

LTCCC MONITOR

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

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LTCCC Files Amicus Brief to Stop Poorly Trained Workers

Since the federal Nursing Home Reform Law (OBRA '87) was enacted 15 years ago, the federal government has required that everyone who provides direct care in a nursing home be trained for a minimum of 75 hours. While licensed nurses, such as LPNs and RNs, have significantly more training and expertise, certified nurse aides (CNAs), who provide approximately 90% of the care in nursing homes, must meet this minimum level in order to provide care to nursing home residents. The final regulations acknowledge that "[n]urse aides have the most significant impact on the

“The way to help residents is to improve staff training and staffing levels, not to loosen regulations.”

quality of life of residents of nursing facilities and therefore *need a broad range of knowledge beyond the ability to perform specific tasks properly.*”

Many studies have shown that, in fact, 75 hours is not sufficient to adequately train someone to provide the level of care required by nursing home residents. New York, like many other states, requires significantly more training (100 hours is the minimum in New York). While this is better, many studies, “Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes” and LTCCC’s “Certified Nurse Aide Screening and

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LTCCC Issues Annual Report Card on Government Protection

How did the state and federal governments do this year? Were consumers protected? Read our third annual “report card” to find out how YOUR elected officials and government offices are doing.

LONG TERM CARE COMMUNITY COALITION REPORT CARD	
MEDICAID/MEDICARE	
Federal Government	D
NURSING HOME CARE	
Governor Pataki	C-
New York State Department of Health	C+
New York State Senate	F
New York State Assembly	B-
Attorney General Eliot Spitzer	A
ASSISTED LIVING	
NY Dept. of Health & State Office of Aging	B+

Medicaid/Medicare

Federal Government = D. From the continuing threat of Draconian Medicaid cuts to the imposition of the Medicare Part D drug plan with inadequate protections for consumers (but plenty of protections for private drug plan companies) the federal government demonstrated a dismal record on consumer protection in 2005. For many, our nation’s safety net – which has long enjoyed broad, bipartisan support – will surely turn into a trap.

Nursing Home Care

Governor Pataki = C-. The governor’s proposal to start levying civil money penalties (CMPs)(see update on our national CMP study in this issue for more information) was an important advancement for NY State consumers. However, that was the only movement to come from the governor’s office that was protective. Governor Pataki neglected to put his weight behind any of the important efforts to improve nursing home staffing requirements in the state and, overall, his administration was moribund when it came to protecting vulnerable consumers. For years this administration touted its concern for consumers

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Report Card...

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and its commitment to holding providers accountable; it is a shame that as the governor's tenure comes to an end the record shows that little was done to safeguard residents.

NY State Department of Health = C+. The Department of Health (DOH) started to levy civil money penalties against nursing homes this year, a positive development in terms of holding providers accountable. However, issues remain regarding the effectiveness of DOH's survey and complaint system's ability to protect consumers. LTCCC has begun to meet again with DOH to address survey and complaint issues. We are glad to see DOH becoming more responsive to our concerns and hope that we can work together to make a stronger survey and complaint system in the coming year.

NY State Senate = F. The Senate once again did nothing to protect nursing home residents. The Safe Staffing bill, which would require minimum staffing levels in nursing homes, was moribund. Most significantly, the Nursing Home Diversion Act, which would protect people from entering nursing homes with dangerously low staffing, failed to get a single sponsor in the NY Senate. This bill would not affect the state budget, and would merely put into place the same policy currently used by hospital emergency rooms, which divert incoming patients when they don't have sufficient staff or resources to care for them safely. Why don't any NY State Senators think that nursing home residents deserve the same protections as hospital patients?

NY State Assembly = B. The Nursing Home Diversion Act continued to gain support in the Assembly, ending the year with over 30 sponsors.

Assembly Health Committee Chair Richard Gottfried held hearings on NY State's nursing home survey and oversight issues, the Family Healthcare Decision Making Act and other issues important to improving nursing home care and protecting vulnerable residents. His leadership on these issues has been critical, otherwise they might have been entirely lost due lack of interest in consumer protections among both the Assembly and Senate political leaders. We would like to see more people in the Assembly stand up for consumer protections, especially other political leaders in that chamber.

