



Update On Assisted Living Licensure

On June 3, 2005, the NY Department of Health (DOH) sent letters and applications for adult home licensure to all interested parties in New York State (as readers of *The Monitor* know, one of the basic requirements of the new law is that all providers must have, minimally, adult home licensure). This letter (available on our websites: www.ltccc.org (on the assisted living page) and on www.assisted-living411.org) clearly explains the law and the requirements for licensure. According to the letter, all presently licensed adult homes and enriched housing who want to become assisted living residences (ALR), enhanced assisted living residences (EALR) or special needs assisted living residences (SNALR) must submit the application within 60 days. If they do not want to apply at this time, they must let the Department know. A copy of the application is at: www.health.state.ny.us.

Any unlicensed residence which operates, provides, conducts or offers assisted living or advertises itself as assisted living (or by a similar term) must be licensed as an adult home or enriched housing first. Thus, these residences must not only apply for assisted living licensure but must also apply for adult home/enriched housing licensure. They also have sixty days to apply. The Department has the ability to impose a fine of \$1000 per day for the operation of an adult home without an operating certificate. In addition, operating an adult home without approval from the Department is a class A misdemeanor.

As readers of *The Monitor* know, the new assisted living law also mandated the establishment of a task force to advise the Department of Health on updating

and revising the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence. The Task Force is focusing on: (1) developing affordable assisted living; (2) promoting resident choice and independence; (3) the evaluation tool required by the law; and (4) specific standards and criteria relating to the special needs certificates required by the law. The committee consists of ten members, nine of which have been appointed. LTCCC's Director of Special Projects (formerly Executive Director, Cynthia Rudder) is one of Assembly Speaker Silver's appointees. The first three meetings of the Task Force focused on the following issues: applications for assisted living licensure and certificates for aging-in (enhanced) and marketed dementia units (special needs), model residency agreements, qualifications of staff, staffing and training, and admission and discharge criteria.

LTCCC's subcommittee on assisted living has been discussing these issues in detail with Cynthia Rudder. The subcommittee will work with Cynthia to make sure that the rights of consumers are protected. Any LTCCC member wanting to join this subcommittee that will be working on these issues over the next few months should contact Richard Mollot, Executive Director. □

NY State's Ability to Protect Nursing Home Residents Under Fire

Recently, LTCCC released a major study, *Nursing Home Residents at Risk: Failure of the New York State Nursing Home Survey and Complaint Systems*, which evaluates the effectiveness of the New York State Department of Health (DOH) inspection and complaint systems in comparison to federal surveyors and other states. This report is now on our website

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(www.ltccc.org) for free download. *The New York Times* highlighted the findings of our report on May 16th, 2005. NYS Assembly's Committee on Health, chaired by Richard Gottfried, conducted a hearing on May 19, 2005 addressing the NYS DOH's role in regulating the nursing home system.

Report Findings

All nursing homes giving care to Medicare and/or Medicaid residents must meet certain federal requirements, which are regulated and monitored by DOH. DOH inspects and surveys nursing homes to determine if they are complying with state and federal guidelines, and is mandated to use its enforcement powers to act against those facilities that do not abide by these rules. Recent studies and testimonies from consumers have indicated that New York State's nursing home inspection and complaint system has not been working as it should. As a result, many vulnerable residents have suffered needlessly.

LTCCC's report reviewed deficiency and complaint data for all states received from the Centers for Medicare and Medicaid Services (CMS). In addition, we reviewed differences in survey findings between federal surveyors and NYS surveyors inspecting the same facilities within a few weeks of each other. We found that NYS does not (1) identify as many violations of federal and state rules as other states or as many as they should, (2) categorize deficiencies in terms of resident outcomes as well as other states or as well as they should, and (3) categorize deficiencies as well as other states or as well as they should in terms of how many residents are impacted. In addition, 40 other states had a higher complaint substantiation rate than NYS and although NYS nursing homes have lower staffing levels than the national average, NYS writes almost no deficiencies for insufficient staff.

