

**STATE**  **WIDE**

**New York StateWide Senior Action Council, Inc**  
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[www.nysenior.org](http://www.nysenior.org)

# **FILING COMPLAINTS ABOUT HOSPITAL CARE IN NYS**

**PATIENT ADVOCATES PROGRAM – MARCH TEACH IN**

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**MARCH 19, 2024**

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# AGENDA

- This presentation will review the process for making a complaint and discuss the complaint system.
- Information about the inclusion of complaints in hospital inspections and the NYS Profile data will be discussed.
- Tips will be provided for making a complaint.

# PATIENT'S RIGHTS TO COMPLAIN: STATUTORY AUTHORITY PUBLIC HEALTH LAW, SECTION 2803 REGULATORY REQUIREMENTS SECTION 405.7

- (b) Hospital responsibilities. The hospital shall afford to each patient the right to:
  - (23) express complaints about the care and services provided and to have the hospital investigate such complaints. The hospital shall provide the patient or his/her designee with a written response if requested by the patient indicating the findings of the investigation.
  - The hospital shall notify the patient or his/her designee that if the patient is not satisfied with the hospital's oral or written response, the patient may complain to the New York State Department of Health's Office of Health Systems Management.
  - The hospital shall provide the telephone number of the local area office of the Health Department to the patient;
- (c) Patient's Bill of Rights. For purposes of subdivision (a) of this section, the hospital shall utilize the following Patients' Bill of Rights:
  - As a patient in a hospital in New York State, you have the right, consistent with law, to:
    - 19) Complain without fear of reprisals about the care and services you are receiving and to have the hospital respond to you and if you request it, a written response. If you are not satisfied with the hospital's response, you can complain to the New York State Health Department. The hospital must provide you with the Health Department telephone number.

**CALL OUR HELPLINE AT 1-800-333-4374**

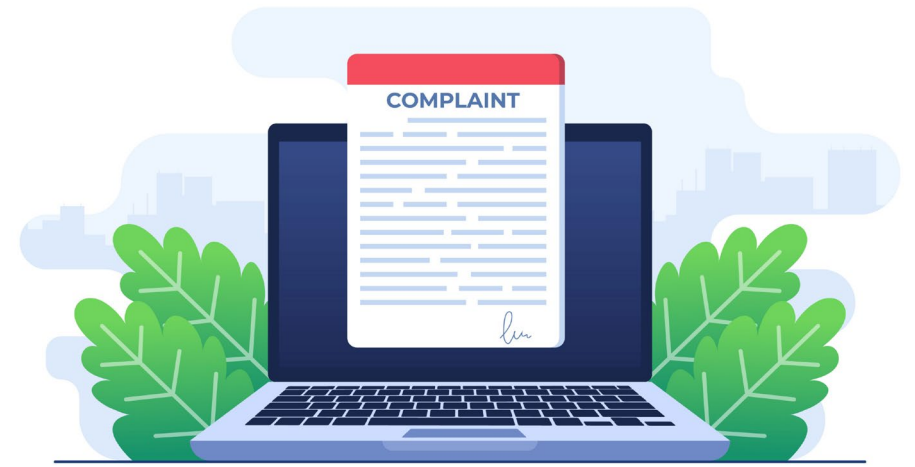
# FEDERAL SURVEY PROTOCOLS INCLUDE PATIENT'S RIGHTS REQUIREMENTS

- Interpretive Guidelines §482.13(a)(1) The hospital must inform each patient, or when appropriate, the patient's representative as allowed by State law, of the patient's rights. Whenever possible, this notice must be provided before providing or stopping care. All patients, inpatient or outpatient, must be informed of their rights as hospital patients.

[Federal State Operations Manual Appendix A - Survey Protocol, Regulations and Interpretive Guidelines for Hospitals](#)

# WHO CAN FILE A COMPLAINT

- The patient or their representative can file a complaint with the hospital and/or New York State Department of Health.
- Remember in NYS hospitals are required to ask a patient if they have a caregiver (family member or friend) has a designated caregiver and the caregiver has rights in the hospital as well under the CARE Act.
  - ✓ They are entitled to education and information prior to discharge.
  - ✓ They have the right to be involved in decision-making, including hospital discharge planning and medical treatments.
  - ✓ They have the right to learn about the patient's condition and ask for help and set limits.



