Long Term Care Community Coalition's *(formerly Nursing Home Community Coalition)*

LTC Monitor

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THE LONG TERM CARE ADVOCATES' NEWSLETTER

LTCCC Responds to the "Single Point of Entry" Proposal

Earlier this year, the Governor's Health Care Reform Working Group – whose goal was to look for ways to constrain or cut Medicaid, released their *Interim Report*, which included a suggestion to change how individuals would enter the long term care system. Through a plan called NY ANSWERS, the State hopes to implement a single point of entry (POE) where consumers, their families, and health care professionals will have access to personnel who will be able to inform them of their long term care options, which allow for the most independent care.

Coalition Members discuss POE proposal

The Coalition is pleased to see that the POE proposal includes, as a major recommendation, that the POE "provide unbiased, comprehensive and accurate information to individuals and families trying to access appropriate long term care services." However, we have serious concerns regarding the proposed plan's ability to accomplish these goals. Because of these concerns, we held a major discussion about the POE at our May coalition meeting and gathered ideas, concerns and other input from the organizational and individual members who attended the meeting. This discussion provided the basis for a formal written response to the NYS Department of Health, Office of Medicaid Management, wherein LTCCC expressed its concerns and questions about the POE.

The deepest concern of the Coalition is that the principal goals identified in the Interim Report disproportionately focus on cutting costs rather than

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Costs of Inadequate Staff Are High

The Long Term Care Community Coalition (LTCCC) has long advocated for increased staffing levels in nursing homes. Adequate staffing levels are widely acknowledged as a critical indicator for quality of care. According to a federal study, 98% of the nursing homes in New York State fall below the level of staffing necessary to provide appropriate care for residents. Inadequate staffing and the resulting poor care can lead to illness, injury, and increased hospitalizations for vulnerable nursing home residents.

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Costs of Inadequate Staff Are High…

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Year after year the state legislature fails to pass meaningful staffing legislation. Advocates are told increasing staff levels would cost the government too much money. Yet the consequences of low staffing also lead to high costs. With support from the Robert Sterling Clark Foundation, LTCCC conducted an examination of the costs of poor care associated with some of the more prevalent problems resulting from low staffing levels. The study specifically examined the costs of malnutrition and dehydration, pressure sores, incontinence and hospitalization.

> ***"LTCCC found that there are many indications that requiring appropriate levels of staff would save money in the long run."***

Pressure sores, also known as bed sores, are one of the most serious consequences attributed to low staffing. The cost of treatment for pressure sores in the U.S. is estimated to be over $3 billion per year. Twenty-three percent of short term residents in New York State have pressure sores.

Inadequate staffing levels are also believed to lead to increased occurrence of urinary incontinence. Many residents need assistance to and from the bathroom but without enough staff to help them, 50 percent of "low-risk residents" in New York are rendered incontinent. Nationally, the cost of dealing with incontinence among nursing home residents is $5.2 billion per year.

LTCCC also found that the additional financial costs incurred by hospitalizations are enormous. Poor care of nursing home residents who typically already have more health problems, increase the need for hospital and emergency care.

In addition to increased cost resulting from poor care, the costs of high staff turnover and injury are also great. The estimated cost to replace a specialty nurse is $64,000. Certified nurse aides, who provide the majority of resident care, have one of the highest rates of job injury of any occupation. Workers compensation insurance costs for the nursing home industry totaled close to $1 billion in 1994.

LTCCC found that there are many indications that requiring appropriate levels of staff would save money in the long run. In addition to the potential monetary savings, there are other costs that must be considered. The human costs resulting from poor care – pain, suffering and unnecessary death of residents – as well as the human costs to workers in terms of job injury, dissatisfaction and stress are important too.

WHAT CAN YOU DO?

Write to the Governor, Assembly and Senate and tell them that you want them to support bills S02304 and A05490 that mandate staffing ratios in nursing homes. Let them know the costs of low staffing, health complications such as malnourishment and bed sores leading to increased hospitalization, and high job injury rates for workers. Visit our Citizan Action Center at www.ltccc.org or see contact information on back cover.❑