Identification of Violations: We found that federal surveyors, when inspecting the same home as a NYS survey team, wrote FOUR times the number of deficiencies written by NYS surveyors. In addition, our data indicated that DOH reports fewer deficiencies per facility than 38 other states.

Severity of Deficiencies: In 2003, NYS surveyors rated 11 percent of its facilities with a deficiency as causing actual harm or putting their residents in jeopardy. This rating dropped below the national average of 16.6 percent. DOH also tended to rate the deficiencies it found as less serious than federal surveyors' findings. Specifically, CMS rated 15 percent of deficiencies as serious compared to DOH's rating of only 1 percent.

Scope of Deficiencies: Federal surveyors rate many more deficiencies as being a pattern or widespread, 39 percent, compared to DOH's finding a pattern or widespread in 25 percent. Reporting a rate of 3.84 percent of deficiencies as widespread, NYS also falls below the national average rating of 9.86 percent.



LTCCC staff testifying at hearing.



Shirley Genn testifying at hearing.

Report's Key Recommendations:

According to the findings in our study, DOH is failing in its job to protect the residents of NYS nursing homes. Therefore, the study makes a number of recommendations to help the state improve its protection of consumers. DOH should:

- Develop a better quality assurance system to evaluate survey findings;
- Conduct better training specifically related to identifying deficiencies and appropriately rating severity and scope;
- Focus on the need to cite insufficient staff;
- Help surveyors understand psychosocial and mental harm as well as physical harm; and
- Require more resident and family interviews.

Assembly Hearing

The purpose of the hearing was for the NY Assembly Health Committee, chaired by Assemblyperson Richard Gottfried, to learn about the effectiveness of the surveillance system in New York by allowing consumers and providers to testify about their experiences with DOH's surveillance system. According to the hearing notice, legislators would attempt to address the following issues:

- What is DOH doing to ensure there is an adequate and effective oversight system?
- How effective is DOH in finding problems in nursing homes during its inspections?

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- How effective is DOH in identifying serious and systemic problems?
- What are the obstacles to DOH's ability to improve its effectiveness once problems have been identified?
- How does DOH encourage appropriate citations?
- What is the experience of consumers dealing with the complaint survey system?

LTCCC's Cynthia Rudder and Martin Sobel presented the study's findings and its recommendations at the hearing. A number of consumers and consumer groups also testified eloquently about consumer experiences with DOH. Many of these testimonies can be found on our nursing home website (www.nursing-home411.org).

Providers in attendance, including representatives of Aging in America and New York Association of Homes and Services for the Aging, critiqued the validity of anecdotal evidence from family members and grass roots organizations, the sample size of the surveys and the quality indicators used for measurement. They also stated that the fact that New York State found fewer deficiencies than the national average might indicate that our nursing homes are doing a better job. Chairman Gottfried, however, pressed providers to explain why federal surveyors would find four times the amount of deficiencies as state surveyors if indeed the nursing homes were doing better. □



Tell Your Story: Fill out a questionnaire describing your experiences with the survey or complaint system. Download a copy of the questionnaire from our website, www.ltccc.org, click on the nursing home page link on the left or call for a copy

to be sent to you: 212-385-0355.

Speak Out: Please send an email to policy makers on this issue now. Visit the Long Term Care Citizen Action (www.ltccc.org) and send a message to your leaders, or contact them directly, to voice your concern and urge them to read the report and encourage the state to implement the recommendations.

Staffing Shortages Large Source of Ombudsmen Complaints

LTCCC conducted a survey of the local ombudsman offices across New York State to investigate the degree to which staffing levels play a role in problems in nursing homes. The survey consisted of questions relating to the types of complaints the ombudsmen had received and, in their opinion, whether these complaints resulted from low staffing. The results revealed that complaints of staff shortages are increasing and affect every aspect of a resident's quality of life in a nursing facility, from their medical care to their personal sense of wellbeing.