# NY STATE DEPARTMENT OF HEALTH MUST ACCEPT COMPLAINTS FOR ALL PATIENTS:

- Try to resolve a problem with your care provider, but if that fails you can contact the state. You can and should complain to the hospital quality assurance committee and hospital administration.
- The New York State Department of Health is responsible for the ongoing surveillance and investigation of complaints related to the care provided by hospitals and diagnostic and treatment centers, including ambulatory surgical centers, dialysis centers, and primary care clinics in New York State.
- Health Department regulations allow individuals to register complaints about the care and services provided by hospitals and diagnostic and treatment centers.

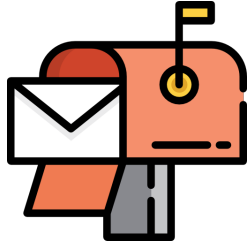


# THE COMPLAINTS NOTED BELOW ARE NOT REVIEWED BY THE DEPARTMENT OF HEALTH

- **Billing issues. Exceptions** to this include complaints related to financial assistance (<https://profiles.health.ny.gov/hospital/pages/billing>), and billing for sexual assault examinations(<https://ovs.ny.gov/forensic-rape-examination-fre-direct-reimbursement-program>).
- For all other billing issues visit: <https://ag.ny.gov/bureau/health-care-bureau>
- **Psychiatric care complaints** about units or facilities regulated by the Office of Mental Health (OMH) visit: <https://www.omh.ny.gov> or 1-800-597-8481
- **Detoxification care complaints** about units or facilities regulated by the Office of Alcoholism and Substance Abuse Services (OASAS) visit: [HTTPs://www.oasas.ny.gov](https://www.oasas.ny.gov) or 1-800-553-5790
- **Those related only to the care provided by a physician in private practice visit:** <https://www.health.ny.gov/professionals/doctors/conduct/> or 1-800-663-6114
- **Attitudes of facility or clinical staff.** You should contact the patient representative at the facility.

# IF YOU HAVE A COMPLAINT ABOUT YOUR CARE

- **Complaints must be submitted in writing.** You can mail a form or submit one online.
- You can contact the NYS Department of Health by regular mail at:



New York State Department of Health  
Centralized Hospital Intake Program  
Mailstop: CA/DCS  
Empire State Plaza  
Albany, NY 12237

- Link to a complaint form:  
[https://apps.health.ny.gov/surveyd8/sites/default/files/forms/electronic\\_complaint\\_form\\_12\\_15\\_2017.pdf](https://apps.health.ny.gov/surveyd8/sites/default/files/forms/electronic_complaint_form_12_15_2017.pdf)
- Submit a complaint using the on-line electronic Facility Complaint:  
<https://apps.health.ny.gov/surveyd8/facility-complaint-form#no-back>
- If you are unable to submit electronically, or print this form, please call the toll-free number at 1-800-804-5447 and someone will assist you.
- **Link to DoH Mailbox** for various complaints: <https://apps.health.ny.gov/surveyd8/email-hospdte>



# MAKING A COMPLAINT

- Describe the incident or concern as clearly as possible.
- Provide a timeline of what happened and when.
- Provide the names of any providers that were involved and any discussions with them about their concerns.
- Provide any documentation such as patient records and correspondence, recommendations from any health professionals that have treated the patient which show the need for more appropriate treatment or showing the need for close monitoring during their care, and any personal observations.



# TYPES OF COMPLAINTS

- It is extremely difficult for consumers to compose complaints that will be acted upon as most do not know what information is needed to be considered by DoH as outside of or deviating from the acceptable standards of care and worthy of corrective action.
- In addition, the standards of care are often very wide in terms of what is allowable action or considered timely action.