Attorney General Eliot Spitzer = A. The Office of Attorney General (OAG) continued to provide the strongest leadership in terms of protecting nursing home residents. The OAG's Medicaid Fraud Control Unit actively investigated nursing home resident care and abuse, and these investigations resulted in real accountability of nursing home providers. Accomplishments in 2005 included substantial restitution from Child's Nursing Home Company in Albany and Hebrew Home for the Aged in the Bronx, as well as an (approx) million dollar litigation against Rosa Coplon Jewish Home and Infirmary in Erie County.

Assisted Living

NY Department of Health & State Office of Aging = B+. DOH & SOFA representatives on the NY State Assisted Living Task Force have helped to ensure that a number of important protections will be in place under the new assisted living regulations. □

Do we have your correct contact information?

Please take a moment to check your information on the back cover and email (info@ltccc.org) or call us (212-385-0355) with any changes.

LTCCC

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This newsletter is made possible through funding by the following foundations:

Robert Sterling Clark Foundation • Herman Goldman Foundation

Printing courtesy of Capital Printing, 140 East 45th Street, 45th Floor, New York, NY 10017

Layout and Design by www.pattiedesign.com

Update on New Assisted Living Law

Progress Made

Cynthia Rudder, LTCCC's Director of Special Projects, continues to meet with the State Task Force on Adult Homes and Assisted Living Residences and with LTCCC's Assisted Living Committee (any LTCCC member who would like to join this committee should contact Sara Rosenberg, our Executive Assistant/Office Manager). There have been two major successes during the last three months:

- The Consumer Guide explaining assisted living for New Yorkers is in its final draft form. The Guide will include many of the points raised by Cynthia and the committee. Once printed, the guide will be widely available from the State and links to the guide will be posted on the LTCCC websites.

- The NY Department of Health (DOH) has invited consumers to comment on adult home and assisted living applications. (See accompanying article: "Help Make Sure That Assisted Living Consumers Receive Care from Qualified Providers" to find out how you can participate by internet or phone.) LTCCC fought hard to make sure that the assisted living law included the requirement that DOH "solicit and consider" consumer input. We are very pleased at the way in which DOH met this requirement. You will find that it is very easy to make comments.

Other Important Recommendations Still to Be Won

Many of our readers went to our website to send emails and letters to the DOH and the Office on Aging (SOFA), with copies to a number of legislators. We have had calls from legislators letting us know that they have received over 85 emails! Thanks to all of you who answered the call. We need to keep these messages coming. See below for information on how to send these crucial messages. While a number of our recommendations were accepted, we are still fighting for some very important issues. Among them:

- All assessments of consumers needing enhanced assisted living (EALRs) must be conducted by a registered nurse (RN) and there must be an RN on-site for at least one shift a day in an EALR. This is crucial.

Residents of EALRs are more medically fragile than the general population of assisted living residences and need ongoing monitoring and assessment. Thus, it is essential that an RN, who has the skills and knowledge necessary to professionally monitor and assess,

be on-site for at least one shift to conduct these assessments. Some people believe that there is a nursing "shortage" and that there will not be enough RNs to hire. However, according to the New York State



Members of the Assisted Living Committee

Nurses Association (NYSNA), there are no shortages of RNs per se in New York, only shortages of RNs who want to work in facilities with poor working conditions. We believe that the paradigm of assisted living residences established under the assisted living law would obviate this concern and minimally offer a superior working (and living) condition to that which generally exists in current licensed long term care facilities.

There are RNs who would want to work in enhanced assisted living and the residents need them.

- There must be some additional minimum staffing requirements added to that required for basic assisted living (ALR) for enhanced assisted living (EALR) and special needs assisted living (SNALR). It is not enough to permit operators to decide for themselves when staffing meets the needs of their residents, especially those requiring additional care.

