

MONITOR

Working to improve long term care through research, education & advocacy

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Federal News: Head of CMS Steps Down; Agency Faces Drastic Cuts in 2012

CMS Administrator Steps Down

Dr. Donald Berwick, who President Obama appointed to head the Centers for Medicare and Medicaid Services (CMS) in early 2010, stepped down as the Agency's Administrator on December 2, 2011. As CMS Administrator, Dr. Berwick oversaw Medicare, Medicaid and CHIP (Children's Health Insurance Program) of which approximately 1/3 of all Americans are beneficiaries.

In terms of long term care (LTC), CMS has ultimate responsibility for ensuring that nursing homes that participate in the Medicare and/or Medicaid programs – virtually all nursing homes – provide good care and quality of life. CMS is also responsible for regulation of care provided to Medicaid beneficiaries in other settings (such as residents in New York's Assisted Living Program and people receiving services in their homes), for approving states' plans to provide care in the least restrictive setting possible (as mandated under the Supreme Court's decision in *Olmstead*) and for engaging providers in quality improvement.

Dr. Berwick came under fire from Republicans during his confirmation hearing and, as a result, his appointment was never confirmed by the Senate. He was a "recess appointment" of the President and his terms was set to expire later in the month. According to Joe Nocera writing in *The New York Times*,



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New Adult Home & Assisted Living Legislation Introduced

Richard N. Gottfried, chair of the New York State Assembly Committee on Health, has introduced three new bills to implement important improvements and safeguards in assisted living in New York State. The Long Term Care Community Coalition has been working with Assembly Member Gottfried since June to develop these bills and has presented them to several leaders in the Assembly and Senate.

A8861: Relates to the adult care facilities training program

Direct care staff in adult homes are not currently required to complete a uniform training program, despite providing significant resident care. Training guidelines issued by the Department of Health (DOH) have not been changed in many years. This lack of adequate training leads to mistakes, including serious errors that can endanger the health of residents. A8861 would create a mandatory 40-hour training course for direct care staff in adult homes. Staff would receive both classroom and hands-on instruction and undergo some basic training in how to safely assist residents with medication.

A8862: Relates to penalties for violations relating to residential care programs for adults

Currently, the maximum fine for violations is only \$1,000, the same as it was in 1977, and facilities

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Dr. Berwick was “the most qualified person in the country to run Medicare at this critical juncture, and the fact that he is no longer in the job is the country’s loss.”

LTCCC staff met with Dr. Berwick twice during his tenure, once to present our findings and recommendations re. government monitoring and oversight of nursing home care (see our report at: <http://www.nursinghome411.org/?articleid=10003>) and a second time to discuss the silent epidemic of inappropriate antipsychotic drug use in nursing homes (see LTCCC’s statement to the U.S. Senate hearing at <http://www.nursinghome411.org/?articleid=10037>, or other hearing testimony at http://aging.senate.gov/hearing_detail.cfm?id=335005&). Both times we found Dr. Berwick to be genuinely interested and engaged in the issues we presented. Following our meeting with him on antipsychotic drug use, Dr. Berwick held a meeting with representatives of the provider industry and asked them to provide him with a plan of the steps they will take to reduce unnecessary antipsychotic drug use in U.S. nursing homes. He also made reducing drugging with antipsychotics a priority for CMS for 2012.

CMS is expected to launch its major national initiative to combat nontherapeutic antipsychotic drug use on April 29, which will be broadcast via the Web (to find out how to tune in, see CMS’s website, www.cms.gov, follow us on Twitter at #LTCconsumer, or join our NY State LTC Listserv by emailing

info@ltccc.org). Since our last meeting with Dr. Berwick, LTCCC, Consumer Voice, Center for Medicare Advocacy and advocates from California and Virginia have been meeting regularly with CMS staff to discuss our priorities and recommendations for CMS action on this issue and advocate for stronger enforcement of the Nursing Home Reform Law’s implementing regulations, which prohibit the use of chemical restraints and provide other protections which, if appropriately monitored and enforced by the states and CMS, would prevent the unnecessary drugging of our nursing home residents.

“...the most qualified person
in the country...”

