

M^{LTC}onitor

WINTER 2004

THE LONG TERM CARE ADVOCATES' NEWSLETTER

Coalition Sets New York State Legislative Agenda for 2004:

Holds meetings with Albany leaders to educate them on consumer perspective and advocates for progress in the coming session

As the Albany legislative session begins in January, the Coalition is planning how we can work most effectively to protect long term care consumers this year. Following are the key issues that we will be working on. For updates and additions to this list, make sure to read future issues of *The Monitor*, visit our website at www.ltccc.org or subscribe to our new e-mail *LTC E-Newsletter* (e-mail richard.nhcc@verizon.net with the words "subscribe to e-newsletter" in subject line).

Nursing Home Care

The Coalition is fighting to improve conditions in nursing homes. Currently, there is a crisis in care with widespread suffering – many residents are neglected, improperly nourished and medicated, and treated without dignity or care. Though state and federal law already requires that nursing homes provide "sufficient" staff, all too often that vague phrase permits homes to have far too few staff to care for their residents.

We are urging the state to take action this year to mandate improved staffing levels. This can be done
continued on page 2

Coalition Issues Report Card for New York on Long Term Care

This year again saw long term care consumers under siege throughout New York State, with little action by our political leaders to alleviate conditions for vulnerable elderly and disabled consumers. The crisis

in nursing home care persisted and assisted living residents continued to be unprotected. However, there were a couple of bright spots on the horizon.

LONG TERM CARE COMMUNITY COALITION REPORT CARD	
NURSING HOME CARE	
Department of Health Oversight	F-
Attorney General Eliot Spitzer's Office	A
Governor Pataki, NY Assembly & NY Senate	D
ASSISTED LIVING	
Governor Pataki, NY Assembly & NY Senate	D
Attorney General Eliot Spitzer's Office	B+
New York Department of Health	B+

Nursing Home Care – Department of Health Oversight: F-

By all accounts, the Department of Health (DOH) – charged by the federal government to ensure that every nursing home resident receives adequate care – failed in its duty to do so. Unnecessary suffering – and in some cases even death – continued across the state. Meanwhile, DOH is citing and fining fewer facilities, the backlog in consumer complaints grows and DOH surveys are becoming increasingly less effective because surveys are too predictable and the DOH continues its over-reliance on using contract workers to perform surveys, rather than develop a permanent, well-trained workforce looking out to protect consumers.

continued on page 8

In This Issue:

LTCCC Executive Director Speaks to CNAs.	3
LTCCC Executive Director Participates in Conference	4
Grandma is a Lesbian	4
New Medicare Law	5
Enforcement Actions	6
Attorney General's Nursing Home Initiative	9
Action Alert Mailing List.	Back Page / 12

Coalition Sets Legislative Agendas...

continued from page 1

through a **Staff Ratio Bill**, introduced in both the Assembly & Senate. This bill would mandate minimum staffing levels to help ensure resident care and safety and define what is meant by “sufficient” staff. Alternatively, if the politicians cannot agree on a Ratio Bill (which would cost money to implement), we are urging legislators and the governor to support the **Nursing Home Diversion Act** which would simply divert people in need of long term care from facilities that have so few staff that their residents are likely to suffer harm, according to a federal study.

This policy is already in place for hospital emergency rooms, which divert incoming patients to other hospitals when they reach the capacity their staff can handle. Don't people who need nursing home care deserve the same basic protection? If we do not do this, we are really just “warehousing” our elderly.

Assisted Living

Currently there is no law regulating assisted living providers and protecting assisted living consumers. We strongly believe that New York should join with the majority of other states which have an assisted living law. **The state should take action this year**, particularly since assisted living is the fastest growing type of senior housing in the state.

Most importantly, any legislation must have substantive protections. It would be terrible if the state passed a law that was not helpful to consumers. The **key issues** we have identified as being important in any law are: a **clear definition** of what assisted living is, **uniform admission and discharge policy**, clear and **easy to understand consumer information** and disclosures, a **strong state oversight** role and a *consumer “bill of rights”* providing rights of privacy and against discrimination.

