

LONG TERM CARE (LTC) E- NEWSLETTER – June 2014: Volume 12, Number 6

The [LTC E-Newsletter](#) is a monthly electronic newsletter of the [Long Term Care Community Coalition](#). Note to Readers: To go directly to an article, click on its page number in the Table of Contents. Once you are at the article, click on any underlined text for a link to more information or to send a message in “Spotlight on Advocacy.”

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[NY State Attorney General Announces Indictment Of Nine Nursing Home Employees In Connection With Resident Death](#)

On June 5, as a result of the continued investigations into Medford Multicare Center for Living by the Medicaid Fraud Control Unit, NY State Attorney General Schneiderman announced that nine employees faced criminal indictments, including the facility's administrator, David Fielding, and director of respiratory therapy, Christine Boylan. The corporation operating the facility was indicted on charges of attempting to cover up the circumstances surrounding the death of a 72 year old resident who was in the Suffolk County, NY facility for short term rehab. Those charged include Victoria Caldwell, a licensed practical nurse who (according to the Attorney General's statement) "claimed to investigators that the resident was alive and "looked up at me" when in fact the resident had likely been dead for some time."

The Attorney General's statement further notes that

Five thousand incidents and accidents have been logged at the facility since 2008, averaging 20 per week; only 60 of the 5,000 were reported to the New York State Department of Health as required by law.

The Attorney General's civil suit also describes how, even after all the arrests and citations, rather than investing in better staffing and improved supervision to remedy the history of neglect and inadequate care, the home's owners slashed salaries and supplies. The complaint alleges that the owners, who paid themselves exorbitant [sic] salaries, failed in their obligations to ensure proper care for residents and siphoned millions of Medicaid dollars intended to provide necessary care and improve residents' quality of life.

[NBC News reported](#) that the owner of Medford has an "obsession with profitability." Quoting the Attorney General's criminal complaint, *People of NY v. Mordechai Klein*, NBC reported that Mr. Klein told his staff "Let's not forget that the vents and tube feeders don't eat that much." [Referring to people who depend on on ventilators and/or feeding tubes.]

A [report released in March](#) from the federal Office of the Inspector General assessed, for the first time, outcomes for Medicare beneficiaries who go to nursing homes for short term rehab. It found that one in three people who go to nursing homes for rehab are harmed, mostly due to inappropriate care and inadequate monitoring. [No study has yet been conducted on unnecessary harm to long term care resident in nursing homes.] According to a [Congressional Research Service \(CRS\) report](#), the Medicare reimbursement rate for nursing homes in NYC in 2013 was **\$682.48 per day** (the "global *per diem*," with Medicare daily nursing home rates nationally ranging from \$190 to close to \$800 according to the [Federal Register](#)). Suffolk County, where Medford Multicare is located, is considered an urban location and has a rate fractionally lower than that for NYC. **The average nursing home's Medicare profit margin increased by almost 60% between 2003 and 2010** (from 10.9% profit to 18.5% profit), according to the CRS report.

[\[http://www.ag.ny.gov/press-release/ag-schneiderman-announces-indictment-nine-suffolk-county-nursing-home-employees\]](http://www.ag.ny.gov/press-release/ag-schneiderman-announces-indictment-nine-suffolk-county-nursing-home-employees)

[Special Note on the Medford Case: Who Are The Governor's Department of Health and NY State Legislators Serving in the Nursing Home Community?](#)

Medford's Government Ratings

On June 6, Medford Multicare had an overall rating of three stars (range is one to five) on the federal nursing home website, [Nursing Home Compare](#), with four stars for health inspections, one for staffing and four for quality measures. This means that the quality of care provided by Medford is considered "average" overall by the government. It is considered above average in terms of both its inspections and quality measures and "much below average" in terms of its staffing. Note: Staffing and quality measures are self-reported by facilities and largely unaudited for their accuracy.

NYS Oversight of Medford

The [New York State Department of Health](#) is responsible for ensuring that all residents are provided with appropriate care and quality of life in nursing homes that are licensed through Medicare and/or Medicaid. They do this by conducting regular health inspections and responding to complaints. These duties are performed under contract to the federal Centers for Medicare and Medicaid Services (CMS), which provides a substantial portion of the funding to support these activities, which are meant to protect the 107,000+ residents in New York State's nursing homes.

DOH in turn operates under [Governor Andrew Cuomo](#), who was the NY State Attorney General for four years prior to being elected governor. As attorney general, in 2008 [Cuomo stated that "my office is watching like a hawk when it comes to the treatment and care of New York's most vulnerable patients and will not tolerate the kind of disturbing neglect and abuse we've witnessed."](#) [Emphasis added.] This statement was made in regard to a case of "serious neglect" and other resident endangerment and Medicaid fraud charges. The facility that was the subject of that investigation was Medford Multicare.