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assessing needs, providing information, and aiding consumers in making choices. With the rapidly expanding population of those in need of long term care, it is necessary to plan for how the system will be able to handle growing demand in the future, particularly since it fails in many ways to meet current long term care needs. Of course, in assessing the future we must consider costs. It is possible that long run costs could be reduced if consumers are given more power to choose amongst long term care options and/or are given opportunities to get care in less restrictive settings; (for instance, it is generally less expensive to allow a person to stay in their home and receive help there, or live in an assisted living facility, than it is to keep them in a nursing home). However, given the stated goals in the interim report – to save money – we are concerned that the POE proposal might end up creating a "gatekeeper" role. As a gatekeeper, the POE system might direct consumers to services that are most "efficient" and cost effective, rather than those that provide the best, least restrictive care for the individual. *continued on page 3*

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Currently, long-term care consumers do have some access to avenues of long term care information, either through personal research or through the many organizations offering such services. If a major goal is to assess needs, give information, and help consumers make choices, why don't we create a plan that supports the organizations that are already providing this service? A better plan might be to build upon the foundation and skills of these professionals, rather than creating an additional bureaucratic layer in New York's government. If the State opts to establish the proposed system, we are unsure that there is a willingness to make the necessary and considerable initial investment in both the POE and in the health care delivery system itself (i.e. capacity building, workforce development, information collection, training etc…), especially if the major goal is to cut Medicaid. And if the State does choose to provide the substantial investment needed, wouldn't it be better spent on much needed community based services?

The Coalition is further concerned about several important elements that NY ANSWERS did not address, as follows:

- Ways to increase the size and training of the currently diminishing long-term care workforce;
- The lack of sufficient community based services;
- How the system will be run, who will run the program and its oversight and their qualifications.
- Method of compensation.

We also have a number of questions, including:

- What happens to the consumer once they enter the long-term care system? Do they continue to receive assessment and information? Or are they left to fend for themselves?
- Are placement plans made by staff in NY ANSWERS suggestions or mandates?
- What happens to those who have already been placed in a long-term care setting? Will they be helped to go to less restrictive settings?
- If the State wants to save Medicaid funds, why does it not look at ways to reduce the amount of money that is spent on duplicative or wasteful procedures among providers?

The long-term care system in New York is much in need of an overhaul. However, that need is founded on the burgeoning crisis in long term care in New York: widespread neglect and abuse in nursing homes which continue almost unabated (due to inadequate standards, and lax enforcement and poor oversight), poor to nonexistent regulations and oversight of other institutions (such as adult homes and assisted living facilities), and inadequate planning and capacity to care for those consumers who would choose to live in the community and could do so safely. The need for change should not be based predominantly on the desire to save money or increase "efficiency."

Furthermore, any changes implemented must ensure that the needs and rights of consumers are better served then they are under the current system. These include: the right to receive adequate care without regard to income; the right to receive services in the least restrictive environment possible for the individual; the right to make choices about one's care; and the right to privacy and respect for differing ethnicities, cultures, gender, race, religion, sexual orientation and gender identity in every care setting.

Presently, the LTCCC is creating a subcommittee to further analyze and address POE issues. Be sure to consult our website (www.ltccc.org) to track the subcommittee's development or to read our future report studying single point of entry systems nationwide.❑

LTCCC Awarded Major Project to Improve Mental Health

The Office of NY State Attorney General Eliot Spitzer has awarded LTCCC a grant to develop educational materials to improve mental health care for the elderly. The project will take a unique approach to the problem by seeking to help those with anxiety and related mental health disorders improve their treatment by becoming more knowledgeable and active participants in their own care. These materials will improve understanding of anxiety issues and encourage early intervention and prevention of serious problems by helping to identify symptoms,

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LTCCC Awarded Major Project...

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fostering better and more educated choices regarding treatment options and by helping the elderly and their loved ones advocate for themselves.

Anxiety and other mental disorders are underrecognized and undertreated in the elderly. Although they can occur throughout a person's life, the appearance and treatment of anxiety disorders often take on distinct characteristics in elderly individuals. These distinctions can stem from the particular issues a person faces in the latter part of life: significant changes such as major losses and bereavement, diminishment of health and abilities, threats to independent functioning, and loneliness or increased isolation. In addition to these emotional challenges and the consequentially unique features of anxiety disorders in the elderly, there are also distinct issues relating to mental health treatment of the elderly. Shame, stigma, and lack of information prevent elderly people from recognizing signs of anxiety or depression within themselves and getting the help they need. Many elderly are unaware that there is a range of effective options which exist to help them to overcome anxiety, phobias and panic attacks.