- Any resident of a basic assisted living residence, with an enhanced assisted living certificate, who deteriorates and needs enhanced care must be permitted to remain in his room/apartment. The enhanced care must come to him. He must not be required to move his location within the residence. This speaks to the fundamental distinction between an assisted living community and a nursing facility, and is at the heart of what the law is about. □



Help protect assisted living residents by writing a letter to DOH and SOFA staff, as well as the chairs of the Aging and Health committees in the State Assembly and Senate and urge the acceptance of the issues stated above. To send a free message: go to our web site, www.ltccc.org, and click on our Citizen Action Center. Click on the Action Alert related to strengthening regulations around assisted living. If you do not have access to the Internet, you can see the back page of this newsletter for contact information. See article on next page for how you can help in your community.

Help Make Sure That Assisted Living Consumers Receive Care from Qualified Providers

Under New York State's new assisted living law, all providers must be licensed - either as adult homes (ACF) or basic assisted living residences (ALR). In addition, some providers who want to care for more dependent or frail individuals are applying for special certificates: (1) SNALR - a special needs certificate that will permit the provider to advertise care for residents with Alzheimer's/dementia; and (2) EALR - an enhanced certificate that will permit care for residents as they "age-in" or get sicker. Recently, the NY Department of Health (DOH) has begun to accept applications for licensure.

You Can Help Ensure That Assisted Living Residents Are Protected In The Future By Speaking Out Now On Your Experience With Adult Home Or Assisted Living Providers

New York's new law requires that the state solicit and consider your opinions on providers in your community that are applying for licensure and certification. This is an important opportunity to speak out about your experience with adult homes or assisted living providers in your area that are seeking approval to provide care and services.

It Is Easy To Find Out If A Home You Know Is Applying For Licensure And Certification And Leave A Comment



Visit our Website, www.ltccc.org, and scroll down to the bottom of the page for the box "Update on Assisted Living in New York." There you will find more information, and a direct link to the official state Website page where you can click on a map of NY State, find out who is applying in your area, for what license and certificate and submit a comment if you like. When you send your email to DOH please send a copy to us at info@ltccc.org. LTCCC will keep track of comments from the community (keeping any personal information confidential). This will help us ensure that both providers and NY State are accountable for providing good care in the future. If you know of an application by a provider in your community, and do not have access to the web, you can also comment by phone: 1-866-893-6772.

LTCCC urges you to comment on these applications. We will monitor the state's response to ensure that they are considering your comments. For more information on assisted living, including free consumer guides, go to www.assisted-living411.org (links are also on our homepage, www.ltccc.org).

Thank you.

Your comments will help make sure that providers that give good care are licensed.

Make a Bequest to LTCCC

An Enduring Legacy of Your Compassion & Generosity



Bequests are an important source of funds for the Long Term Care Community Coalition. Throughout the Coalition's history of service to the community, supporters have remembered the Long Term Care Community Coalition in their wills. Many people find that it is a special and meaningful way to leave behind something lasting that will benefit the vulnerable elderly and disabled for many years to come.

Why are Bequests Often the Most Generous Gifts One Can Make?

- Bequests can have certain tax advantages that benefit both the donor and the organization.
- Bequests to the Long Term Care Community Coalition are deductible under the federal income, estate and gift laws.
- Bequests come from assets accumulated during a lifetime.
- Bequests are revocable, so people may feel more comfortable making larger gifts in their Will. If they need to use their assets themselves during their lifetime, they can still do so.

How You Can Include a Bequest to LTCCC in Your Will?

If you wish to make a bequest to the Coalition, please be sure to use the formal corporate name: "Long Term Care Community Coalition." We recommend that you consider the following language:

"I give, devise and bequeath (dollar amount, percentage or description of property) to the Long Term Care Community Coalition, a New York Corporation which has its principal offices at 242 West 30th Street, Suite 306, New York, NY 10001, to be used for general purposes." LTCCC is a not-for-profit corporation incorporated under the laws of the State of New York.