CMS Faces Drastic Cuts in 2012 Budget

The federal budget for the 2012 fiscal year (October 2011 – September 2012), which passed Congress and was signed into law at the end of December 2011, imposed a cut to CMS of approximately 12% from the level requested by President Obama. This cut is alarming, especially given that the agency has faced significant underfunding in recent years (see, for instance, LTCCC’s report on government oversight of nursing home care referenced above, which noted that CMS regional surveyor staffing levels had decreased by approximately 50%) and the fact that CMS (and the nation) are facing numerous new challenges that require increased, rather than decreased, monitoring and oversight.

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LONG TERM CARE COMMUNITY COALITION

Working to improve long term care through research, education & advocacy

The Monitor is published quarterly.
SPRING 2012 • Volume 60

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This newsletter is made possible through funding by the following foundations:
FJC-Foundation of Philanthropic Funds • Robert Sterling Clark Foundation
Layout and design by www.pattiedesign.com

Medicaid Redesign: Major Changes in Long Term Care

For the first time, New York State is not just cutting Medicaid rates to long term care providers; it is implementing major changes to the very structure of the Medicaid program that will significantly affect long term care recipients.

Mandatory Enrollment

If the federal government approves (and it is expected to), beginning with New York City residents in April, 2012, enrollment in managed care plans will be mandatory for most adult Medicaid enrollees who need home and community based long-term care services for more than 120 days. Mandatory enrollment will expand throughout the rest of the state as plans become available. The state expects to enroll about 2000 individuals a month. To see a draft of the enrollment plan, go to: http://www.health.ny.gov/health_care/medicaid/redesign/docs/201111_draft_enrollment_plan.pdf.

In addition, in October 2012, Medicaid nursing home residents will be required to enroll in a managed care plan.

Payment Changes

In addition to cuts across the board, housekeeping services will be kept to a specific amount; Certified Home Health Agencies will be subject to an agency specific amount; administrative rates will be cut; and living wages for workers will eventually be mandated at 100 percent. In addition, since nursing home placement will be a covered service and payment for nursing home care will be part of the rate, the plans will be reimbursing the nursing homes directly for their care of Medicaid residents. Within three to four years, New York State will not be paying nursing homes directly for care

of Medicaid residents.

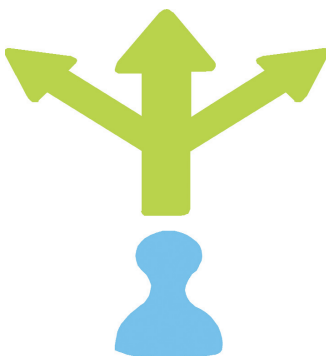
Medicaid Redesign Team

The Medicaid Redesign Team, a committee created by the Governor, has been tasked to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 fiscal year. In Phase 1, the MRT developed a package of reform
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Department of Health In Midst of Reorganization

There are major changes going on at DOH. The Office of Long Term Care, under the directorship of Mark Kissinger, is no more. This office, which handled nursing home, adult home, home care and assisted living surveillance and enforcement as well as licensure applications has been broken up and moved to other offices. The surveillance and enforcement staff have moved to the Office of Health Systems Management under the directorship of Keith Servis. This includes Mary Hart (overseeing adult homes and assisted living), Jacki Pappalardi and Val



Deetz (overseeing nursing homes). Mark Kissinger and Carla Williams (who was assistant director of the Office of Long Term Care) have moved to the Office of Health Insurance Programs under the directorship of Jason Helgerson, where they will focus on issues related to the Medicaid Redesign Team (see related article). Thus, all issues related to managed long term care resides within this office. This office is also focused on licensure applications such as those for licensed assisted living. As things continue to change, we will keep you informed. □

Challenges for Long Term Care

The LTC challenges include: (1) increasing move to home and community-based services, which means that states' plans must be approved and monitored, and quality, safety and dignity for consumers must be assured in a growing number of care settings; (2) many important provisions in the Affordable Care Act require engagement and action by CMS, including the requirement that nursing home staffing information reported to the public be based on actual personnel data (not just self-reported by the facilities), the use of Civil Money Penalty (CMP) funds must now be approved by CMS (see <http://www.nursinghome411.org/articles/?category=civilpenalties> for more information on what CMPs are and how they are important to improve nursing home care), nursing home survey reports are required to be made public, suspicion of crime in nursing homes now has strict and comprehensive reporting requirements, etc...; and (3) important changes to improve nursing home care have been initiated in recent years that will be meaningless if they do not receive adequate CMS engagement. These include implementation of the critical "guidance" that CMS put out in 2009 on nursing home resident dignity and autonomy (see

<http://www.nursinghome411.org/?articleid=10007>) and implementation of the Quality Indicator Survey, which is expected to improve the nursing home inspection process, including making it more responsive to the input of a nursing home's residents and their representatives.