> ***"Anxiety and other mental disorders are underrecognized and undertreated in the elderly."***

In order to promote better care most effectively, we are planning on developing two sets of informational materials. One set will be geared directly to the elderly (and their families and friends) to educate them as they address mental health issues and treatment options. The second set will consist of complementary materials geared toward caregivers who frequently do not properly recognize or address these issues with their elderly patients. All materials will be specially tailored so that they are easy to understand and use.

The overall goal is to promote the delivery of responsive, quality care for this vulnerable population by giving them the tools to advocate for themselves with their caregivers and to make more informed choices. The project is expected to be completed in one year, and upon completion will be announced in our newsletter. ❑

Home Care Workers Strike for Better Wages

Certified home care agencies in New York City are provided with $17 or $18 an hour to deliver home care services to Medicare and Medicaid individuals while less than $7 an hour goes to the workers who actually provide the care. These agencies contract the care out to licensed agencies who receive about $12 of the original $18. 1199/SEIU, the union representing many of these workers, accuses the managers of some of these agencies with collecting huge salaries while forcing their workers to live a life of poverty.

For example, *The New York Times* reported in a May 3, 2004 article that "the 2002 tax filings for Metropolitan Jewish Health – a network of more than a dozen related companies, including a nursing home – show that it paid more than $1 million in salary and other compensation to its chief executive, Eli S. Feldman, and $317,000 to $508,000 to each of seven other officials."

1199/SEIU has been trying for three years to get employers to raise wages to $10 an hour and make sure that all workers have health care benefits. They organized a campaign called, "Invisible No More." The Long Term Care Community Coalition has endorsed this campaign.

Finding it could not convince the agencies to pay workers something they could live on, the union called for a three day strike beginning on June 7th. The strike won a tentative settlement with four employers, covering 10,000 workers and providing for significant annual raises that will bring most workers to a living wage of $10 an hour by mid-2007. The other agencies have been given a thirty-day window to agree to the same contract or face targeted strikes.

1199/SEIU will continue this campaign stating that home care workers deserve "more than a life of poverty." ❑

Legislative Round-Up

The New York State Legislative session in Albany ended this year with little in the way of programmatic accomplishments. Once again, budget negotiations ran well over schedule, which means that there was little time for the legislature to focus on program bills, such as legislation on long term care. For the most part, this year once again came down to "too little, too late." This was especially true for legislation affecting the elderly and disabled in New York. Following are updates on the three major legislative proposals that the Coalition worked on this year.

Nursing Home Diversion Act

Thanks to the many people who contacted their leaders in Albany, the Nursing Home Diversion Act (NHDA), Assembly Bill #8866, has been progressing in the Assembly. The NHDA is an emergency, stop-gap measure that would require nursing homes with extremely low staffing levels to divert incoming residents until they are able to bring their staffing levels up. It would duplicate the policy currently in place for hospital emergency rooms, which divert incoming patients when they don't have the staffing or resources to safely handle an additional patient. Supporters of the NHDA believe that people who need nursing home care deserve the same protections as those requiring hospitalization.

Between February and the end of the session, the NHDA went from one sponsor to over two dozen in the Assembly. While that is a great accomplishment – thanks in large part to the many calls, letters and emails received from readers of *The Monitor* – more needs to be done. See the end of this article for what you can do to help.

Nursing Home Minimum Staffing Legislation

Both the Senate and Assembly have bills calling for state-mandated minimum staffing levels in nursing homes (Assembly Bill # 5490 and Senate Bill # 2304). Under current law, the state does not require that nursing homes have specific levels of direct care staff on duty. As a result, resident neglect and abuse are serious problems in New York's nursing homes.

Unfortunately, though there are many supporters in both the Senate and the Assembly for this legislation, there was little movement in either side of the legislature to make this bill into law. This is because the law is widely perceived to be very costly, in terms of hiring and training new staff. However the Coalition, along with many other advocates and experts, believe that increasing staffing levels would actually save money, since treatment and hospitalization of the results of poor care – such as malnourishment, dehydration and bed sores – is extremely costly. (See the related article in this edition of *The Monitor* and visit the News and Reports section of our website, www.ltccc.org, to read our recent report on the underlying costs of poor care, LTCCC Urges New York State Leaders to Consider Costs of Poor Care.)

Assisted Living Legislation

The Coalition has been at the forefront for several years in calling for New York's leaders to pass a law to protect assisted living consumers. Last year our state leaders were close to passing a bill, but negotiations between the Governor and Senate and Assembly leaders broke down at the end of the session. This year we pushed hard for legislation with real consumer protections, meeting several times with our state leaders and joining with AARP, StateWide Senior Action and Alzheimer's Association in a press conference calling for assisted living legislation with substantive protections for consumers.

