the 2,889 total complaints, all facility types, which is approximately 40.2% *increase* from 2016 and a 62.7% *increase* since 2013 (784 NH complaints).
- There were 285 nursing homes with at least one complaint filed, constituting 88 % of the total nursing homes.
- There were 70 nursing homes with ten or more complaints filed, constituting approximately 21.7% of the total nursing homes; an *45.7%increase from last year of* nursing homes with ten or more complaints filed.
- The number of nursing homes with at least one substantiated⁴ complaint:
 - 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
 - 2016 - 101 nursing homes or 31.3% of the 327 nursing homes
 - 2017 – 110 nursing homes or 34.0% for the 323 nursing homes

⁴ Onsite investigation verification of associated regulatory standard not met.

The 2017 nursing home data show a continued increase in percent decline in number of substantiated complaints ; and a continuing upward trend in the number of complaints and incidents reported against nursing homes since 2013.

DEFICIENCIES CITED IN NURSING HOMES⁵:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2017 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 1.75, compared to 1.85 within CMS region IV and 1.63 in Tennessee, below both the region and national averages; with by far the largest average percentage of citations per survey occurring at scope and severity of “D” at 60.74%; (65.95% for CMS region IV and 56.0% for the nation respectively)⁶. The percentage of immediate jeopardy (IJ)⁷ citations to resident health and safety nationally was at 4.86% of the total number of nationwide health citations, a slight increase from last year. All eight of the CMS Region IV states were above the national IJ citation percentage.

Of the 323 licensed nursing homes in Tennessee in 2017, the following was ascertained:

- **There were two (2) nursing homes owned by one (1) corporation in bankruptcy in 2017, with that corporation undergoing reorganization.**
- Eleven (11) nursing homes were cited with substandard level of care, with (15) nursing homes cited with immediate jeopardy (IJ) citations, one cited IJ on two separate occasions.
- Thirteen (13) nursing homes were cited with Federal Civil Monetary Penalties for Immediate Jeopardies a total *assessed* amount of \$ 2.9M; approximately \$1.4M below 2016 CMP total.

⁵ Federal S&C PDQ Database, Deficiency Count Report – Source CASPER (02/12/2018)

⁶ 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.

⁷ “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

- Six (6) nursing homes were cited with state Civil Penalties for a total assessed amount of \$84,501; \$61,399 more than 2016 state cited monetary penalties.
- Seven (7) nursing homes had admissions suspended in 2017, for an increase of 2 above the 5 suspended in 2016.
- Three nursing homes were involuntarily terminated by the Centers for Medicare and Medicaid Services (CMS) from participation in the Medicare/Medicaid programs in 2017, one more than in 2016.
- One nursing home ceased (voluntarily terminated) operations.

TOP 15 MOST FREQUENTLY CITED DEFICIENCIES IN NURSING HOMES:

The most common deficiencies cited in nursing homes in 2016 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. F0371 FOOD PROCURE, STORE/PREPARE/SERVE - SANITARY
2. F0441 INFECTION CONTROL, PREVENT SPREAD, LINENS
3. F0323 FREE OF ACCIDENT HAZARDS/SUPERVISION/DEVICES
4. F0225 INVESTIGATE/REPORT ALLEGATIONS/INDIVIDUALS
5. F0514 RES RECORDS-COMPLETE/ACCURATE/ACCESSIBLE
6. F0282 SERVICES BY QUALIFIED PERSONS/PER CARE PLAN
7. F0431 DRUG RECORDS, LABEL/STORE DRUGS & BIOLOGICALS
8. F0278 ASSESSMENT ACCURACY/COORDINATION/CERTIFIED
9. F0280 RIGHT TO PARTICIPATE PLANNING CARE-REVISE CP
10. F0309 PROVIDE CARE/SERVICES FOR HIGHEST WELL BEING
11. F0241 DIGNITY AND RESPECT OF INDIVIDUALITY
12. F0520 QAA COMMITTEE-MEMBERS/MEET QUARTERLY/PLANS
13. F0157 NOTIFY OF CHANGES (INJURY/DECLINE/ROOM, ETC)
14. F0279 DEVELOP COMPREHENSIVE CARE PLANS
15. F0314 TREATMENT/SVCS TO PREVENT/HEAL PRESSURE SORES