Coalition representatives met with leaders from the Senate and Assembly in December to educate them about long term care issues and the crisis in care and urge them to mandate improvements.

Time and time again the politicians told us that nothing will get done until they hear from their constituents – people like you and your family and friends and co-workers – that these issues are important.



WHAT CAN YOU DO?

Our politicians must hear from as many people as possible. Visit the new Long Term Care Citizen Action Center on our website – www.ltccc.org – and send a fax or email for free. **YOU CAN MAKE A DIFFERENCE!** [If you don't have Internet access, you can find contact information right now by turning to the back page of this newsletter.]

1. Call, fax or write your Assemblyperson or Senator and tell them that you want them to protect nursing home and assisted living residents this year. Urge them:

- **To Mandate Minimum Staffing Levels:** Ask your Senator to support bill #S02304. Ask your Assembly Representative to support bill #A05490.
- **To Stop Nursing Homes With Extremely Poor Staffing Levels from Admitting New Residents:** Ask your Assembly Representative to co-sponsor the Nursing Home Diversion Act, bill # A08866. Ask your Senator to sponsor a Senate version of the bill. **TELL THEM ANOTHER YEAR CANNOT GO BY WITHOUT SOMETHING BEING DONE TO ALLEVIATE THE CRISIS IN OUR NURSING HOMES!!!**
- **To Protect Assisted Living Consumers:** Tell your Senator and Assembly Representative that you want the state to protect people in assisted living – pass a law this year with real protections for vulnerable consumers (SEE “key issues” discussed above).

2. Tell your friends and families and co-workers about how important it is to speak out too. Give them a copy of this newsletter; tell them to visit our Citizen Action Center. Let them know that if people don't tell our leaders that we care about the way elderly and disabled people are treated, they will continue to receive poor care!

LTCCC Executive Director Speaks to CNAs About Working Conditions

Cynthia Rudder, Executive Director of the Long Term Care Community Coalition (LTCCC, formerly the Nursing Home Community Coalition of New York State – NHCC), was the keynote speaker at the Black Long Term Care Executives conference for nurse aides on December 3, 2003. She described LTCCC's latest study on staff working conditions supported by the New York Community Trust. The study, released last June, is available for free on LTCCC's website: www.ltccc.org.



Over 150 nurse aides attended the conference from facilities throughout the metropolitan area. When asked what they believed important for a good working condition, most gave similar responses to those of the original study, demonstrating that the indicators of a good working condition found in the study seem to be true for most CNAs. Number one, of course, was the need for more staff to care for residents.

The CNAs broke up into small groups to discuss comments made in the original study and developed their own recommendations to improve conditions related to staffing, relationships with supervisors, families and residents, respect and teamwork.

"Adequate Staffing Is Crucial"

Most of the aides felt that we must continue to fight for adequate staffing levels. While waiting for this:

- Supervisors must be ready to roll up their sleeves and help.
- CNAs should be advised at the beginning of shifts if there are serious staffing issues so they can try to make adjustments.



- CNAs should not be rushed if there is not adequate staff. They only get more stressed.

"Good communication leads to respect."

For most of the CNAs at the conference, an important element was communication. Some suggestions to improve communication in nursing homes:

- Educate supervisors to communicate effectively. Monitor their performance.
- Create a CNA "communication" book where CNAs can put down any comments they want to make about residents they care for. This should be read and followed up by supervisors.



- Have discussion groups and team meetings on a regular basis.

- Involve CNAs in care plan meetings. Schedule

care plan meetings around the aide's schedule so she/he can attend.

- Individuals should go to people who they feel have spoken to them or treated them unfairly and explain to them how they feel.
- Union and management should work together to deal with conflicts.

The aides also felt that teamwork was very important and felt that management has a responsibility to implement teamwork by dealing with issues of different personalities, cultures, and lack of cooperation.