Your Generosity is Acknowledged in the LTCCC Silver Lifeline Society

If you advise us that you have included a bequest to the Long Term Care Community Coalition in your Will, you will become a member of the LTCCC Silver Lifeline Society. The Silver Lifeline Society is an honorary organization that recognizes during their lifetimes those individuals who have generously included the Long Term Care Community Coalition in their estate plans. Members of the Silver Lifeline Society are invited to an annual recognition reception and are listed with other major donors in our publications.

If you or your attorney would like to discuss a gift or bequest with a member of the Long Term Care Coalition's staff, please call our Executive Director, Richard Mollot at (212) 385-0355, email Richard@ltccc.org or write to him at the following address: Long Term Care Community Coalition, 242 West 30th Street, Suite 306, New York, NY 10001. □





Enforcement Actions Against Nursing Homes¹

FEDERAL ENFORCEMENT ACTIONS AGAINST NURSING HOMES: 9/16/05-11/30/05

The Federal Government Imposed Civil Money Penalties (CMPs)² On 1 Nursing Home

NAME OF HOME	LOCATION	DATE	AMOUNT
Lemberg Home and Geriatric Center	Brooklyn	11/10/05	\$109,980.00

STATE ENFORCEMENT ACTIONS AGAINST NURSING HOMES: 9/16/05-12/15/05

The State Fined 20 Nursing Homes³

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT
Arbor Hill Care Center	Rochester	12/20/01	\$2,000.00
Bayview Nursing Home	Island Park	11/16/04	\$7,000.00
Bethel Nursing and Rehabilitation Center	Croton on Hudson	5/19/03	\$10,000.00
Broadlawn Manor Nursing Care Center	Amityville	1/30/04	\$1,000.00
Columbia-Greene LTC	Catskill	9/30/04	\$1,000.00
East Rockaway Care Center	Lynbrook	7/20/01	\$2,000.00
Episcopal Church Home	Rochester	9/10/04	\$2,000.00
Fairport Baptist Home	Fairport	2/11/05, 4/2/04	\$4,000.00
Glen Cove Center for Nursing	Glen Cove	2/15/05	\$1,000.00
Little Falls Hospital HCF	Little Falls	2/4/05	\$2,000.00
Mercy of Northern New York	Watertown	9/23/04	\$3,000.00
Morris Park Nursing Home	Bronx	9/20/04	\$2,000.00
Parkview Nursing Home	Massapequa	3/4/05, 4/2/04	\$3,000.00
Presbyterian Home for Central New York	New Hartford	2/17/05	\$1,000.00
Riverview Manor	Owego	12/1/04	\$1,000.00
Robinson Terrace	Stamford	1/28/05	\$1,000.00
Rosewood Nursing Home	Syracuse	7/3/01, 6/6/03	\$7,000.00
St. Margaret's Center	Albany	8/18/04	\$1,000.00
Terrance Cardinal Cooke	Manhattan	4/20/05	\$4,000.00
Wedgewood Care Center	Great Neck	7/2/02	\$2,000.00

¹ As reported by the Department of Health (DOH) and 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 at 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 FOIA Officer at 212-616-2318.

² Civil Money Penalties (CMPs) – a federal sanction against nursing homes that fail to comply with quality care requirements.

³ Under state law nursing homes can be fined up to \$2,000 per deficiency.