LTCCC is working with the Consumer Voice, Center for Medicare Advocacy, California Advocates for Nursing Home Reform and the Legal Aid Justice Center of Virginia to engage CMS regarding priorities for protecting consumers.



Visit our Citizen Action Center at <http://bit.ly/supportcms> for phone numbers to call President Obama and your representatives in Congress and talking points to let them know that individuals who depend on nursing home care and other services supported by Medicaid & Medicare deserve to

be protected from abuse and neglect. Current funding cuts to CMS put LTC consumers at risk. They can be costly to all Americans, if providers are not monitored properly and held accountable when they fail to use taxpayer monies appropriately. □

Please Make a Donation Today

As you can see from this newsletter, our past newsletters, our e-newsletters and our website, we have been very busy protecting elderly and disabled people who rely on long term care this year. **Now, we need your help.** Please make a tax-deductible donation today to support our work!

Make out a check to Long Term Care Community Coalition and send it to LTCCC, 242 West 30th Street, Suite 306, New York, NY 10001 or donate online at: <http://bit.ly/supportLTCCC>. **In these difficult times, we truly need your support & generosity today to continue our work in 2012 and beyond.** Thank you! □



Changes in Nursing Home Medicaid Reimbursement

LTCCC Proposals Accepted!

The state is changing its system for reimbursing nursing homes for care of their Medicaid residents. Instead of paying facilities their costs within a corridor with a floor and ceiling (i.e., a facility that spends below a floor receives the floor as its rate, facilities that spend above a ceiling receive the ceiling rate and facilities that spend within the corridor receive their costs), a facility will now receive only an average statewide price within peer groupings (i.e., hospital based; over 300 beds). The price will be adjusted by one of 16 different wage equalization factors. It is assumed that wages are different depending on your geographical location. While LTCCC is disappointed that the average pricing is going into effect for both direct and indirect care costs, we are happy that the state accepted our proposals around quality pools and the need to document expenditures for any additions to the rates. Thanks to all of you who have worked with us on these issues over the last few years.

Although this system will be phased in over time, by using average prices for direct care rates, those facilities now spending above the average will likely be motivated to cut staff (whose costs make up most of the direct care costs) in order not to lose money; facilities that have historically had less staff and thus are now spending less than the average will have a windfall. We are concerned about the care at those facilities cutting staff and feel that the other facilities spending below the floor should not be rewarded for keeping their staffing low. We have urged the Department to monitor those facilities cutting staff as well as those facilities making a windfall.

\$100 million to be set aside for quality.



One of LTCCC's proposals that have been accepted by the state relates to add-ons to the rate. Currently, nursing homes are paid extra to admit bariatric (\$17 a day), dementia (\$8) and brain-injured residents (\$36).

They are not currently required to spend any of this additional money on the care of these residents. We have urged the Department to require documentation that these additional funds have been spent on the care of these residents as well as monitoring of outcomes. We are pleased that these requirements have been incorporated into the final system.

In addition, as readers of *The Monitor* know, one of LTCCC's major initiatives has been to urge the state to begin reimbursing facilities based upon quality outcomes. We are pleased that the state has accepted this

idea and it will be part of the new system. One hundred million dollars of the pool of funds for reimbursing facilities will be put aside for distribution based upon quality. LTCCC has been asked to be part of a group developing the criteria for the distribution. In 2012 the state will develop criteria. After development of indicators and benchmarks, in year one, facilities will receive the quality funds (\$50 million) for "reporting" on the criteria and in year two facilities will receive funds (\$50 million) for superior performance on these criteria. We have commented that facilities should not

receive funds for merely reporting on quality. However, state staff have indicated that the criteria chosen, such as possibly rehospitalizations, will not be easy to report, thus paying them to report makes sense. We shall see. We will keep readers of *The Monitor* and the LTC E-Newsletter up to date as the state moves forward. □