The issue of family and resident relationships was also seen as crucial to a good working condition. In fact, for many aides, this is where they felt most appreciated and happy with their job. However, these relationships sometimes depend on not taking some negative things said by families or residents personally.

continued on page 4

GRANDMA IS A LESBIAN...She is going to a nursing home – what to do?

We all have had an inkling about Grandma Estelle. She and Kathleen have been sharing an apartment in Flushing for 31 years. They had monthly gatherings with what they called “The Group”, and took joint summer vacations every year that I can remember. My family just took to including Kathleen in our holiday dinners. We knew she was never married, was an LPN at Flushing General and was without family here in New York. But we never put any labels on their close relationship ...it just was. That’s the way we left it – and in fact, it’s the way grandma and Kathleen handle it – even now when things have radically changed.

By that I mean that grandma, now 82, can barely move or talk after her stroke 4 months ago. Using all her nursing skills, Kathleen tried taking care of her at home – but grandma was



never a light weight and proved too much what with toileting and repositioning to prevent bed sores. My brother and I finally convinced Kathleen that it would be best all around if grandma were in a nursing home. She sadly, and reluctantly, agreed.

To tell you the truth, my family is now facing a dilemma. With all the gay shows and discussion on TV and in the movies, we have begun to recognize the nature of the loving relationship between my grandmother and Kathleen. We have even begun to talk about it within the family – something we have not done before.

For the first time we realize that without Kathleen’s constant presence, grandma could simply wither on the vine – proper medical care or not. *continued on page 11*

LTCCC Executive Director Speaks to CNAs

continued from page 3

- Remember that some families and residents say negative things because of love, guilt or what they have seen on the TV.
- Tell them that you understand how they feel; that you would feel the same way if it were your mother.
- Reassure them that you will care for their relative as if he or she were your own.

Education of supervisors was also seen as a way to improve conditions. In addition to the issue of communication, supervisors need to be educated in staff diversity, stress management, how to get feedback from workers and how to make sure that all sides are heard. All supervisors should be aides for a day.

As the CNAs left to go back to their facilities, Dr. Rudder urged them to meet with other staff to discuss the conference and what they learned from each other.

LTCCC Executive Director Participates in Conference on Quality of Life in Assisted Living



On November 13, 2003, Cynthia Rudder, Executive Director of the Long Term Care Community Coalition (LTCCC

– formerly the Nursing Home Community Coalition of NYS – NHCC) moderated a panel discussing quality of life in assisted living. The conference, “Assisted Living: New Opportunities and Challenges,” was sponsored by Health Care Advocates for Older People. The panel moderated by Dr. Rudder focused on a new guidebook, funded by the Robert Wood Johnson Foundation, for potential consumers looking for autonomy, choice and independence in assisted living. This guidebook, written with the Coalition of Institutionalized Aged and Disabled (CIAD) was published in November and is available for free at www.ltccc.org.

New Medicare Law: The Destruction of Medicare?

Unless something is done to change things, Medicare and its beneficiaries are in for major change, much of it harmful. At the end of 2003, President Bush signed into law legislation giving the elderly a prescription benefit under Medicare for the first time and changing the Medicare system so that private insurance companies will have a much bigger role.

While the law offers a few potential benefits to its beneficiaries (emphasizing preventive care and providing incentives for reducing medical errors), its major benefits are to the drug and insurance industries; its prescription benefits are elusive and potentially harmful and its major provisions threaten to destroy Medicare as we know it.

The Drug Benefit is Inadequate

The drug plan is not as generous as what Senators and members of Congress give themselves and what most employers offer their employees (as reported in *Time Magazine*, December 2003). While low income beneficiaries not on Medicaid will get some help, it is projected that as many as 9 million people nationally will lose more comprehensive prescription drug coverage as a result of this law, including people with retiree coverage and people with coverage from their states.