The top fifteen life safety code deficiencies were the following:

1. K0353 Sprinkler System - Maintenance and Testing
2. K0321 Hazardous Areas - Enclosure
3. K0324 Cooking Facilities
4. K0920 Electrical Equipment - Power Cords and Extens
5. K0363 Corridor - Doors
6. K0351 Sprinkler System - Installation

7. K0345Fire Alarm System - Testing and Maintenance
8. K0923Gas Equipment - Cylinder and Container Storag
9. K0511Utilities - Gas and Electric
10. K0711Evacuation and Relocation Plan
11. K0372Subdivision of Building Spaces - Smoke Barrie
12. K0355Portable Fire Extinguishers
13. K0712Fire Drills
14. K0211Means of Egress – General
15. K0521 HVAC

NURSING HOME QUALITY INITIATIVE UPDATE 2017

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, non-punative, non-regulatory, 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 Goals

Organizational				
Consistent Assignment	Hospitalizations	Person Center Care	Staff Stability	
Consistent assignment has been shown to strengthen relationships between caregivers	Many changes in condition can be managed safely without transfer, avoiding the trauma and risks associated	Person-centered care promotes choice, purpose and meaning in daily life.	A stable staff allows the nursing home to benefit from experience and knowledge that staff gain over	

Clinical Outcome Goals				
Infections	Medications	Mobility	Pain	Pressure Ulcers
<i>Working on this goal will allow a nursing home to implement strategies that reduce the incidence and spread of C. difficile, as well as other infections, among residents in the nursing home.</i>	<i>Medications used inappropriately can compromise a resident's well-being and even cause death.</i>	<i>Enhancing and maintaining mobility as a part of daily care helps to maintain a person's function as well as physical and psychological well-being</i>	<i>Less than adequate pain management can affect residents' daily activities and quality of life, cause depression, sleeplessness, restlessness, decline in appetite and unintentional weight loss.</i>	<i>A systematic approach to assessing and addressing resident's risk and skin can reduce the incidence and severity of pressure ulcers, thus avoiding pain, infection and other complications, and increasing residents' quality of life</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 website⁸, 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

⁸ <https://www.nhqualitycampaign.org/>

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. To maintain registration, at least one organizational goal AND one clinical outcome goal must be selected

Registration Statistics of each state captured on the website as compared to the nation, identifies Tennessee with a 91% registrations rate in 2017 with 86% (273) of those registered nursing homes having also selected at least one Organizational Goal and one Clinical Goal to work on

	Tennessee	Nation
Registrant nursing homes that have selected goals⁹:	287	9,738
*Percentage of registrant nursing homes:	89%	62.2%

*In TN, enrollment saw a percent increase in 2017 above 2016 by ~4.4% , while in the nation, a smaller percent increase in enrollment by ~ 1.0%.

⁹ 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 30.3% for long-stay residents, as compared to the national average of 22.2%. 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 17.4% 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 21.2% 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).

In Q2 (June) 2016, the national reduction rate of antipsychotic medication use in nursing homes since initiative implementation was 30.9%. Over the same period of time Region IV reduction rate was 31.7%, and **that of Tennessee was 37.5% which exceeded both the region and the nationwide percent reduction. By this quarter (Q2 2016) Tennessee had** already achieved the Q4 2016 reduction goal.

As of Q2 2017, currently the last quarter of available data, antipsychotic medication use in Tennessee nursing homes is at 16.5%, a 45.5% reduction since the implementation of the national initiative. (see Fig.1). All 50 states and every CMS region showed at least some improvement toward meeting Partnership reduction goal.