Quarterly Enforcement Actions Against Nursing Homes

Selected Enforcement Actions of NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 6 Nursing Home Personnel 9/16/11 - 12/15/11

Nursing Home	Location	Defendant	Narrative	Sentence
Beth Abraham Health Services	Bronx	Bain, Dorothy, Registered Nurse	A mentally and physically disabled resident, with a propensity to wander, eloped from the facility while under the care of RN Bain. The facility's video surveillance revealed that the resident was not in the facility during the six hours she documented caring for him and administering medications.	10/17/2011: One-Year Conditional Discharge with the condition being that she surrenders her license and refrain from working in the health care field for the duration of the CD.
Beth Abraham Health Services	Bronx	Williams, Vicky, Certified Nurse Aide	A mentally and physically disabled resident, with a propensity to wander, eloped from the facility while under the care of CNA Williams. The facility's video surveillance revealed that the resident was not in the facility during the 6 hours she documented caring for him.	10/31/2011: One-Year Conditional Discharge with the condition being that she relinquish her certificate and refrain from working in the healthcare field during the duration of the Conditional Discharge.
Loretto Health and Rehabilitation Center	Onondaga	Riggall, Mindie, Certified Nurse Aide	CNA stole personal property from multiple residents of the nursing home.	10/26/2011: One-Year Conditional Discharge, Restitution of \$72 and must surrender her CNA certification within 30 days.
Northwoods Rehabilitation and ECF-Troy	Rensselaer	Mayo, Leslie, Licensed Practical Nurse	Hidden Camera Case - the defendant failed to treat bedsores with anti-bacterial medications, but documented Treatment and Medication Administration Records to reflect that she did.	10/12/2011: Five-years Probation; surcharges of \$375 and license was surrendered.
Northwoods Rehabilitation and ECF-Troy	Rensselaer	Sousie, Lisa, Licensed Practical Nurse	Hidden Camera Case - the defendant failed to administer medications, including anti-coagulants and vitamins, and failed to treat bedsores with anti-bacterial medications, but documented Treatment and Medication Administration Records to reflect that she did.	10/12/2011: Three-years Probation; surcharges of \$400 and license was suspended.
Western NYS Veteran's Home	Genesee	Lawrence, Kristina, Certified Nurse Aide	Lawrence falsely documented on the Nourishment Monitoring Sheets of diabetic residents that she had provided the nourishment when other employees of the home found the snacks in either the garbage or unopened in the refrigerators.	10/6/2011: Three-years Probation, surcharge of \$200 and was also ordered to write a letter of apology.

Federal Civil Money Penalties¹ Against 14 Nursing Homes: 9/1/11 – 11/30/11²

Name Of Home	Location	Survey Date	Amount
Blossom North Nursing & Rehabilitation Center	Rochester	9/14/11	\$11,765.00 ³
Blossom South Nursing & Rehabilitation Center	Rochester	3/25/11 & 7/12/11	\$14,267.50 ³
Bridgewater Center for Rehabilitation and Nursing	Binghamton	7/6/11	\$3,575.00 ³
Highbridge Woodycrest Center	Bronx	8/22/11	\$77,382.50 ³
Indian River Rehabilitation and Nursing Center	Granville	2/23/11	\$4,875.00 ³
Livingston Hills Nursing & Rehabilitation Center	Livingston	7/6/11	\$36,900.00
M.M. Ewing Continuing Care Center	Canandaigua	6/24/11	\$2,925.00 ³
Parker Jewish Institute for Health Care & Rehabilitation	Queens	7/13/11	\$4,875.00 ³
Pathways Nursing and Rehabilitation Center	Niskayuna	5/4/11	\$975.00 ³
The Pines at Utica Center for Nursing and Rehabilitation	Utica	7/27/11	\$16,022.50 ³
Ramapo Manor Center for Rehabilitation and Nursing	Suffern	9/6/11	\$1,300.00 ³
St. Camillus Residential Health Care Facility	Syracuse	6/10/11	\$3,250.00 ³
Van Duyn Home and Hospital	Syracuse	6/21/11	\$15,600.00 ³
Waterfront Health Care Center	Buffalo	9/27/11	\$1,625.00 ³

¹Civil Money Penalties (CMPs) – a federal sanction against nursing homes that fail to comply with quality care requirements.