The Drug Benefit is Very Complicated, with Serious Gaps in Coverage

Beginning in 2006, seniors will be required to pay an estimated \$35 monthly premium and a \$250 deductible. The program will then cover 75% of drug costs up to a maximum of \$2250. The individual must then pay the next \$2850. Once expenses reach \$3600, the plan will cover 95% of any remaining costs.

There Are Problems Related to the Drug Coverage

1. The \$35 is just an estimate. Private insurers, who will be administering the benefit, can require higher premiums. Costs may vary by geographic location.

2. Seniors who have drug coverage today could have less access to drugs under this plan because private insurers can decide which drugs it wants to cover. It may not cover the drugs seniors need.

3. Seniors may not be able to afford the “benefit.” Medicare beneficiaries will not be allowed to buy insurance to cover their share of the costs, which can be very high. Premiums and deductibles will increase greatly as time passes. In 2013, the deductible will be \$445 (instead of \$250) and the maximum limit will be \$6400 (instead of \$3600). These increases are roughly three times the rate of inflation used to increase Social Security payments (as noted by the Center for American Progress). At least 650,000 New Yorkers will pay more for prescription drugs than they do now if they want to use this benefit. This is because the premiums, deductibles and co-payments cost more than they now spend on drugs.

LTCCC is afraid that Medicare will not be able to compete with private plans as drug costs rise.

4. Seniors will have little information. Beneficiaries will have to choose a drug insurer without knowing exactly what drugs that insurer will cover. Insurers can change their list of covered drugs at any time, but beneficiaries cannot change insurers at any time.

5. Medicaid beneficiaries may be worse off. If an individual is on Medicaid, he or she will lose Medicaid drug coverage and get help with the Medicare drug premium, deductible and coinsurance. However, the benefit may not cover the drugs he or she needs. This will depend on what the private insurer wants to cover.

There are Many “Poison Pills” Which May Eventually Destroy Medicare

1. The law specifically forbids the government from doing what all other group health plans do and what Medicare does for other services: negotiate with pharmaceutical companies to lower drug prices. This gives private plans a major advantage over

continued on page 6



Enforcement Actions Against Nursing Homes¹

9/15/03 –12/15/03

The State Fines 10 Nursing Homes

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>DATE OF SURVEY</i>	<i>AMOUNT</i>
Albany County	Albany	12/12/01, 5/9/02	16,000
Elderwood Health Care @Wedgewood	Amherst	6/6/01, 1/2/03	8,000
Howd	Moravia	1/04/02	6,000
James Square	Syracuse	7/26/00, 9/17/01	9,500
Lakeside NH	Ithaca	2/28/02, 5/7/02	4,500
Nathan Miller	White Plains	4/11/02	2,000
Oakwood Care Center	Oakdale	3/10/03, 8/28/03	10,000
Sutton Park Center	New Rochelle	1/24/01	22,000
Vivian Teal Howard	Syracuse	9/11/01	3,000
Waters of Aurora Park	Aurora Park	8/3/00, 10/11/00, 11/13/00	13,000
Waters of Aurora Park	Aurora Park	9/14/01	1.000

LTCCC Did Not Receive Any Notification That Any Homes Were Notified That They Are Subject To A Fine During This Period.

¹As 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.

²Nursing homes are also required to post the most recent survey results.

New Medicare Law: The Destruction of Medicare?

continued from page 5

traditional Medicare and does nothing to hold down the cost of drugs.

2. The law forbids the importing of drugs from other countries such as Canada, which has lower price drugs. Thus, drug prices will continue to rise.
3. The law has a bias toward private plans. Payments to the insurance companies will be increased immediately. By 2006, rates will be 25% higher than traditional Medicare costs for the same beneficiaries. Additional financial incentives will begin in 2006.

LTCCC is afraid that Medicare will not be able to compete with private plans as drug costs rise. That may be the idea. Private plans have a history of leaving the market if profits are not high enough (i.e., Medicare HMO plans). Unlike the government, they have no obligation to stay. Consumers may be left high and dry.