As of this writing, assisted living legislation is still under negotiation in Albany. The Coalition is working with provider organizations, other consumer groups and legislators to make sure that any law offers good consumer protections. Further developments will be reported in the next issue of *The Monitor*.

WHAT CAN YOU DO?

Contact your state leaders and tell them that you believe nursing home residents deserve the same protections as hospital patients - incoming residents should be diverted from facilities that have dangerously low staffing levels. Ask them to support the Nursing Home Diversion Act, Assembly Bill #8866. It is especially important that State Senators and the Governor hear from people like you. ❑

Enforcement Actions Against Nursing Homes[1]

3-15-04 — 6-15-04

The State Fines 26 Nursing Homes

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT
Amsterdam House	NYC	9/28/01	2,000
Bellhaven Center	Brookhaven	6/03/02	2,000
Bethel NH	Ossining	10/24/01, 07/18/03	4,000
Cabrini Ctr. For Nursing	NYC	02/12/01	1,000
Coler Goldwater	NYC	05/21/02	1,000
Cortland Care Ctr.	Cortland	08/15/01	4,000
Eden Park East Greenbush	E. Greenbush	10/19/00, 11/15/00, 02/21/01, 11/08/03, 02/18/03	14,000
Elderwood at Heathwood	Amherst	06/08/01	2,000
Elderwood at Lakewood	Hamburg	11/27/01	2,000
Ferncliff NH Co. Inc.	Rhinebeck	11/16/01	2,000
Gowanda MH	Gowanda	11/20/01, 08/01/02	2,000
Hudson Haven Care Ctr.	Wappingers Falls	11/08/01	2,000
Kateri Residence	NYC	09/28/01	4,000
Lutheran Care Ctr.	Smithtown	2/12/01	2,000
Nassau ECC	Hempstead	07/25/01	2,000
Nazareth NH	Buffalo	12/14/01	2,000
Northgate HCF	N. Tonawanda	01/02/03	2,000
Putnam Commons NH	Brewster	03/12/03	1,000
Rutland NH	Brooklyn	03/26/02, 05/20/02	6,000
Salem Hills HCCC	Purdys	08/23/01	2,000
Silvercrest	Jamaica	04/02/01	3,000
St. Catherine of Siena	Smithtown	05/15/03	8,000
Townhouse ECC	Uniondale	08/31/01	2,000
Wartburg NH	Mt. Vernon	03/01/01	2,000
		12/10/01	1,000
Wells NH	Johnstown	01/21/03	2,000
Westledge NH	Peekskill	09//21/01	1,000

[1]As reported by the Department by Health. This list 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, you can get a copy of the Statement of Deficiencies (SOD) from the Department of Health. You will be charged $.25 a page. Call Jim O'Meara, 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.

The State Took Other Actions at 7 Nursing Homes

In addition to the actions listed below, the following nursing homes have fines pending. 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 - Have received G's in two consecutive surveys.

NAME OF HOME	LOCATION	IJ, SQC or G	SURVEY DATE	ACTIONS[1]
A. Holly Patterson	Uniondale	IJ/SQC	04/15/04	DOPNA, In Service, State Monitor
Greenpark Care Ctr.	Brooklyn	IJ/SQC	05/14/04	DOPNA, POC, In Service, State Monitor
Hillhaven NH	Webster	IJ/SQC	03/19/04	DOPNA, POC, State Monitor
Mercy Health & Rehab	Auburn	IJ/SQC	05/26/04	DOPNA, POC, In Service, State Monitor
Northwoods Rehab	Cortland	IJ/SQC	03/11/04	DOPNA, POC, In Service
Rutland NH	Brooklyn	Double G	04/06/04	DOPNA, POC, In Service, State Monitor
Williamsville Suburban NH	Williamsville	IJ/SQC	05/04/04	DOPNA, POC, State Monitor

[1]**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-ServiceTraining**: 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 from the Federal Government.

Nursing Home is Terminated from Medicare and Medicaid

Is NYS Now Footing Entire Bill for Poor Care?