*The following pages review some examples (examples and not an exhaustive list) of categories.*

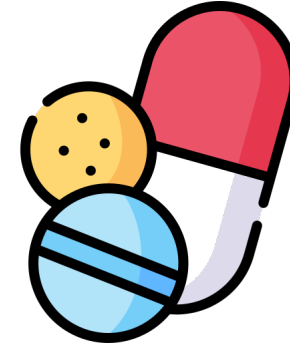
- ✓ Try to be as specific as possible.
- ✓ List your concerns and/or incidents.
- ✓ Number and categorize each concern associated with an event or poor outcome.

# ERROR IN DIAGNOSIS

Missed diagnosis, Slow diagnosis, dispute over diagnosis, did not act on changes in patient status

## MEDICATION ERRORS

- Medication omission, medication error, reaction to medication



## PATIENT SAFETY

- Lack of attention, elopement, falls, abuse of a patient, pressure sores, transfusion or medication reactions

## POOR QUALITY

- Lack of appropriate care, rough treatment, lack of adequate staffing, hospital acquired infection, poor pain management, lack of monitoring, failure to investigate changes in patient, problems with coordination of care, did not order consultation with appropriate specialists, did not follow evidence-based practices.

# POOR TREATMENT

- Delays in admission, examination or treatment
  - Inadequate patient examination
  - Care plan not established in a timely manner
  - Did not perform a procedure that was indicated by a test
  - an adverse event
  - Surgical complications
  - Poor post surgery care
- Unsuccessful treatment, incorrect treatment, complications not expected, complications not explained
  - Poor or inappropriate discharge plan
  - Refusal to treat
  - Poor communication, did not follow up on patient non-compliance
  - Improper use of restraints.

## ADVERSE EVENTS

- An event in which care resulted in an undesirable clinical outcome—an outcome not caused by underlying disease—that prolonged the patient stay, caused permanent patient harm, required life-saving intervention, or contributed to death.
- Source: Office of Inspector General <https://oig.hhs.gov/reports-and-publications/featured-topics/adverse-events/>

### EXAMPLE

misdiagnosis, failure to act on test results, hospital acquired infections, surgical, treatment, or medication mistakes, medication errors, failure of medical devices, falls, sepsis, unsafe injections, etc.

# INVESTIGATION OF COMPLAINTS

- Generally, only those complaints concerning issues that occurred within the past year will be considered.
- However, NOT all complaints will be assigned for investigation.
- NOTE: The state does not survey every facility every year. They sample hospitals. Many are reviewed by an accrediting organization and deemed in compliance.
- The State agencies reviewing complaints categorize them by level of severity. Based on federal standards.
- In NYS, the regional offices play a role in reviewing complaints and determining the course of follow up.
- Responses can take several weeks to several months depending on the situation
- **Call DoH about your complaint if you do not get a response**



# THE COMPLAINT REVIEW PROCESS

- The Department conducts an investigation on every complaint it receives. The more serious complaints require Department investigators to conduct interviews, review medical records and other facility documentation, and perform other activities onsite at the Hospital.
- Some complaints contain more than one allegation. The Department investigates every allegation related to each complaint as part of a single investigation. When an investigation determines that an alleged incident did occur, the allegation is substantiated.



# THE COMPLAINT REVIEW PROCESS (CONT.)

- The complaint investigation will determine whether a facility has failed to meet state requirements. For cases in which an allegation is substantiated, or when the Department determines the Hospital violated a regulation, the Department issues a statement of deficiencies to the Hospital. The facility then must correct the deficient practice, and usually submit a plan of correction that is acceptable to the Department.
- The Department also informs complainants of the results of complaint investigations and assists the public in the resolution of problems.
- The Complaint Information in a hospital report shows the number of complaint investigations completed in the reporting period, the number of those that resulted in citations (a statement of deficiencies) being issued and the regulatory areas cited for the specific cases.