WHAT CAN YOU DO?

One of LTCCC’s members, New York StateWide Senior Action Council is mounting a large campaign. Call 518-436-1006 to see how you can help.



Enforcement Actions Against Nursing Homes

9/15/03 –12/15/03

The State Took Other Actions at Thirteen 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.

<i>NAME OF HOME</i>	<i>LOCATION</i>	<i>IJ, SQC or G</i>	<i>SURVEY DATE</i>	<i>ACTIONS¹</i>
Adventist NH	Livingston	NA	11/21/03	DOPNA, POC, In- Service
A. Holly Patterson	Uniondale	SQC	10/15/03	DOPNA, POC
Amsterdam Memorial Hos SNF	Amsterdam	NA	10/28/03	DOPNA, POC, In-Service
Betsy Ross Rehab	Rome	NA	10/30/03	DOPNA, POC, In-Service
Brunswick Hospital Center	Amityville	IJ/SQC	10/31/03	DOPNA, POC
Champlain Valley Physicians Hos	Plattsburg	IJ	10/31/03	DOPNA, POC, In-Service
Concord	Brooklyn, NY	SQC	10/20/03	DOPNA, POC
Gold Crest	Bronx	SQC	10/27/03	DOPNA, POC
Highland Living Center	Pittsford	IJ/SQC	9/12/03	DOPNA, POC
Jewish Home for The Aged	NY	SQC	10/31/03	DOPNA
Julie Blair	Albany	IJ/SQC	10/10/03	DOPNA, POC, In-Service, State Monitoring
Mary Manning Walsh	NY	IJ/SQC	9/22/03	DOPNA
Mercy Healthcare	Tupper Lake	IJ/SQC	10/24/03	DOPNA, POC, In-Service, State Monitoring

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-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.

NHCC Changes its Name and Moves to New Address

The Nursing Home Community Coalition of New York State, in order to reflect the work it does on behalf of all long term care recipients, has changed its name to: **The Long Term Care Community Coalition.** In addition, it has moved its offices to midtown Manhattan: **242 West 30th Street, Suite 306, New York, NY 10001.** Our telephone number has remained the same – (212) 385-0355 – but our fax number has changed to (212) 239-2801.

Coalition Issues Report Card for New York on Long Term Care

continued from page 1

Nursing Home Care – Attorney General Eliot Spitzer’s Office: A

Attorney General Eliot Spitzer has been using his office to hold providers accountable by suing nursing homes that fail their residents. In a sense, he is working to criminalize poor care – while many have long thought that the way some nursing homes treat their residents is criminal, the Attorney General’s office has been the first political leader to make this a reality. You can read more about the Attorney General’s activities in this issue of *The Monitor*. Please make sure to tear out the post card in this issue and let him know that you support his important efforts!

Nursing Home Care – Governor Pataki, NY Assembly & NY Senate: D

Although Assemblyperson Richard Gottfried took leadership in proposing important legislation to protect vulnerable residents, the NY State Assembly, Senate and Governor Pataki again failed to pass any bill that would protect nursing home residents or provide relief for the crisis. The Staff Ratio Bill proposed in both houses, by Representative Gottfried in the Assembly and by Senator Hannon in the Senate, did not gain sufficient support to move forward. Our proposal to institute a moratorium on new admissions to the state’s worst nursing homes resulted in a bill being introduced by Assemblyperson Gottfried at the end of the session – the Nursing Home Diversion Act. This bill, too, did not pass the Assembly as of the end of 2003, and has not yet been introduced in the Senate. In short, the Governor and state legislators seemed to be telling nursing home residents that they needed to fend for themselves!

Assisted Living – Governor Pataki, NY Assembly & NY Senate: D

Unlike the majority of states, New York offers no protections for assisted living consumers. Representatives of the governor and legislative leaders appeared close to agreeing on a bill in the spring,

but those negotiations fell apart in the last days of the session. As a result, though assisted living is the fastest growing segment of consumer housing in New York, consumers continue to be unprotected from unscrupulous providers, fraudulent fees, medication management problems and other serious issues that may put elderly consumers at risk.