LTCCC Survey Results

The survey was conducted with the help of the state Long Term Care Ombudsman Program and the state ombudsman association, which distributed questionnaires and encouraged local ombudsman to participate. Fourteen out of the 51 ombudsman offices statewide responded to the survey. Respondents reported that they believed 4233 complaints of 14,110 total (approximately 30%) were related to low staffing. The findings also indicated that half of the respondents believed staffing was getting worse in their county.

Increased Complaints Due to Low Staffing & High Turnover: Low staffing levels lead to higher turnover rates of staff, which often results in a lack of familiarity with the residents and therefore poor care. For example, one respondent stated "Staff must know the residents well. In many homes, this is not happening and it becomes a struggle for them to provide basic care."

Increased Complaints Due to Injuries & Death: Low staffing allows for less time devoted to each patient, which often increases the possibility of mistakes. This poor care can result in accidents leading to unnecessary hospitalization and even death. Complaints include pressure sores, dehydration, incontinence, soiled beds, medication errors, avoidable falls and fractures, and even deaths. Another respondent stated, "I also find that care plans are not always followed because staff is in a hurry, accidents occur because toileting of residents is delayed so residents attempt to toilet themselves."

Increased Complaints Due to Lack of Dignity, Respect & Mental Well-being: Due to shortages of staff, quality

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ENFORCEMENT ACTIONS AGAINST NURSING HOMES¹

STATE ENFORCEMENT ACTIONS AGAINST NURSING HOMES: 3/15/05-6/15/05

The State Fined 17 Nursing Homes

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT
Andrew Michaud Nursing Home	Fulton	11/13/03, 10/8/04	3,000
Bishop Charles Waldo MacLean Episcopal Church Home	Far Rockaway	2/10/04	6,000
Cobble Hill Health Center	Brooklyn, NY	6/6/01, 4/22/02	2,000
Greenpark Care Center	Brooklyn, NY	5/14/04	4,000
Jennifer Matthews Nursing and Rehab Center	Rochester	6/14/00, 11/17/00, 9/14/01, 1/23/01, 9/6/02	11,000
Jennifer Matthews Nursing and Rehab Center	Rochester	4/30/03	4,000
Lake Shore Nursing Home, Inc.	Irving	12/9/04	2,000
Mercy Health Care Center	Tupper Lake	10/24/03	4,000
Northeast Center for Special Care	Lake Katrine	5/21/03	4,000
Northeast Center for Special Care	Lake Katrine	7/27/01, 10/19/01	16,000
Northeast Center for Special Care	Lake Katrine	4/24/02	4,000
Northwoods Rehab ECC of Cortland	Cortland	1/4/05	1,000
Our Lady of Consolation Geriatric Care Center	West Islip	8/19/04	1,000
Sheridan Manor	Tonawanda	5/14/03	4,000
St. Johnland Nursery Center	Kings Park	2/20/04	3,000
United Presbyterian Home at Syosset, Inc.	Syosset	10/23/02	1,000
The Waters of Gasport	Gasport	12/31/03	1,000
Westmount Health Inc.	Queensbury	4/3/03	1,000

¹ As reported by the Department by Health (DOH), and The Center for Medicare and Medicaid Services (CMS). These lists will be posted on LTCCC's website every three months, two to three weeks after the end date listed above. If you want to know why a facility was cited and/or fined by DOH, you can get a copy of the Statement of Deficiencies (SOD) from the Department of Health. You will be charged \$.25 a page. Call FOIL Officer - 518-474-8734 or e-mail - nhinfo@health.state.ny.us. Ask the Department to let you know how much it will cost to make sure that you can afford the amount. If you cannot, ask if you can look at the SOD in your regional office. If you want to get a copy of the CMS citations, call FOIL Officer - 212-616-2318.