²As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2439.

³Amount reflects a 35% reduction as the facility waived its right to a hearing as permitted under law. Original fine was 35% higher.



Quarterly Enforcement Actions Against Nursing Homes

NY State Fined 14 Nursing Homes: 9/16/11 – 12/15/11¹

Name Of Home	Location	Date Of Survey	Amount ²
Charles T. Sitrin Health Care Center Inc.	New Hartford	8/24/10	\$6,000
Countryside Care Center	Delhi	6/17/10	\$6,000
Heritage Commons Residential Health Care	Ticonderoga	6/1/10	\$6,000
James Square Health & Rehabilitation Centre	Syracuse	10/6/10	\$10,000
John J. Foley Skilled Nursing Fac	Yaphank	5/6/09	\$6,000
Keser Nursing & Rehabilitation Center, Inc.	Brooklyn	4/29/10	\$6,000
Marcus Garvey Nursing Home Company Inc.	Brooklyn	6/14/10 and 11/30/10	\$10,000
Oneida Healthcare Center	Oneida	4/2/10	\$8,000
Otsego Manor	Cooperstown	4/30/10	\$6,000
Queens Nassau Rehabilitation & Nursing Center	Queens	3/19/10	\$20,000
River Valley Care Center Inc.	Poughkeepsie	9/13/10	\$12,000
Rivington House-The Nicholas A. Rango Health Care Facility	Manhattan	7/30/10	\$10,000
Sunrise Nursing Home	Oswego	2/5/10	\$4,000
Terence Cardinal Cooke Health Care Center	Manhattan	4/9/10	\$2,000

¹As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL Officer at 518-474-8734 or e-mail – foil@health.state.ny.us.

²Under state law nursing homes can be fined up to \$2,000 per deficiency. These fines may be increased to \$5,000 if the same violation is repeated within twelve months and the violations were a serious threat to health and safety. These fines may also be increased up to \$10,000 if the violation directly results in serious physical harm.

NY State Took Other Action Against 8 Nursing Homes 9/16/11 - 12/15/11¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Absolut Center for Nursing and Rehabilitation at Endicott	Endicott	IJ	11/21/11	CMP, Monitor, DPOC, Inservice, DOPNA
Blossom North Nursing and Rehab Center ⁴	Rochester	IJ/SQC	9/14/11	CMP, Monitor, DPOC, Inservice, DOPNA
Countryside Care Center ⁴	Delhi	IJ/SQC	9/7/11	CMP, Monitor, DOPNA
Countryside Care Center	Delhi	IJ/SQC	9/19/11	CMP, DOPNA
Fiddlers Green Manor Nursing Home	Springville	IJ/SQC	9/12/11	CMP, DPOC, DOPNA
Rosewood Heights Health Center	Syracuse	SQC	10/14/11	CMP, DPOC, Inservice, DOPNA
Rutland Nursing Home ⁴	Brooklyn	IJ/SQC	9/1/11	CMP, DPOC,
Van Duyn Home & Hospital	Syracuse	IJ/SQC	9/27/11	CMP, Monitor, DOPNA
Van Duyn Home & Hospital	Syracuse	IJ/SQC	10/3/11	CMP, Monitor, DPOC, Inservice, DOPNA
Woodmere Rehabilitation and Health Care Center	Woodmere	IJ/SQC	12/1/11	CMP, Monitor, DPOC, Inservice, DOPNA

¹As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL officer at 518-474-8734 or e-mail – foil@health.state.ny.us.

²Immediate jeopardy (IJ), and substandard quality of care (SQC): The most serious level of deficiency causing harm; GG: Deficiencies that have caused isolated resident harm on two consecutive surveys; Continued Deficiency (Cont'd Def): Deficiencies continue at post survey inspection and/or new deficiencies found.

³Civil Money Penalty (CMP): State recommends the fine to CMS; State Monitoring: State survey staff is onsite in the facility to monitor and oversee correction; Directed Plan Of Correction (DPOC): A corrective action plan that is developed by the State or CMS, and requires a facility to take action within specified timeframes. In New York State, the facility is directed to determine the root cause of the deficiency, identify and implement steps to correct the problem, and evaluate whether corrective measures are successful; In-Service Training: State directs in-service training for staff; which must be provided by a consultant who is not affiliated with the facility; Denial of Payment for New Admissions (DoPNA): Facility is not paid for any new Medicaid or Medicare residents until correction of deficiencies is achieved.