Assisted Living – Attorney General Eliot Spitzer’s Office: B+

As with nursing home care (see above), Attorney General Eliot Spitzer seems to be the leader in New York State who is most interested in protecting assisted living consumers. He succeeded in holding Atria, a leading provider, accountable for charging fees to their residents that were misrepresentative of the services being charged for. As a result, Atria residents were able to get large, court-ordered refunds.

Assisted Living – New York Department of Health: B+

While the legislature has failed to mandate licensure of assisted living residences, the Department of Health (DOH) has been taking important steps to protect consumers by requiring assisted living providers who provide adult home services to be licensed. If DOH believes that these facilities are really adult homes calling themselves a different name, it requires them to apply for licensure under the current adult home law.

We are happy to report that in this regard the DOH has been very responsive to consumer concerns. If a consumer complains or we believe a facility should be licensed under the present adult home law, DOH staff go in to investigate in order to make a decision about the need for licensure.

While we are pleased to see this initiative on the part of DOH, it does not alleviate the need for a law mandating assisted living licensure. The DOH can only take action on facilities that consumers complain about or that they hear about from us or others – facilities that are not brought to their attention operate without proper oversight or scrutiny. Furthermore, facilities can take the DOH to court to fight and delay regulation. Meanwhile, assisted living residents continue to be unprotected.

Attorney General's Statewide Nursing Home Initiative Combats Systemic Abuse and Neglect

At a time when seniors, the disabled and others who depend on long term care in New York are increasingly marginalized, Attorney General Eliot Spitzer's office has been taking effective measures to protect nursing home residents across the state. The Attorney General accomplishes this through two offices, the Health Care Bureau, headed by Joseph Baker III and the Medicaid Fraud Control Unit (MFCU), under the direction of Deputy Attorney General William Comiskey.

The MFCU plays a significant role in the investigation and prosecution of health care crime in New York State. The Unit's prime responsibility is to monitor Medicaid fraud arising out of the billions of dollars spent on Medicaid in New York State each year. It prosecutes cases of patient abuse in nursing homes, fraudulent billing practices by physicians, pharmacists and/or any other health care providers and vendors using Medicaid dollars.

For more than 25 years the MFCU has investigated and prosecuted individual staff members for intentional or neglectful behavior toward residents. While we were glad to see the Unit protect our vulnerable nursing home residents from the individual actions of abusive staff, we have long felt that "systemic"

mistreatment – mistreatment caused by overall nursing home practices – was a much more widespread form of nursing home abuse. Thus, we were pleased and excited when Attorney General Spitzer began a new nursing home initiative a couple of years ago that began to investigate harm attributable to owner/management policies or practices. That initiative has already begun to provide real benefits for vulnerable nursing home residents.

The initiative has been very successful in holding providers accountable for the care they give (or don't give!) and, we hope, will force other providers to think twice before they take similar actions. A few of the cases involve homes that LTCCC has long been concerned about, but has been unable to get the Department of Health (DOH) to do anything about in a meaningful way.

Most recently, the initiative has directly resulted in positive changes in the lives of residents at three homes. These cases focused on an issue crucial to nursing home care: staffing. The Attorney General has found a way to hold providers accountable for inadequate staff.

In a press release announcing a recent case, Spitzer said, "This prosecution demonstrates that nursing

continued on page 10

Use this postcard to send a quick message to Attorney General Eliot Spitzer. Tell him that you appreciate the work that he is doing to hold nursing home providers accountable for poor care. It is important that he knows that he has the support of citizens like you, because the providers are putting, a lot of pressure on his office to cut back on prosecutions for nursing home abuse and neglect.