Enforcement Actions Against Nursing Homes

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 15 Nursing Homes 9/16/05 – 12/15/05					
NAME OF HOME	LOCATION	IJ, SQC or G	SURVEY DATE	CMP ¹	ACTIONS ²
Arbor Hill Care Center	Rochester	IJ/SQC	10/25/05	X	DOPNA, POC, Inservice, State Monitor
Dumont Masonic Home	New Rochelle	IJ removed	10/25/05	X	
Eastside Nursing Home	Warsaw	IJ removed	10/7/05	X	POC
Eden Park Health Care Center	Utica	GG	11/3/05		DOPNA, POC, Inservice
Highland Nursing Home	Massena	GG	11/16/05		DOPNA, POC, Inservice
The Hurlbut	Rochester	IJ/SQC	9/16/05	X	DOPNA, POC, Inservice, State Monitor
McAuley Manor at Mercy Care	Hornell	IJ removed	9/22/05	X	POC
Mercy Health and Rehab Center, Auburn	Auburn	GG	9/21/05		DOPNA, POC, Inservice
Mercy of Northern New York	Watertown	GG	10/19/05		DOPNA, POC, Inservice
Montgomery Meadows RHCF	Amsterdam	IJ	9/19/05	X	DOPNA, POC, Inservice, State Monitor
North Gate Health Care Facility	North Tonawanda	IJ/SQC	9/30/05	X	POC, Inservice, State Monitor
River View Manor	Owego	IJ	11/21/05	X	DOPNA, POC, Inservice, State Monitor
Split Rock Nursing Home	Bronx	IJ/SQC	12/5/05	X	DOPNA, POC, Inservice, State Monitor
St. Elizabeth Ann's Healthcare and Rehab Center	Staten Island	IJ/SQC	9/29/05	X	DOPNA, POC, Inservice, State Monitor
Workmen's Circle Multicare Center	Bronx	IJ/SQC	10/11/05	X	DOPNA, POC Inservice, State Monitor

¹ Civil Money Penalties (CMPs). In addition to state fines New York State now recommends CMPs to be imposed by CMS. These fines can be as much as \$10,000 per day for deficiencies in care.

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.

New Program for Distributing Assisted Living Guides in NY Metro Area

Currently the fastest growing type of senior housing in New York, assisted living provides a combination of housing and supportive services for those who do not need all the services nursing homes provide, but who no longer can (or wish to) live on their own. Seniors often prefer assisted living to other types of housing because of the promise that they will be able to continue to live as independently as possible, while still getting the care they need as they become more frail. Unfortunately assisted living's promise of "independent and non-institutionalized living" can sometimes be difficult to achieve.

In conjunction with the Coalition of Institutionalized Aged and Disabled (CIAD), LTCCC conducted a three-year study, funded by the Fan Fox and Leslie R. Samuels Foundation, uncovering the difficulties in achieving the promise of assisted living. Based on this study, and our findings that the promise of assisted living were frequently not fulfilled, LTCCC and CIAD, with a grant from the Robert Wood Johnson Foundation, published four assisted living guides to help both residents and staff learn how to increase resident independence and autonomy in assisted living.

Two of the guides aim to help residents and potential residents identify their needs and what is important to them in their lifestyles and gives them tools to realize the stated goals of assisted living. The other two guides focus on helping direct-care workers and assisted living management understand and realize the promise of assisted living, including how augmenting resident independence can positively impact quality of life for both residents and workers, and be beneficial to the assisted living community as a whole. Together, these four guides address a very important public health need and belong in every location consumers access for resource information about assisted living.

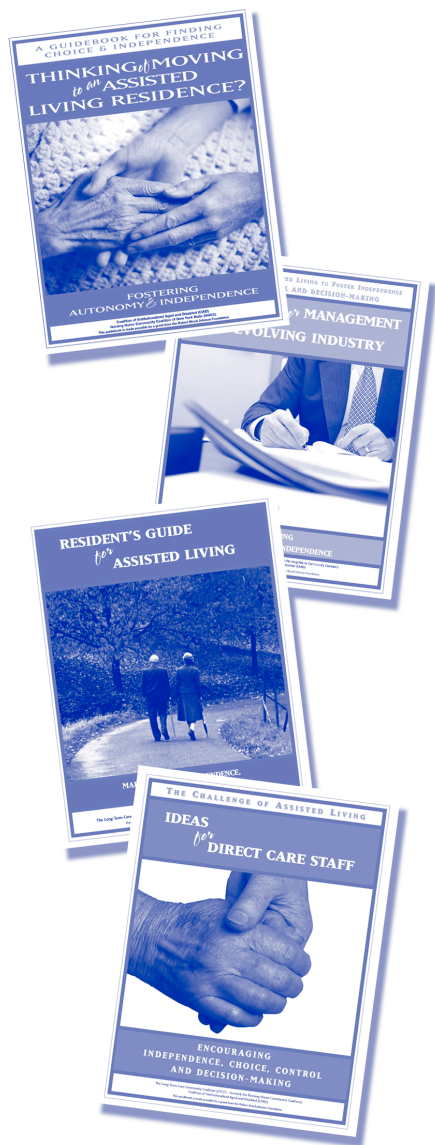
In the last year, dozens of newspaper articles and radio appearances by the guides' authors, Cynthia Rudder & Geoffrey Lieberman, helped to publicize the guides. As a result, thousands of these guides have been distributed (and downloaded from our Website). To build on this success, and to ensure that the guides are used as effectively as possible, LTCCC and CIAD have begun a new distribution project focused on the New York Metropolitan Area that will greatly increase awareness of and access to the guides in this community.