FEDERAL ENFORCEMENT ACTIONS AGAINST NURSING HOMES: 3/16/05-6/15/05

The Federal Government Imposed Civil Money Penalties (CMPs)³ On 2 Nursing Homes

NAME OF HOME	LOCATION	DATE	AMOUNT
Sheridan Manor	Tonawanda	3/17/05	\$34,125
Ocean Promenade	Rockaway Park	4/5/05	\$40,625

³ Civil Money Penalties (CMPs) - States can collect CMP funds from nursing homes that have failed to maintain compliance with Federal conditions of participation in Medicare and Medicaid programs. At this time, New York State does not collect such funds because we have only recently changed a law that would have put us in violation of federal law. The state will begin imposing these in the near future. These CMPs are now Due and Payable to the federal government.

In addition to the actions listed below, the following nursing homes are also subject to a fine. If the nursing home was found, at the time of the survey, to have given substandard quality of care (SQC) and/or to have put residents in immediate jeopardy (IJ), the most serious level of deficiencies, or to have repeated deficiencies that have caused isolated resident harm (G) it is noted in the third column. Double G means the home has received G's in two consecutive surveys.

The State Took Other Action Against 10 Nursing Homes				
NAME OF HOME	LOCATION	IJ, SQC or G	SURVEY DATE	ACTIONS ²
Arbor Hill Care Center	Rochester	IJ/SQC	3/22/05	DOPNA, POC, In-Service, State Monitor
Auburn Nursing Home	Auburn	GG	2/24/05	DOPNA, POC, In-Service
Franklin County NH	Malone	GG	4/28/05	DOPNA, POC, In-Service
Genesee County NH	Batavia	IJ/SQC	5/26/05	DOPNA, POC, In-Service, State Monitor
Heritage Health Care Center	Utica	GG	3/24/05	DOPNA, POC, In-Service
Lutheran Augustana	Brooklyn, NY	IJ/SQC	6/7/05	DOPNA, POC, In-Service, State Monitor
Mercy Health and Rehab	Auburn	GG	3/17/05	DOPNA, POC, In-Service, State Monitor
The Shore Winds	Rochester	IJ/SQC	5/27/05	DOPNA, POC, In-Service, State Monitor
Terrence Cardinal Cooke	NYC	IJ/SQC	4/19/05	DOPNA, POC, In-Service, State Monitor
Vivian Teal Howard	Syracuse	IJ/SQC	5/18/05	DOPNA, POC

² Denial of Payments for New Admissions (DoPNA): Facility will not be paid for any new Medicaid or Medicare residents until correction; Directed Plan Of Correction (POC): A plan that is developed by the State or the Federal regional office to require a facility to take action within specified timeframes. In New York State the facility is directed to analyze the reasons for the deficiencies and identify steps to correct the problems and ways to measure whether its efforts are successful; In-Service Training: State directs in-service training for staff; the facility needs to go outside for help; State Monitoring: State sends in a monitor to oversee correction; Termination means the facility can no longer receive reimbursement for Medicaid and Medicare residents.

Large NYC Nursing Home Closes

Although there had been rumors of a possible closure for some months, when the public announcement was made that the Rehab Institute of New York (previously known as Florence Nightingale Nursing Home) was closing the community was shocked and upset. The facility is one of the largest in the city with a capacity of 561 beds and is connected to an adult day care facility.

The home made the public announcement on May 17th and let it be known that they planned on closing in mid-July. The Placement Interest Form (PIF) sent to family members requested that residents pick five facilities to which they would want to be transferred and a list of all nursing homes in the city was provided

for reference. The home asked that the PIF be returned ‘as soon as possible.’ Even though a closure plan had not been submitted to and approved by the NYS Department of Health (DOH) and the facility did not give a legally satisfactory 30 day notice (as required by NYS law), the facility held meetings advising residents and caregivers that the home would be closing and that they should prepare to transfer. Residents and caregivers began to rush to find a placement.

Friends and Relatives of Institutionalized Aged (FRIA, a member of the Coalition) mobilized to help residents and caregivers cope better with this dilemma.