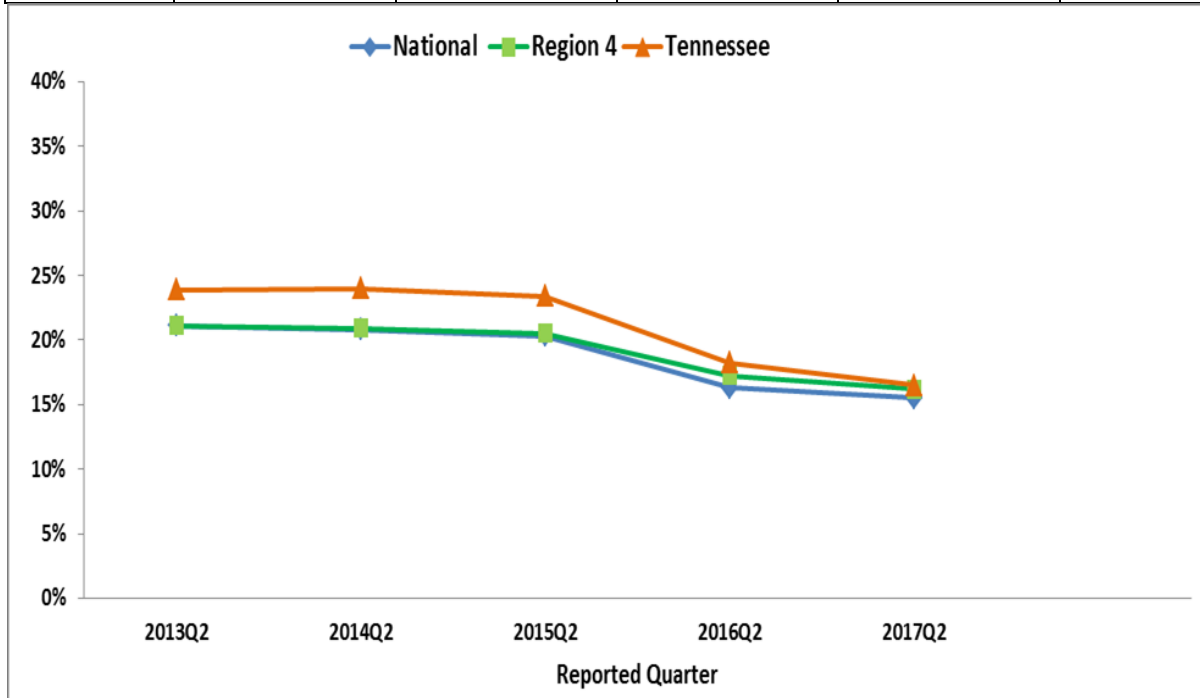
Additional federal funding resources through the Civil Monetary Penalty (CMP) funds program continue to be awarded to Tennessee nursing homes to educate and train facility staff in best practices for quality of care and quality of life without the use of antipsychotic medication. This further promotes the continued steady decline in unnecessary antipsychotic use prevalence in Tennessee nursing homes and hospitals.

Unfortunately however, not all facilities in all states have achieved the expected reductive success in antipsychotic medication usage. Excluding facilities caring for large resident populations requiring antipsychotics, there are some in each state that have made little to no progress in decreasing their antipsychotic medication use or have actually increased since the start of the 2012 National Partnership reduction initiative. For these facilities in Tennessee, identified as “Late Adopters”, the Department of Health’s Office of Health Care Facilities will, working collaboratively with QSource, the state’s quality improvement organization (QIO), the nursing home association, and other stakeholders, refocus efforts specifically toward these “late adopters” to decrease antipsychotic medication use by 15% by the end of 2019, while continuing our ongoing efforts, maintaining statewide success.

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] 2013Q2-2017Q2)

	2013Q2	2014Q2	2015Q2	2016Q2	2017Q2
National	21.1	19.4	18.0	16.29	15.5
Region 4	21.1	20.0	18.8	17.23	16.2
Tennessee	23.9	22.7	20.6	18.26	16.5



* 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.