This distribution project, funded with a generous grant from the Nash Foundation, will not only distribute the guides in the targeted community, it will also ensure that they are effectively publicized and used by seniors. This will be accomplished through a special education and outreach component of the project, which will include development and dissemination of posters showcasing the guides and special community training sessions to introduce the guides to seniors in the community.

These training sessions, which will be held in every county in the New York metropolitan area, will target senior community leaders (such as heads of senior centers and councils on aging) and help them to understand how the guides can help their constituents, giving them tools to take back to their communities the benefits provided by the guides. These "train

the trainer" sessions will ultimately enable those considering assisted living to learn about the guides from someone they know and trust.

To access and download any of the four Assisted Living guides mentioned in this article, please visit LTCCC's assisted living website at www.assisted-living411.org. If you are interested in helping with our Assisted Living training sessions or would like to order hard copies of the guides (free, though there is a \$1.50 per guide charge for shipping and handling) please contact our offices at 212.385.0355. □



New LTCCC Research Can Benefit Nursing Home Residents

Over the past year, LTCCC has been conducting a research study collecting information on states' use of federal and state CMPs/fines. This study, funded by the Commonwealth Fund, has been conducted with Charlene Harrington (a nationally renowned researcher based at the University of California, San Francisco) and the National Citizens' Coalition for Nursing Home Reform (NCCNHR).

What Are CMPs And What Can They Do For Us?

Civil money penalties (CMPs) (or fines) were one sanction implemented by the government in 1995 to encourage nursing homes to comply with federal requirements and to prevent poor quality of care. In addition to federal CMPs, states may also issue and collect state CMPs or fines for violations of state quality of care rules.

For nursing home residents, CMPs offer a two fold opportunity to make their lives better: (1) CMPs offer an additional pool of money to improve the quality of life and care; and (2) CMPs may be deterrence to poor care (since they provide an incentive to providers to maintain standards). Yet, many states do not levy them, collect them or, if they do, use them in innovative ways to improve care.

Goals of This Project

Because there is an "epidemic" of suffering and neglect in nursing homes across the country, and a longstanding inability by states to commit the financial resources necessary to improve conditions, we embarked on this study because we felt that CMPs – if appropriately levied and utilized – could have a wide-ranging, positive impact on the lives of nursing home residents. Fundamentally, CMPs are a potential resource of funding for programs and activities tar-

geted to making things better for residents. Thus, the goals of this project are to inform the public, consumer groups, government officials, ombudsmen and the industry about the practices and experiences of states' use of CMPs; encourage states to make greater use of CMPs; and to identify innovative uses for CMP monies that can be replicated to provide lasting and widespread improvements to resident quality of life.

Initial Findings

As of this writing we are in the process of analyzing our data; however, there have been some important preliminary findings that have emerged. Although CMPs/state fines represent a substantial resource that can be used for quality improvement projects, only slightly over half of the states reported using these funds for projects to improve nursing home care. States' use of CMPs/fines show a wide variety of types of improvement projects. However, few projects have been evaluated for effectiveness.