⁴Listed in last edition of The Monitor. New information in Actions added by DOH for this report.



Quarterly Enforcement Actions Against Nursing Homes

Selected Administrative Actions By The NYS Office of Medicaid Inspector General

Action Taken Against Nursing Home Personnel 9/15/11 - 12/15/11

OMIG's mission is to enhance the integrity of the New York State Medicaid program by preventing and detecting fraudulent, abusive and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting high quality patient care. An important part of the mission is to protect vulnerable New York State citizens residing in long term care facilities by ensuring that those responsible for care do not engage in abusive and fraudulent activities. OMIG makes certain Medicaid providers are properly vetted through the enrollment process; investigates allegations of fraud and abuse within long term care facilities; and, excludes providers who have abused their positions as caregivers. In addition to excluding providers based on its own investigations, the OMIG makes determinations to exclude based on other agency actions, including the State Education Department (SED), the Medicaid Fraud Control Unit (MFCU), and Health and Human Services (HHS). Based on various federal, state agency and court actions in response to a given provider's behavior, a single provider can be excluded multiple times under New York State regulations. The attached chart highlights providers who were excluded this quarter from the Medicaid program based on other agencies actions.

Nursing Home	Defendant	Location	Narrative	OMIG Exclusions ¹
Clinton County Nursing Home	Andrews, Dawn, CNA	Plattsburgh	In violation of an elderly resident's care plan, Ms. Andrews left a 98-year-old patient unattended during toileting. The resident fell, sustained a fractured hip, and died from these injuries four days later. This was not an isolated incident, as the day before the fall, Ms. Andrews failed to activate the same resident's chair alarm as required, and the resident was later discovered on the floor, having fallen from the chair.	Based on HHS Exclusion 9/20/2011 Based on MFCU Conviction 3/17/2010
Daleview Care Center	Poulard, Dieudonne, CNA	Deer Park	Ms. Poulard gave a false statement regarding a fall sustained by a resident which led to a fractured hip. Ms. Poulard lied to administrators saying she had no knowledge of the fall, when in fact she had participated in giving care to the resident after the apparent fall.	Based on MFCU Conviction 9/19/2011 Based on MFCU Indictment 3/27/2011
Fairchild Manor Nursing Home	Maczo, Serena, LPN	Lewiston	Ms. Maczo stole seven Hydrocodone pills from the nursing home's narcotics cabinet for her personal use.	Based on State Education Department Consent Order ² 11/29/2011 Based on HHS Exclusion 4/20/2011 Based on MFCU Conviction 8/15/2010

¹Exclusion means that no payments will be made to or on behalf of any person for the medical care, services or supplies furnished by or under the supervision of the defendant during a period of exclusion or in violation of any condition of participation in the program. Additionally, any person who is excluded from the program cannot be involved in any activity relating to furnishing medical care, services or supplies to recipients of Medicaid for which claims are submitted to the program, or relating to claiming or receiving payment for medical care, services or supplies during the period. OMIG may take a variety of exclusion actions against a provider based upon: indictments; convictions; consent orders or HHS exclusion.

²An agreement between the State Education Department Office of Professional Discipline, Board of Regents, Committee of the Professions and the licensee who admits guilt to at least one of the alleged acts of misconduct. The Consent Order provides the details of the misconduct and the assigned penalties.



Quarterly Enforcement Actions Against Nursing Homes

Selected Administrative Actions By The NYS Office of Medicaid Inspector General

Action Taken Against Nursing Home Personnel 9/15/11 - 12/15/11 (continued)