We reported in the Fall, 2001 edition of *The Monitor*, that a July 27, 2001 survey found that the Northeast Center for Special Care in Lake Katrine put residents in jeopardy and gave them substandard care. DOH gave the Northeast Center a denial of payments for new admissions (DOPNA) and a directed plan of correction (POC) and required the home to give in-service training. And, in the Summer 2002 edition of *The Monitor*, we reported that Northeast Center was sent a letter notifying them that they could be fined by the State if they did not correct deficiencies found by the State. Although we received no notification of any state fine, we reported in the Fall, 2003 edition of *The Monitor*, that a May 21, 2003 state survey found that once again the Northeast Center put their residents in immediate jeopardy and had given them substandard care. The State again imposed a DOPNA, a POC and, in this case, state monitoring. We received no notification of any state fine.

Finally, the federal government stepped in. Federal surveyors inspected the home on September 26, 2003 and found that the home had yet again put their residents in immediate jeopardy. A federal fine of $62,000 was levied and a DOPNA was put in place from October 1, 2003 to March 26, 2004 when the home was terminated from the Medicare and Medicaid program for poor care. Termination means that the home will not receive any Medicare or Medicaid funds from the federal government. During that time the home met with Center for Medicare and Medicaid (CMS) staff to discuss correction and was given a POC.

The facility will be visited again on July 30, 2004 to see if it is eligible to be reinstated into the programs. However, we believe that the home is still receiving Medicaid funds. If it is, that means that New York State is picking up the entire amount, continuing to pay the state portion and also paying the federal portion. This is very unusual. We wonder why the State is using State Medicaid funds to keep a facility going that has given such poor care over quite a few years. Why not get another operator in place? ❑

Coalition Examines CNA Training and Continuing Education

Within nursing homes, Certified Nurse Aides (CNAs) provide crucial services, such as feeding, dressing, and communicating. Thus their training is very important, both for giving them the skills necessary to provide these services and making sure that they are prepared to handle their jobs. The high rates of neglect and abuse of residents as well as high staff turnover and worker injury rates are clear indicators that more needs to be done to prepare CNAs for their important role.

Previously, LTCCC research studies identified the absence of screening mechanisms for aspiring CNAs and a lack of continuing education, as major shortcomings of the New York State training system. As a follow up, with support from the Robert Sterling Clark Foundation, the LTCCC conducted a nationwide survey to determine how other states screen those interested in becoming CNAs and what training is required during the course of their careers (post-certification). After survey analysis, we released a report this past spring, *Certified Nurse Aide Screening and Continuing Education: A National Survey of State Requirements with Recommendations for Improvements*, which featured recommendations for improving the quality of New York State policies. The report can be downloaded for free from the Publications page of our website, www.ltccc.org.

> ***"Other states are demonstrably more committed to maintaining and improving the education of their CNAs. New York should follow their lead."***

The study's major findings are that New York is lacking in a number of important areas: pre-certification requirements, in-service training, incentives for CNAs to remain in the field and increase their training, and recertification rules. To become a CNA in New York, the Department of Health (DOH) currently requires 100 training hours of which at least 30 hours must be supervised practical experience in a nursing home. In addition, within two years of training program completion, candidates must successfully pass a clinical skills competency test and a written or oral competency test. According to our findings, many states require much more than that.

Although the federal mandate is 75 hours, the Coalition believes that even 100 hours is too little to adequately train nurse aides for the important job they must do. For a long time, the Coalition has advocated increasing New York's CNA training requirements. As recently as 2002, our Nursing Home Staffing Committee developed a "model" curriculum, which suggested a minimum of 155 training hours, smaller trainer to student ratios, and learning experiences beyond the traditional lecture format. Both the DOH and provider organizations agreed with our recommendations, in principle, but implementation never occurred. Given the continual pressures being placed on the nursing home system, it is important that we attempt to make these suggestions a reality.

After certification, it is essential that CNAs receive in-service training to help them maintain and advance their skills. Continual training and practical experience are necessary to keep pace with the changing needs and developments of the nursing home resident. The DOH mandates, at a minimum, an annual performance review to help identify weaknesses to be corrected through in-service training. However, New York only requires six hours of in-service training in a six month period. We discovered that other states are demonstrably more committed to maintaining and improving the education of their CNAs. For example, California requires 48 hours of in-service training every two years, while Delaware requires 64 hours of in-service training every two years. New York should follow their lead and increase its minimum training requirements at least to 12 hours every six months, where training will introduce new topics and skills that: 1) affect all nurse aides, and 2) address a particular nurse's weakness.