Final Results to Come

In the spring of 2006, LTCCC will be releasing an action plan that stakeholders can use to positively impact their state's use of CMP funds. The action plan will include a list of recommendations that we believe CMS and state governments should follow in order to better utilize CMPs, as well as recommended steps that stakeholders should take to influence political and regulatory leaders in their community to ensure that the monies are utilized in a way that will best help consumers. Other products include two articles describing the findings in detail, a detailed case study of six state practices and a resource brief based on a survey of ombudsman and citizen advocacy groups. □

“CMPs...could have a wide-ranging, positive impact on the lives of nursing home residents.”

Federal Study Identifies Significant Weaknesses in Federal and State Oversight

The Government Accountability Office (GAO) has issued a new report that assesses problems with nursing home oversight from 1998 to the present. The report, "Nursing Homes: Despite Increased Oversight, Challenges Remain in Ensuring High-Quality Care and Resident Safety (GAO-06-117)", presents the findings of GAO's investigation in which they reviewed trends in nursing home quality from 1999 to January 2005, evaluated the extent to which CMS (Centers for Medicare and Medicaid Services) has addressed nursing home survey and oversight problems and identified the key challenges to greater progress in ensuring resident health and safety. The investigation found widespread, serious issues, from understatement of serious deficiencies to inconsistency in state surveys.

The GAO's findings corroborate many of the findings in LTCCC's recent report, "Nursing Home Residents at Risk! NYS' Failure to Oversee Nursing Homes", which compared nursing home oversight in NY State vs. other states and found that New York had serious underperformance issues in a number of areas critical for nursing home resident protection and safety. Visit www.nursinghome411.org to access either the GAO report or LTCCC's report. □

LTCCC Files Amicus Brief...

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Continuing Education: A National Survey of State Requirements With Recommendations for Improvements,” indicated that the number of training hours should be at least double the federal minimum requirements in order to truly provide the level of care necessary to keep residents safe.

These and other studies indicate not just a change in philosophy but also, and more importantly, have led to a dramatic change in outcomes. According to *Assuring Nursing Home Quality: The History and Impact of Federal Standards*, by Catherine Hawes, director of the Program on Aging and Long-Term Care at the Research Triangle Institute, the reforms required under OBRA ‘87 have had a monumental impact on nursing home residents’ lives. “Use of psychotropic drugs and restraints has declined, hospitalization rates are down, and physical functioning of residents is up.” This study, by one of our nation’s leading researchers on health care and aging issues, also reports that, since promulgation of OBRA ‘87, there has been a 50% reduction in the use of restraints in nursing homes, psychotropic drug use has diminished by 1/3, while the use of hearing aides has increased by 30%, behavior management programs to constructively help residents deal with wandering, aggression and resistance to care have increased by over 25% and the use of toileting programs – to help human beings overcome incontinence – has doubled.

All of these developments indicate sweeping, important changes for what life in a nursing home means for both residents and workers, and are indicative of trends toward more holistic care delivery, wherein caregivers are not merely completing tasks, but treating human beings who are frail and in need of care. As the report’s “Briefing Note” states, “The evidence about these positive effects of OBRA-87 reforms, combined with the history of poor care and inadequate quality assurance before OBRA, suggests that a withdrawal or weakening of the new federal-state regulatory system could undermine the quality of nursing home care.”

Because the movement over the years among government officials, researchers and advocates has been towards recognizing the need for increased training and higher levels of trained staff in nursing homes, it came as a surprise to many that the federal Department of Health and Human Services

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What’s the matter with allowing feeding assistants in nursing homes?

1. Feeding assistants will not have the training they need to be able to provide critical help to residents with high levels of frailty. By allowing feeding assistants with minimal training and supervision to feed frail residents, the federal Department of Health and Human Services (DHHS) is turning its back on years of research and its own longstanding policy indicating that nursing home resident safety depends on skilled care. Residents who are unable to feed themselves are among the most frail in nursing homes. They do not need help simply with raising a fork to their mouth; many have significant issues related to ability to swallow, “packing” food in their cheeks, and other problems. These residents need and deserve to be helped by someone with the knowledge and ability to make sure that they are fed safely, and that any problems are quickly identified and brought to the attention of a professional caregiver.