PLACE
STAMP
HERE

Message to Attorney General Eliot Spitzer
c/o LTCCC
242 West 30TH Street, Suite 306
New York, NY 10001

You can make a difference!!

Attorney General's Statewide Nursing Home Initiative...

continued from page 9

homes will be held criminally accountable when corporate management willfully fails to follow important laws designed to protect nursing home residents.”

In September 2002, the owner of Briar Crest (also known as Chandler Care Center) in Ossining pled guilty to failing to provide an adequate level of care as required under the law. This is the same home that the Director of the Westchester Ombudsman Program, Margaret Hadad, and LTCCC complained about to the Department of Health (DOH). Although DOH investigated 13 times, they found few or no problems until we asked the federal surveyors to go in. Only then did DOH cite the home for placing its residents in immediate jeopardy. The Westchester Ombudsman also asked the Attorney General to investigate the home and its owner, Sam Klein, who was about to enlarge another home and open a new home in Long Island (something we kept urging DOH to prevent). As a result of the Attorney General's investigation and lawsuit, Mr. Klein pled guilty to failing to employ the number of nurses needed to care for his residents. He agreed to a \$400,000 restitution to the Medicaid program. [In addition, the DOH finally officially denied his application for the new home in LI.] In this case, according to Attorney General Spitzer, “The message is a simple one. If you obtain taxpayer funds by telling

the state you are providing a service and you are not, you will be prosecuted.”

Hallmark Centre, Inc., also pled guilty in June 2003 to criminal charges brought by the Attorney General for its failure to provide an adequate level of care at its home in Schenectady. It admitted that it did not employ sufficient staff and that it falsified medical records. Hallmark agreed to pay \$1 million in restitution to Medicaid and \$17,000 in fines. Moreover, the owners, James Durante and Joseph Nichols, will give up their nursing home operations and Durante will surrender his administrator license. The Attorney General's office was also able to get the court to require that Hallmark pay for an independent monitor, to oversee compliance.

A third case involved another owner which LTCCC had long been concerned about. Working with a nurses' union, Buffalo United, LTCCC made a number of care complaints over the years to DOH. Although deficiencies were found, little enforcement was enacted. However, when the Medicaid Fraud Control Bureau stepped in things changed. The operators of two homes, The Waters of Aurora and Orchard Park, agreed to a \$3 million settlement (October, 2003) to resolve allegations that they did not provide adequate

continued on page 11

Dear Attorney General Spitzer:

Use this postcard to send a quick message to Attorney General Eliot Spitzer. Tell him that you appreciate the work that he is doing to hold nursing home providers accountable for poor care. It is important that he knows that he has the support of citizens like you, because the providers are putting, a lot of pressure on his office to cut back on prosecutions for nursing home abuse and neglect.

You can make a difference!!

GRANDMA IS A LESBIAN...

continued from page 4

Would Kathleen be able to visit regularly? Would the nursing home accept her as they would a spouse or next of kin? Would they let her make decisions on behalf of the person with whom she has been so close for so many years? If my grandmother has expressed her wishes about her care, it has probably been to Kathleen. She has not discussed such thoughts with the rest of her family. Would these two women, as partners, be protected with the privacy of a shared room if Kathleen needed nursing home care? After all, according to NY State regulations the privacy of partners is to be respected – but the home, if it wanted, could come up with some excuse to separate them. At this stage would Kathleen and my grandmother take the chance of standing up for their rights?

Should we even bring up these issues to Kathleen? Should we explain that we understand their partnership and want to go to bat at the nursing home for protection of their closeness ...or do we respect the protective silence they have maintained for so long? Would the nursing home staff accept and work with my non-traditional grandma and her partner, lover, friend or spouse – whatever they choose to call each other? There is a real conflict here.