# THE COMPLAINTS SUMMARY IN PROFILES FOR A HOSPITAL

- The reporting period for the results listed is shown first.
- **Total Complaints Received per 10,000 patient days:** The number of complaints received in the reporting period, divided by the total number of patient days (number of individual patients multiplied by their respective lengths of stay in the hospital). Figures are given for both the specific hospitals, and for all hospitals statewide.
- **Number Reviewed Resulting in Citations:** The number of complaint investigations completed in which the Department determined that the hospital violated a regulation and issued a statement of deficiencies. The total is given for both the specific hospitals, and for all hospitals statewide.
- **Percentage of Allegations Made that were Substantiated:** The percentage of the allegations made that, following an investigation, the Department determined were valid. The percentage is given for both the specific hospitals, and for all hospitals statewide. (In NYS approx. 20% of allegations were substantiated)

# HOSPITAL CITATIONS DURING INSPECTIONS

- A diversity of inspections are performed, covering various activities, including:
  - inspections of care
  - reviews of medical records
  - addition/deletion of beds
  - changes in services provided
  - focused and follow-up surveys
- The Department informs the hospital of the results of all inspections conducted. When the Department determines the hospital violated a regulation, the Department issues a statement of deficiencies to the hospital. The facility then must correct the deficient practice, and usually submit a plan of correction that is acceptable to the Department.

# UNDERSTANDING THE CITATIONS SUMMARY SECTION IN AN INSPECTION REPORT

- The reporting period for the results listed is shown first.
- **Statement of Deficiencies issuance date:** The date on which the written report, which included the Statement of Deficiencies for the citations displayed, was sent to the hospital.
- **Plan of Correction Approval Date:** The date the Department accepted the hospital's Plan of Correction for all deficiencies cited for this inspection/survey (when applicable).
- **Regulatory Citation:** The numerical identifier of the Section of the New York State Codes, Rules and Regulations that was cited.
- **Deficiency Categories:** The title of the Section of the New York State Codes, Rules and Regulations that was cited. This indicates the Category of Hospital service delivery for which a deficiency has been found. The categories are described in the Deficiency Categories section of this site.

# HOSPITAL VIOLATIONS DATA (VERY OPAQUE)

There is a national website that is (was) providing access to hospital inspections: [hospitalinspections.org](http://hospitalinspections.org) a website run by the [Association of Health Care Journalists \(AHCJ\)](http://Association of Health Care Journalists (AHCJ)) that aims to make federal hospital inspection reports easier to access, search and analyze. This site includes details about deficiencies cited during complaint inspections at acute-care, critical access or psychiatric hospitals throughout the United States since Jan. 1, 2011. It does not include results of routine inspections or those of long-term care hospitals.



- **In NYS The Hospital Inspection Information for a hospital is only available by filing a Freedom of Information Request (FOIL).**
- If you wish to obtain survey reports that are the basis for the inspection and complaint summary information, or other records about hospitals from the NYS Department of Health, you must submit a written request under the Freedom of Information Law (FOIL), via land mail, FAX or e-mail.

# HOW MANY COMPLAINTS ARE RECEIVED

- Data for all hospitals to see trends in complaints, substantiations, and corrective action or fines is hard to find.
- Information about the rate of complaints received per 10,000 patient days, the number of complaints reviewed resulting in citations, and percentage of allegations made that were substantiated are available for each hospital on the NYS DoH Profiles site.

**According to the Centers for Medicare and Medicaid Services star ratings, New York State (NYS) hospitals are relatively poor performers:**



**33% achieving 1 star compared with 5% of hospitals across the United States.**

*(for details see: Why Did New York State Hospitals Rank So Poorly?, McLaughlin, C., Medical Care 61(5):p 295-305, May 2023.)*

<https://profiles.health.ny.gov/hospital/index#5.79/42.868/-76.809>

# HOSPITAL ENFORCEMENT/FINES

- Section 12 of the Public Health Law allows the Department of Health to assess fines against Hospitals that have been cited for noncompliance with state regulations that resulted in harm to patients, represents substandard quality of care, or placed patients at immediate risk for harm.
- The maximum fine allowed under law is \$10,000 per violation. The Enforcement Summary Section presents a history of fines assessed against each Hospital, since January 1, 2002.