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Staffing Shortages...

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of care has diminished causing many residents to feel like a burden. "Residents in many cases are waiting too long for basic needs such as going to the bathroom." Complaints include reports of increased depression and anxiety, wandering, restraint use, psychotropic drug use, lack of cleanliness, abuse and neglect.

CMS Quality of Life Study

Similar studies have supported this correlation between staff and resident interactions and the resident's quality of life (QOL). In a CMS-funded study, *Measures, Indicators, and Improvement of Quality of Life in Nursing Homes*, principal investigator Rosalie A. Kane, PhD, surveyed how policies, practices, and staffing patterns affected QOL in nursing homes in six states (CA, FL, MN, NJ, NY, and MD). Indicators of QOL included: comfort, security, meaningful activity, relationships, enjoyment, functional competence, autonomy, dignity, privacy, individuality, and spiritual well-being. Researchers found that some low QOL scores resulted from areas related to staff and resident interaction – or lack thereof – including: staff talking over resident's head, staff moving resident's wheelchair without asking or explaining, resident expressing displeasure, resident calling out in distress and being ignored, and resident being disengaged.

The study acknowledges that these attributes must be thoroughly defined before more research and comparisons can be conducted. To read the study, go to www.cms.hhs.gov/quality/nhqi/QualityOfLife.asp. □

WHAT YOU CAN DO!

Speak Out: Visit the Long Term Care Citizen Action (www.ltccc.org) and take action to improve staffing such as the action to support the nursing home diversion act.

Tell Your Story: Have you, a family member, or friend ever encountered any problems related to care in a nursing home due to poor staffing levels? YOU can make a difference and help improve conditions by participating in our "Tell My Story" campaign. LTCCC collects stories about individual experiences and uses them to inform policy makers and the public about the impact of low staffing on real people. Visit www.ltccc.org, email info@ltccc.org, or call 212-385-0355 for more information.

Nursing Home Closes...

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FRIA distributed flyers outside the home advising residents of their rights. In addition, FRIA contacted many local politicians in an attempt to delay the closure.

On June 7th, the New York City Council held a hearing, to address concerns about the nursing home closure. FRIA, LTCCC, CIAD, the Alzheimer's Association, CIDNY, 1199 Union representatives and representatives of the providers testified at the hearings. Among other things, the testimony by consumers called attention to the serious risks of 'transfer trauma' associated with this kind of hurried and poorly planned transition for the elderly.

In early June DOH approved the submitted closure plan. The notice to residents and caregivers cautioned that Manhattan facilities were largely full and that facilities outside Manhattan should now be selected for resident transfer.

The Rehab Institute closing comes on the heels of the announcement that Menorah Home and Hospital for the Aged and Infirm in Brooklyn is also closing. The home is still in the process of transitioning residents to other facilities.

The closure of these two facilities raises important public policy questions as to how to ensure there will be sufficient inventory of nursing home beds to accommodate the aging population in the future.

For more information on this issue contact FRIA at 212-732-4455. □ *This article was written by Amy Paul, Executive Director, FRIA.*

LTCCC Welcomes New Staff

LTCCC is pleased to announce that Sara Rosenberg has joined our staff as LTCCC's new Executive Assistant/Office Manager. Sara has over ten years of experience in office management and administration and holds a Bachelor of



Science degree from Drake University in Des Moines, Iowa. She can be contacted by calling the main line for the Coalition – 212-385-0355 – or by email at sara@ltccc.org. Please join us in welcoming her to the Coalition! □

New York Legislative Round-Up

The New York State Legislature finished its session in June. For the first time in many years Albany passed a budget on time, leaving state leaders plenty of time to focus on substantive issues. Unfortunately, little was done to protect nursing home residents and other long term care consumers in that time. Reports from around the state indicated that many nursing home residents suffered needlessly in the past year, faced with poor treatment, inhumane conditions and neglect. Yet leaders in Albany continued with “business as usual,” sending a clear signal that the most vulnerable and frail among us are not a powerful enough constituency to merit their attention.