Of particular interest to the Coalition is the concept of a tiered system, where higher salaries might be given for increased skill levels, thus providing an incentive to continue in the profession and opt for

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Coalition Examines CNA Training…

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additional training. This concept has the potential to positively impact the system by decreasing the high turnover rate and increasing the quality of care received by the residents. For example, in Delaware's tiered system, "senior" certified nurses have been in good standing for at least three years, completed additional hours of training, and passed a competency exam. The Coalition recommends that New York conduct a tier system pilot test to determine if such a system truly improves long term health care delivery.

Further proof that New York requirements are insufficient is found in assessing the State's policy for recertification. Currently, recertification occurs as long as an aide has worked for pay in a New York State nursing home (or for any other DOH approved nurse aide employer) for a minimum of seven hours during the previous 24 consecutive months. In contrast, the study found that Nevada, Oregon, and Wyoming each require at least 400 hours of nursing service during the 24 month period (equivalent of ten 40 hour weeks in a 104 week period). Additionally, with only seven hours of service required, it is fairly unlikely that a CNA working at that level will have fulfilled the DOH requirement of receiving a yearly performance review or the necessary hours of in-service training.

In summary, the LTCCC recommends that New York State:

- Require at least 155 hours for nurse aide training;
- Adopt tougher requirements for recertification,
- Increase in-service education to at least 12 hours every six months; and
- Implement a large-scale pilot test of a tiered system of nurse aides.

In addition, the report includes and recommendations on other issues, such as:

- New York State should conduct an investigation to determine whether creating a minimum age requirement for certification will severely diminish potential CNAs or will increase staff stability, since more mature CNAs will be more apt to handle the job;
- New York State should require that all nursing home employees have a criminal background check, not only the CNAs; and
- New York State should determine if language barriers are a problem in nursing homes and if so, how to resolve potential problems.

WHAT CAN YOU DO?

1. Send a letter by mail or fax to:
   - Governor Pataki
   - Your Senator
   - Your Assemblyman
   - Honorable Speaker Sheldon Silver
   - Majority Leader Joseph L. Bruno

   Contact information for selected officials may be found on the back page of *The Monitor*.

   Let them know that you want them to make sure that the state requires at least 155 hours for nurse aide training; adopts tougher requirements for recertification, increases in-service education to at least 12 hours every six months; and implements a large-scale pilot test of a tiered system of nurse aides, and

2. Go to our website (www.ltccc.org) and click *"Support Better Training for Nurse Aides"* and submit your letter electronically to State leaders. ❑

DOH Clarifies Nursing Home Discharge and Transfer Process

In response to a lawsuit brought by attorney Jane Greengold Stevens (the New York Legal Assistance Group) at the request of Friends and Relatives of Institutionalized Aged (a member of LTCCC) on behalf of several residents who were inappropriately discharged, the Department of Health (DOH) sent out a Dear Administrator letter to all nursing homes to clarify the discharge process. In addition, a revised interim policy for transfer/discharge of nursing home residents, effective May 1, 2004, was issued. The full text of the letter and the revised policy can be accessed from our website: http://ltccc.org/key/nursing.htm (Scroll down to the bottom of the page.)

Consumers have long complained about inappropriate discharges. DOH finally dealt with these issues only after the lawsuit was filed. Two of the situations clarified occur when residents who transferred to a psychiatric or medical (including an emergency room) unit of another facility has been determined by that facility to be ready to return to the nursing home, and when residents are discharged from a short-term rehabilitation unit in the nursing home.

The following clarifications about these situations were made:

- A transfer of a resident to a psychiatric unit or psychiatric hospital requires that a nursing home issue a discharge/transfer notice. A resident has the right to contest such a transfer/discharge. Facilities are expected to readmit residents with behavioral problems after the course of treatment has been completed and it has been determined that the resident is no longer a danger to themselves or others. Decisions on readmission must be based on the evaluation of the full course of treatment received at the psychiatric facility and may not be made based solely on the resident's condition at the time of transfer from the nursing home. In situations where the facility has determined it will not readmit the resident, a notice of discharge is required and the resident has the right to appeal. The DOH will, to the best of its ability, expedite the hearing of these types of appeals as it is important that, where appropriate, the resident return to the facility he/she considers home as soon as possible.
- A facility may not enter into a discharge plan upon admission, nor seek to specify the date of discharge based upon a third party payor's limitation on payment, nor seek to discharge an individual who has completed the course of rehabilitation but is still in need of residential care.
- Residents who reside on short-term rehabilitation units of a facility who have been determined to no longer require such services but still need nursing home care may be transferred to another unit in the facility. If it is determined that the resident no longer requires nursing home care and the facility plans to discharge the resident, a proper notice of discharge must be provided in accordance with regulations.
- Residents who are thought to be an imminent danger to others in the facility may be involuntarily transferred before a hearing. As such, cases of imminent danger are considered transfers. The facility therefore shall be required to hold the resident's bed until after the hearing decision. If the transfer is found to be appropriate, the facility may charge a private pay resident for the time the bed was held. If the transfer is found to be inappropriate, the facility shall readmit the resident to his or her bed on a priority basis. For situations of imminent danger the facility is required to hold the specific bed that the resident occupied prior to transfer. The obligation to hold the bed exists regardless of whether or not Medicaid payments are available and whether or not bed hold residency or vacancy requirements are met. The DOH will expedite the appeal hearing process in an attempt to conduct the hearing and render a decision prior to the conclusion of the 20-day bed hold period. If, however, a decision is made after 20 days and the resident is successful in the appeal, they must return to the bed they occupied prior to the transfer from the nursing home.

In addition clarifications were made about appeal hearings, bed hold policies, discharge notices and situations relating to imminent danger.❑

Coalition Releases Study on Federal Staff Posting Requirements

In January 2003, the Centers for Medicare and Medicaid Services (CMS) initiated new regulations that require every nursing home in the country to post the number of licensed and unlicensed direct care staff on duty for every shift. This information must be posted in a prominent and public place. The requirements were instituted to inform consumers about staffing levels. The Coalition and other advocates were glad to see CMS take this step, because staffing levels are widely acknowledged as a key indicator of resident care. This information could help consumers determine whether an individual facility had sufficient staff on duty to provide adequate care.

To gain insight into whether the new regulations were helping consumers, the Coalition conducted a year long campaign measuring consumer experience with the new staff posting requirements. We asked people to report to us about their personal experiences with the postings in their facilities – were they easy to find?, easy to read? – as well as report to us on the information they found – was the required information there?, did they feel it was accurate?, etc…

The results of this campaign, which was made possible by funding from the Robert C. Clark Foundation, have been made public in a report LTCCC issued in the Spring: *Are the Federal Nursing Home Staff Posting Requirements Serving Consumers?* The report can be read or downloaded for free from our website, www.ltccc.org (click on "Read Our Latest News, Reports and Policy Briefs" on the right.)

Though New York State was the primary focus, the National Citizen's Coalition for Nursing Home Reform (NCCNHR) publicized the project in their national newsletter which resulted in people across the country participating in the campaign. Several hundred responses were received from residents, family, friends, staff and ombudsmen, providing an informative look at how people perceived the implementation of the new regulations.

Major findings of the study:

- The majority of responders found or noticed the staff posting and felt they were easy to find and easy to read. Variation in posting sizes ranged from 2" x 3" to 15" x 15". (CMS recommends postings be 8.5" x 14".)
- Postings were found in a wide range of locations in the facility, from the building entry to community bulletin boards to nurse stations and even in non-public areas.
- Only 78 percent of respondents felt the numbers posted were accurate. This could be due either to inflated staffing figures or a lack of faith in the integrity of the facility. (However, since this study focused on impressions and did not authenticate the numbers, we are limited in the extent to which we can judge whether the answers to this question accurately reflect conditions in the nursing homes.)

Major recommendations of the study:

- Standardize the format of the posting form and require a minimum size, preferably 11" x 14" or legal size paper.
- Include a daily resident count in addition to a direct care staff count to maximize comprehension of staffing to resident ratios.
- Include information about current shift staffing, so people can determine current staffing levels.
- Include all staff providing direct care, not just licensed nurses and CNAs.
- Mandate a specific place where information should be posted that is prominent and easily accessible to both residents and visitors.
- Institute strong enforcement and oversight mechanisms to ensure accurate information is being presented.
- Require facilities to submit posting information to CMS or a state database to track this important information.

More findings and recommendations can be found in the full report, which can be downloaded for free from our website (as noted above). CMS is currently drafting final regulations for the staff posting requirement, based on the past year's experience. The Coalition submitted their study and recommendations to CMS for consideration in the drafting process. Thus, it is possible that our work – and the efforts of people who participated in the campaign – could have a real impact on national policy! ❑

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

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