Nursing Home	Defendant	Location	Narrative	OMIG Exclusions ¹
Finger Lakes Center for Living	Peterson, Brandy, CNA	Auburn	After another aide tipped a resident over in his wheelchair while transferring the gentleman without required assistance, Ms. Patterson assisted the aide in picking the gentleman up. Even though the resident had bumped his head and torn the skin on his arm, Ms. Patterson and the other aide instructed the resident and his wife not to tell anyone what happened.	Based on HHS 9/20/2011 Based on MFCU Conviction 4/03/2011 Based on MFCU Indictment 3/8/2011
Gowanda Rehabilitation and Nursing Center	Lewis, Sheila, CNA	Gowanda	Ms. Lewis took a blank check belonging to a resident, made it payable to "Diamonds and Pearls," forged the resident's name and cashed the check for \$785.	HHS Exclusion 9/20/2011 MFCU Conviction 05/04/2010 MFCU Indictment 9/01/2009
Jewish Home of Rochester	Cooley, Christine, LPN	Rochester	Ms. Cooley removed Tramadol, an opiate, from a patient's medication cart, taking it home for her husband's use.	Based on SED Consent Order 10/25/2011
Long Island Care Center/ Atlantis Rehabilitation and Residential Health Care Facility	Robinson, Jennifer	Flushing	Ms. Robinson, a former director of social work at a long term care facility, allegedly stole approximately \$220,000 from an elderly patient with dementia through writing checks off his bank account and then pocketing the money. The resident had no known living relatives when he was admitted to the facility where Ms. Robinson worked; however, within a year, he appointed Ms. Robinson as his power of attorney. Ms. Robinson then arranged for the gentleman to be admitted into a different nursing home than the one she worked at, listing herself as his "niece" on the admitting papers. Ms. Robinson then began withdrawing money from his bank account, until the resident passed, and Ms. Robinson arranged for the cremation of his body.	Based on indictment of Ms. Robinson in the Supreme Court of the State of New York County of Queens

In addition to these actions, all of the providers which were reported as having actions taken against them by the Medicaid Fraud Control Unit in our last newsletter have been excluded by OMIG. Please see our newsletter archives at www.ltccc.org/newsletter/ for their names.

Help LTCCC Go Green!

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Medicaid Redesign *continued from page 3*

proposals that achieved the Governor's Medicaid budget target, introducing a number of significant structural reforms. In Phase 2, the MRT has been directed to create a coordinated plan to ensure that the program can function within a multi-year spending limit and improve program quality. Work groups focusing on specific issues were created to develop recommendations for the MRT. The Managed Long Term Care work group made a number of very important recommendations around care coordination, consumer choice, evaluation and quality measures that has been approved by the full MRT. To see the full set of recommendations, go to: http://www.health.ny.gov/health_care/medicaid/redesign/docs/mltc_implement_waiver_rpt.pdf.

We do however have a few other recommendations that we would like to see in place: (1) there must be mandated qualifications for the care manager or care team and guidelines for a ratio of care managers to clients; (2) adequate capacity and choice must be spelled out; (3) uniform criteria must be developed so the data submitted by the plans can be compared; and (4) DOH resources must be increased to make sure staff can monitor quality.

Challenges for Consumers

- Once nursing home care becomes a benefit, individuals will lose the free choice of a nursing home; they will now have a choice of only 2 or 3 nursing homes within their plan's network. How will the state ensure that a consumer's clinical needs, cultural needs and social needs are met? Will consumers know to find out the nursing homes in a network before they choose a plan?

- Managed long term care plans may be better for some long term care recipients if their care is appropriately managed. However, managed care can often become managed costs with the lower cost options chosen over appropriate options. Who will ensure that these plans offer sufficient patient protections that this does not occur if the Department of Health does not have the full resources they need?

- Currently the state reimburses nursing homes for the care of Medicaid residents. Who will ensure that nursing home residents are receiving appropriate care, quality of life and dignity once a new private entity, with a vested

interest in reducing nursing home costs, is taking over managing and paying for their care?

- Will consumers have the information they need in time to choose a plan before being auto-enrolled in a plan? How many days will they have to make a choice?

- Since a care manager or care team is at the heart of the plan, what are the requirements of the care manager? Without any ratio of care managers to clients, how can the state assure that appropriate care management will take place?

- Currently there are a number of different types of managed care plans and new plans are being developed. Understanding their differences and the choices consumers will have will be crucial.

- Changes in reimbursement might affect care; consumers will have to be aware of these changes.

- One third of the population of individuals on Medicare and Medicaid (dual eligibles) are under the age of 65. They are very diverse, with widely differing needs for physical and behavioral health care, social and community supports, and care coordination. Consumers under 65 must be aware of how the different plans intend to deal with these issues.