# FINES

- In 2017 NYPIRG found that New York issued fines to only four hospitals for a total of about \$12,000, the study found. In contrast, the California Department of Health issued fines to 53 hospitals in 2017, and many were individually fined \$50,000 or more.
- One way to improve hospitals would be for the Health Department to impose substantial fines similar to California,
- In 2020, the Health Department noted that the agency imposes the maximum fine of \$2,000 where appropriate and issued \$108,000 in fines to New York hospitals between 2015 and 2019. (Source: New York hospital rankings: Why Empire State has worst quality, safety ratings in U.S., Robinson,D., Iohud, <https://www.lohud.com/story/news/health/2020/01/06/why-new-york-hospital-rankings-worst-u-s-based-feds-report/2798093001/> January 6, 2020.)



# COMPLAINTS ABOUT MEDICAL CONDUCT

- The Office of Professional Medical Conduct reviews all complaints of professional medical misconduct against licensed physicians, physician assistants and specialist assistants, including complaints of sexual harassment and assault. As a patient, you have a right to file a complaint if you believe your physician may have committed professional misconduct.
- Link to the DoH page: [File a Complaint \(ny.gov\)](#). Here are instructions for completing the complaint form: [https://www.health.ny.gov/professionals/doctors/conduct/complaint\\_form\\_instructions.htm](https://www.health.ny.gov/professionals/doctors/conduct/complaint_form_instructions.htm)
- If you have a complaint or need information about professionals other than physicians, physician assistants or specialist assistants, please contact the [New York State Education Department](#).



New York State  
EDUCATION DEPARTMENT  

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Office of the Professions



# PATIENT SAFETY INCIDENT COMPLAINT CAN ALSO BE MADE TO THE JOINT COMMISSION

- The Joint Commission is an accrediting & certification organization and will investigate complaints about patient safety incidents
- These include incidents where physical or mental harm that occurred. Examples would be where: death occurred; permanent or long-term harm was experienced; further treatment or other procedure was needed; extra observation or minor treatment was needed; psychological harm occurred; other harm occurred; or unsafe practices or conditions occurred, which could have resulted in harm.
- Form to report a patient safety concern by mail: [https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/20230523\\_report-a-safety-concern-by-mail\\_update.pdf](https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/20230523_report-a-safety-concern-by-mail_update.pdf)
- Instructions to report a safety concern by mail: <https://www.jointcommission.org/-/media/tjc/documents/resources/patient-safety-topics/original-mail-guidance.pdf>
- Mail to: Office of Quality and Patient Safety  
The Joint Commission; One Renaissance Boulevard  
Oakbrook Terrace, Illinois 60181
- **Submit complaint online:**  
[https://apps.jointcommission.org/QMSInternet/IncidentEntry.aspx?\\_ga=2.7320181.619059695.1710887145-580922336.1710213863&\\_gl=1\\*5aaxag\\*\\_ga\\*NTgwOTlyMzM2LjE3MTAyMTM4NjM.\\*\\_ga\\_K31T0BHP4T\\*MTcxMDg4NzE0NS4zLjEuMTcxMDg4ODEwOC4wLjAuMA..](https://apps.jointcommission.org/QMSInternet/IncidentEntry.aspx?_ga=2.7320181.619059695.1710887145-580922336.1710213863&_gl=1*5aaxag*_ga*NTgwOTlyMzM2LjE3MTAyMTM4NjM.*_ga_K31T0BHP4T*MTcxMDg4NzE0NS4zLjEuMTcxMDg4ODEwOC4wLjAuMA..)