2. Mealtimes are not just about feeding a resident. They often present the only opportunity trained staff gets to spend one-on-one time with residents and because of prior interactions with the resident, trained staff can spot differences in behavior or appetite that may be indicative of a more serious problem.

3. Planned safeguards to prevent residents with “medically complicated feeding problems” from being fed by feeding assistants are inadequate. A federal nursing home study reports that more than half of all nursing homes have deficiencies related to resident assessments. If nursing homes cannot be relied on to provide accurate assessments, how will residents with complicated feeding problems be protected?

4. Regulations regarding supervision of feeding assistants are not sufficiently clear to protect residents. Feeding assistants are permitted to feed resi-

dents in their room and depending on the interpretation of the federal law, a supervisor does not necessarily need to be in the same unit, or even on the same floor, when feeding is being administered. What will happen if a resident begins to choke? These poorly trained workers will not know what to do and there may not be anyone to help nearby.

5. Using feeding assistants is dehumanizing.

Feeding assistants are “task-oriented” workers, focused on the task to be done rather than the resident as a person. Nursing home residents deserve—and need—to be cared for; they are not merely the subjects upon which tasks are performed. It is critical for both their emotional and physical well-being that they be cared for by people who are fully involved in providing care, not merely coming in to perform a task.

6. The introduction of feeding assistants clashes with the national movement towards resident centered care and “culture change.”

“Culture change” is the term used to describe the growing movement in nursing home care which focuses on change the way care is delivered by making it more resident centered and giving direct care workers a more meaningful role in the residents’ lives and the “culture” of the nursing home. According to the Pioneer Network, a leader in the culture change movement, “Providers that have made substantial progress in culture change have clients (be they elders or individuals living with disabilities) who truly direct their own care and make their own choices about how they spend their time. The workers in these organizations are highly involved in decisions that are relevant to their jobs and the people they care for.”

Culture change, indeed any movement towards resident centered (rather than rote, task centered) care relies on the continued movement toward giving direct care workers increased responsibility, allowing residents to establish “consistent care-giving relationships with their support staff,” and fostering a work environment imbued with greater—not lesser—professionalism and ties to the nursing home community. □

LTCCC Files Amicus Brief...

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(DHHS, which is responsible for federal oversight of nursing homes principally through CMS, the Centers for Medicare and Medicaid Services) promulgated new regulations in late 2003, which unexpectedly endorsed the idea of allowing states to use feeding assistants with a fraction of the training required of CNAs (as little as eight hours) and minimal supervision. Because feeding residents who are too frail to feed themselves is a complex and difficult task, many experts and advocates realized that the new policy was not only dehumanizing to both residents and workers, it was clearly very dangerous as well.

In July of 2004, four nursing home residents and two organizations representing residents and their families challenged these new federal feeding assistant regulations (*Resident Councils of Washington v. Thompson*) on the grounds that they betrayed the fundamental impetus for the Nursing Home Reform Law: to ensure resident safety and an environment in which residents would be helped – not harmed – by their caregivers. LTCCC supported this lawsuit, taking the position that the new federal rules are a huge step backwards for both residents and staff.

Though the plaintiffs lost at trial, they are now appealing the case and have made strong arguments for reversing the new regulations. LTCCC is playing a leading role in supporting this case by working closely with the Michigan Campaign for Quality Care to write and file an amicus (friend of the court) brief in support of plaintiffs. In addition, LTCCC has worked to get more organizations to add their names to the amicus brief. As of this writing, Alzheimer’s Association NYC Chapter, Coalition of Institutionalized Aged and Disabled, the National Citizens’ Coalition for Nursing Home Reform and NY State Nurses Association have joined in the brief.

Together, we hope to show the court not only that there are many consumer groups who are aware of the critical issues regarding resident nutrition and dehydration, but that we also know that the way to help residents is to improve staff training and staffing levels, not to loosen regulations and undermine the level of skill and professionalism among nursing home staff.

For more information, updates, or to read the amicus brief in its entirety, please visit our websites www.ltccc.org or www.nursinghome411.org. □

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