- Out of 643,000 full and partial dual eligibles in New York, fewer than 5% are now enrolled in Medicaid managed care. How will the state and the plans manage mandatory enrollment of so many adults?

LTCCC has developed a dedicated web page on mandatory managed long term care: <http://www.ltccc.org/MandatoryManagedLongTermCare.htm>. This page will be updated as things change. Please visit it often.



We are working with DOH to develop answers to questions consumers may have.

Please send us any questions that you have by email to: info@ltccc.org.

We will add these to those we are sending to DOH. □

New Legislation Introduced *continued from page 1*

cannot be fined at all if they correct a so-called non-endangerment violation within 30 days, even if that violation caused actual harm. This bill will raise the maximum penalty to \$5,000 per violation per day, which is half of the maximum amount for nursing homes, and requires DOH to levy a fine for any violation that harms a resident even if a facility has corrected and gives DOH discretion to levy a fine for violations that have the potential to cause serious harm. In addition, it permits DOH to levy a per violation fine in addition to a per day fine.

From LTCCC's perspective, the changes in A8862 are crucial steps to better protecting residents and ensuring that assisted living facilities follow, at least, the minimum standards. We think it is outrageous that current law allows facilities to have repeated violations and even cause harm to their residents without facing a penalty if they correct within 30 days. Likewise, it is absurd that fines for violating standards have not been raised in 35 years. Is it any wonder that scandalous conditions pervade many adult homes across New York?

A8870: Relates to requiring a registered nurse on staff at facilities certified for enhanced assisted living or special needs assisted living

Residents in Enhanced or Special Needs certified assisted living residences (assisted living with special certification to provide care for people with significant

dementia or frailty) do not need full-time nursing care, but they do require a professional to both monitor and assess their needs. These residents are the most vulnerable to becoming unstable and in need of 24 hour skilled care. Unfortunately, under current law, these facilities are not required to have a licensed nurse onsite to monitor the health of these residents day-to-day and ensure that they are being properly cared for in an assisted living setting. A8870 would require facilities with these special certifications to employ a registered nurse full time, one shift a day, five days a week, on-site, to assess and monitor the condition of each resident.



Please send an email or letter to your legislator and legislative leaders, urging them either to join Assemblyman Gottfried as a sponsor on these bills or to sponsor similar bills in the Senate.

Go to: www.ltccc.org. In the right-hand column, click on the action alert: PROTECT ASSISTED LIVING RESIDENTS. Send your emails or letters.

If you are able, please call your legislator and leave a message asking him/her to join in sponsoring these bills. To find your legislator, go to our LTC Citizen Action Center on our website or see the back page of this newsletter. □

UPDATE: Bills Introduced in NY Senate

Just before this issue of *The Monitor* went to press the NY Senate took action and introduced all three of the assisted living bills. The three Senate bills are: S6274 (introduced by Senators Montgomery and Grisanti, same as A8870), S6279 (introduced by Senators Montgomery and Grisanti, same as A8861) and S6278 (introduced by Senator Grisanti, same as A8862).

Introduction of these bills in the NY Senate is an important first step in implementing these critical protections for assisted living residents in NY State. Please speak out to your state leaders now! See the action alert below for info on how you can send a quick and easy message.

Every day that these bills await passage is another day that an assisted living can take in a person with significant dementia yet have no nurse on staff, another day that an assisted living can violate minimum standards – even cause harm to their residents! – and escape any fine if they “correct” with 30 days.



Please send a message now to your legislator and to Senator Hannon, Chair of the Health Committee, and Senator Valesky, Chair of the Aging Committee. Let them know that you expect them to stand up to protect our frail elderly, not sacrifice their safety to protect the assisted living industry's bottom line. □

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NYS Department of Health (DOH)
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Albany, NY 12224-0341
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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 518-455-4000. In addition to your personal representative, it is important that the following leaders hear from you:

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

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

Assemblymember Joan Millman
Chair, Committee on Aging
millmaj@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 Dean Skelos
Temporary President and
Majority Leader
skelos@nysenate.gov

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

FEDERAL OFFICIALS:

To contact your federal representatives visit our action alert center at www.ltccc.org or call the congressional switchboard 202-225-3121.