Where is the outrage? How can we allow the elderly and disabled in need to be pushed to the back burner yet again?!

Following is an overview of some of the key legislation LTCCC was involved in this year:

Staffing Legislation

Readers of The Monitor know that staffing levels is the most critical issue for the safety and dignity of nursing home residents.

“Safe Staffing” bills (A3263/S4572) in both the Assembly and Senate would establish minimum staffing levels throughout the day for nursing homes. In the Assembly, the bill has many sponsors, but has essentially stagnated for years. In the Senate, the bill does not even have any sponsors.

Nursing Home Diversion Act (A5347): This stop-gap emergency measure – which would require nursing homes with severely low staffing to divert incoming residents to other facilities in the area (just as hospital emergency rooms divert incoming ambulances when they cannot safely care for additional patients) failed to pass into law this session. As a result, nursing homes are free to take in – and get paid for – as many people as they want, no matter how low their staffing is or the potential for resident harm and neglect. The NHDA was reintroduced in the Assembly this year by Assemblyman Richard Gottfried and



increased in sponsorship to 30 Assembly members. However, this important bill continued to be un-introduced in the Senate.

Other Important Legislation

Family Healthcare Decision Act (A5406/S5807): This bill would establish procedures for family members, surrogates and others close to an incapacitated patient to make health care decisions on behalf of patients unable to decide about treatment for themselves. The bill came close to passage at the end of session but failed. [It is possible, as of this writing, that the legislature might readdress the bill when it returns at the end of July.]

Bill to Increase Personal Needs Allowance (A1640/S2608): The Personal Needs Allowance (PNA) for residents of nursing homes in New York State who are on Medicaid has not been increased in over 18 years. At that time the allowance was increased to \$50, which doesn't go very far when one needs to buy clothing and incidentals, pay for t.v. and telephone services and cover other personal expenses. This bill could make life much more pleasant for the people who depend upon the PNA; unfortunately, however, the legislature failed to pass PNA reform as well. □

WHAT YOU CAN DO!

Let your representatives in Albany and Washington know that you are concerned about nursing home residents.

Visit the Long Term Care Citizen Action Center at www.ltccc.org and send a message to Albany and/or Washington.

Call or write a letter to your representatives (see Action Alert Mailing List on back page).

Visit your representative at his or her office.

IT IS CRITICAL THAT LEADERS HEAR FROM PEOPLE LIKE YOU THAT THESE ISSUES ARE IMPORTANT.

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E-Mail: Go to:
<http://www.state.ny.us/governor>

Commissioner Antonia C. Novello
NY Department of Health
Tower Building
Empire State Plaza
Albany, NY 12237

New York State Assembly:

To write to your representative in the Assembly, address your letters to him or her at NYS Assembly, Albany, NY 12248. The general switchboard for the Assembly is 518-455-4100.

In addition to your personal representative, it is important that the following leaders hear from you:

Action Alert Mailing List

Assemblymember Sheldon Silver
Speaker
speaker@assembly.state.ny.us

Assemblymember Richard N. Gottfried
Chair, Committee on Health
gottfrr@assembly.state.ny.us

Assemblymember Steve Englebright
Chair, Committee on Aging
engles@assembly.state.ny.us

New York State Senate:

To write to your Senator, address your letters to him or her at NYS Senate, Albany, NY 12247. The general switchboard for the Senate is 518-455-2800.

In addition to your personal senator, it is important that the following leaders hear from you:
Senator Joseph Bruno
Majority Leader
bruno@senate.state.ny.us

Senator Martin Golden
Chair, Committee on Aging
golden@senate.state.ny.us

Senator Kemp Hannon
Chair, Committee on Health
hannon@senate.state.ny.us

To obtain the names of your personal state government representatives, go to The Citizen Action Center on our website: www.ltccc.org.

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