**CALL OUR HELPLINE AT 1-800-333-4374**

# WHERE TO MAKE COMPLAINTS ABOUT CARE IN NYS

<b>Adult Care and Assisted Living</b>	<b>866-893-6772</b>
<b>Funeral Homes</b>	<b>518-402-0785</b>
<b>Home Care and Hospice Care</b>	<b>800-628-5972</b>
<b>Hospital Patient Care</b>	<b>800-804-5447</b>
<b>Hospital Diagnostic and Treatment Center</b>	<b>800-804-5447</b>
<b>Laboratory</b>	<b>800-682-6056</b>
<b>Medicaid Fraud</b>	<b>877-87FRAUD</b>
<b>Managed Care</b>	<b>800-206-8125</b>
<b>Nursing Homes</b>	<b>888-201-4563</b>
<b>Professional Medical Conduct</b>	<b>800-663-6114</b>

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# INFORMATION ABOUT HEALTH CARE PROVIDERS

**Federal Websites to Compare Nursing Homes, Hospitals , Home Care Agencies, Doctors, Hospices, Dialysis Centers** <https://www.medicare.gov/care-compare/>

**NYS DoH Guide to Selecting a Nursing Home**  
[https://profiles.health.ny.gov/nursing\\_home/](https://profiles.health.ny.gov/nursing_home/)

**Nurse Aide Registry** <https://registry.prometric.com/registry/public>

**New York State Department of Education Office of Professionals to Check on Licensing Status** <http://www.op.nysed.gov/opsearches.htm>

**State Department of Health Information To Compare Doctors, Hospitals, Nursing Homes, Hospice** <https://profiles.health.ny.gov/>

# FOR MEDICARE HOSPITAL DISCHARGE OR QUALITY OF CARE COMPLAINTS OR ASSISTANCE

Complain if the quality is poor. Examples of concerns or complaints:

- A medication mistake
- More information needed at discharge
- Disagreeing with the timing of a discharge
- A change in condition was not treated
- Receiving an infection while in care
- Excessive wait times for emergency or urgent care



**LIVANTA is the CMS designated entity for these issues**

**866-815-5440**


Email:

**[BFCCQIOArea1@Livanta.com](mailto:BFCCQIOArea1@Livanta.com)**

**Website link is:**

**<http://www.bfccqioarea1.com/mqhelpline.html>**

# APRIL TEACH IN: PRESENTATION ON THE LIVANTA COMPLAINT SYSTEM

- Tuesday, April 23; 10-11 AM
- Bryan Y. Fischer, Community Outreach and Education Coordinator & Provider Relations, Livanta LLC (a Medicare Beneficiary and Family Centered Care Quality Improvement Organization)
- **To register for the ZOOM Webinar virtually** scan the QR code 
- **To connect via phone:** 646-558-8656, **Webinar ID:** 841 9727 3733#



Connect to the Webinar using your telephone, computer, or tablet

**How to Appeal a Hospital or Nursing Home Discharge or Complaint about the Quality of Care from a Health Care Provider**

**Date:** Tuesday, April 23, 2024 **Time:** 10:00 AM—11:00 AM

**Speakers:** Bryan Y. Fischer, Community Outreach and Education Coordinator & Provider Relations, Livanta LLC (a Medicare Beneficiary and Family Centered Care Quality Improvement Organization)

**To register for the ZOOM Webinar virtually** [click HERE](#) (or scan the QR code)

**To connect via phone:** 646-558-8656, **Webinar ID:** 841 9727 3733#



## Session Overview

Medicare provides assistance to beneficiaries and their families to help them appeal a discharge or complain about the quality of the care they have received. The Centers for Medicare and Medicaid Services (CMS) contracts with a Beneficiary and Family Centered Care Quality Improvement Organization known as LIVANTA to provide these services to beneficiaries in New York State.

It is important for all beneficiaries, caregivers and aging networks to learn about how to access the services that Livanta provides, the process they go through to follow up on appeals and complaints, and the rights of Beneficiaries during the process. This information can be absolutely critical to help a beneficiary avoid an inappropriate or unsafe discharge or to help address poor quality of care concerns.

**In this session you will learn about:**

- How to appeal a discharge from hospital, nursing home, or home care agency and who to call for immediate assistance when a discharge is imminent.
- What to do if you are a family member or caregiver appealing on behalf of a beneficiary.
- How to complain about poor care received.
- The types of quality of care complaints that Livanta will handle.
- The process that Livanta uses to review a Discharge Appeal or Quality of Care concern and how long such reviews take.
- Efforts Livanta is making to address varying Health Literacy Rates

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