On one hand we are now getting used to the idea that lesbian, gay, bisexual and transgender people are very much part of our society. This past year New York passed the Sexual Orientation Non-Discrimination Act (SONDA) as part of its civil rights legislation. On the other hand, President Bush, the Vatican, and other groups are condemning the validity of same sex commitments. What do the nursing home staff members believe? How would they treat my grandmother and Kathleen if they knew? What about other residents and their families? The danger would more likely be subtle neglect and isolation rather than any flagrant civil rights violation. If, on the other hand, we decide on silence, saying nothing about the intimate nature of their relationship, it is probable that people will make more assumptions about my grandmother and her former husband, my grandfather. Who would realize the strong love and commitment between these two elderly women? Who would dream that the loss of either partner would be as devastating for the other as it

would be in any long-term marriage? With such mourning and loneliness to whom could they turn for understanding and support?

I have several gay friends who are more my age. They are certainly more outspoken than my grandma and I strongly doubt that they will be in any closet when they reach a dependent 82 years. But now – what is best for Kathleen and my grandmother?

This article was written by Ellen Ensig-Brodsky. Ms. Ensig-Brodsky is a member of the Coalition and was the founding director of Pride Senior Network.

Attorney General's Statewide Nursing Home Initiative...

continued from page 10

care over a three year period. MFCU concluded that the homes operated without sufficient staff to deliver basic care and that some records were falsified to indicate that care had been delivered when it had not. An independent monitor, paid for by the owner, will report to MFCU and will oversee care over the next two years. The owner, Neil Chur, will also be required to initiate corporate compliance programs in his other homes. Thus, from a single lawsuit, the MFCU was able to get better care not only in the two homes implicated, but also in other homes run by this owner.

As these stories clearly show, the Attorney General's efforts to protect long term care consumers are having a huge impact. We hope that his continued commitment will have an even bigger impact, not only on individual cases, but in showing providers that if they fail in their legal duty to provide adequate care to nursing home and assisted living residents, they will be held accountable.

For far too long the pervasive problems in New York nursing homes have been ignored. The few people who want to help are stymied by a system which overwhelmingly favors the interests of providers. Meanwhile, vulnerable residents continue to suffer while providers – many of whom are running highly profitable businesses – are able to continue with “business as usual.” LTCCC applauds the Attorney General's valuable work that effectively breaks through the gridlock in Albany.

NEW YORK STATE OFFICIALS:

Governor Pataki
State Capitol
Albany, NY 12224
Phone: 518-474-7516
E-Mail: Go to:
<http://www.state.ny.us/governor>

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

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

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

Action Alert Mailing List

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

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

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

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

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

Senator Joseph Bruno
Majority Leader
bruno@senate.state.ny.us

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

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

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

FEDERAL OFFICIALS:

President Bush
The White House
Washington, DC 20500
Phone: 202-456-1111

Fax: 202-456-2461
E-Mail:
president@whitehouse.gov

Senator Hillary Clinton
United States Senate
476 Russell Senate Office Building
Washington, DC 20510
Phone: 202-224-4451
Fax: 202-228-0282
E-Mail: Go to:
<http://clinton.senate.gov/offices.html>

Senator Charles Schumer
313 Hart Senate Building
Washington, DC 20510
Phone: 202-224-6542
Fax: 202-228-3027
E-Mail: Go to
<http://schumer.senate.gov>



Long Term Care Community Coalition (LTCCC)

(formerly the Nursing Home Community Coalition of New York State)

Phone (212) 385-0355 Fax (212) 239-2801
website: www.ltccc.org

Board of Directors

Jennifer Weiss, President

Judy Brickman
Nora O'Brien
Juan Duarte

Geoff Lieberman
Karen Manning
Martin Petroff, Esq.

Long Term Care Community Coalition
242 West 30th Street, Suite 306
New York, NY 10001

Staff

Cynthia Rudder, PhD., *Executive Director*
Richard J. Mollot, Esq., *Associate Director*
Barbara Lynch, *Program Coordinator*

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

Robert Sterling Clark Foundation
Herman Goldman Foundation

NON-PROFIT ORG.
U.S. POSTAGE
PAID
NEW YORK, NY
Permit No. 893