The [NYDOH's nursing home website](#) states that there were "No Deficiencies" found in Medford Multicare's 2013 health inspection. According to the state's summary for the facility for May 2010 through April 2014, Medford had approximately one-third less than the NY State average number of deficiencies over the four year period (17 as opposed to 23) and **zero percent (0%) "of Deficiencies Related to Actual Harm or Immediate Jeopardy."**

Who Are NY State Leaders Protecting?

Most states have minimum staffing requirements to ensure some level of safety in their nursing homes. Staffing levels are, in fact, widely considered to be the most important indicator of quality of care. Despite this, New York has no minimum safe staffing standards. Unsurprisingly, New York nursing homes are among the lowest staffed, overall, in the country. And, according to [Families for Better Care's](#) Nursing Home Report Card, [New York State nursing homes have an](#)

“F” grade and are at “the bottom of the barrel.” Yet the New York State Assembly & Senate fail, year after year, to pass a bill that would require safe staffing.

LTCCC’s latest studies found that [New York is failing to adequately address the high rates of dangerous antipsychotic drugging](#) in our nursing homes and [failing to provide the NYS Long Term Care Ombudsman Program with the independence and support it needs](#) to help residents in nursing homes and assisted living.

What Does the Future Hold?

This summer, NY State is planning to begin requiring that people on Medicaid enroll in a private managed care plan in order to access nursing home services. Elderly and disabled people, and their families, will find their choices sharply curtailed. Plans do not have to contract with every nursing home in a community; they can choose to contract only with nursing homes that offer them the most attractive pricing, regardless of their quality of care or safety. In fact, **the NY State Department of Health is actively discouraging plans from imposing any quality requirements of any kind** on the facilities to which they will be sending their clients. As [LTCCC’s fall 2013 investigation](#) found, many of the nursing homes now in managed care have significant problems. Medford Multicare is one of the facilities with which New York’s managed care plans now contract.

[http://www.nursinghomes.nyhealth.gov/nursing_homes/complaints/637]

Study: Consequences of Minimum Staffing Standards for Nursing Homes

On May 22 the journal *Health Economics* published an article, [Intended and Unintended Consequences of Minimum Staffing Standards for Nursing Homes](#), which presents an assessment of the effects of state minimum staffing standards. As discussed above, the majority of state governors and legislators have passed staffing standards to protect their nursing home residents and provide some accountability for how public funds for care are used by nursing home owners. Leaders in approximately one-third of U.S. states, including New York, have failed to institute a safe staffing standard.

Researchers found that, “[o]verall, the staffing regulations led to a reduction in severe deficiency citations and improvement in certain health conditions that required intensive nursing care.” However, because the states studied – California and Ohio – do not distinguish types of staff in their requirements (i.e., time for CNAs, LPNs and RNs are all considered equally), their standards “had the unintended consequences of both lowering the direct care nursing skill mix (i.e., fewer professional nurses relative to nurse aides) and reducing the absolute level of indirect care staff.” The control states (not having standards) used in the study were Alabama, Kentucky, Nebraska, Nevada, New Hampshire, North Dakota, South Dakota, Virginia, Washington and New York.

[<http://www.ncbi.nlm.nih.gov/pubmed/24850410>]

[Spotlight on Advocacy: What Can You Do to Stop Medford-Like Deaths and Harm?](#)

Time after time we have been told by NY State legislative staff that nothing will happen until legislators and the governor hear from citizens that these issues are important. Over 100,000 New Yorkers rely on nursing home care every day. Forty percent of people who live to age 65 will need nursing home care at some point in their lives. If these issues are not important to you today, it is likely that they were important to someone you loved in the past, or will be in the future. **If we don't speak out for residents now, who will speak out for us in the future?**

The message is simple: Nursing home residents deserve to receive care that meets minimum standards for safety, dignity and quality of life. Providers must be held accountable when they fail to meet these standards, especially when residents are harmed or neglected. New York needs minimum staffing requirements for nursing homes to ensure that there are sufficient caregivers to provide the 24/7 care for which nursing homes are paid.

[Click here](#) for our action alert site where you can look up your state representatives and find easy contact information for them and for other state and federal officials.

If possible, we strongly recommend writing a note or a letter and sending copies to all of your state and federal representatives (including Senators Schumer and Gillibrand and President Obama's new HHS Secretary, Sylvia Matthews Burwell). Feel free to copy and use LTCCC's materials. If you can, follow up your email or letter with a phone call. Contact information for state officials is also included in our free quarterly newsletter, The Monitor, available at <http://www.ltccc.org/newsletter/monitor.shtml>. You can also contact Governor Cuomo directly by: U.S. Mail: State Capitol, Albany, NY 12224; Phone: 518-474-8390 or E-Mail: <http://governor.ny.gov/contact/GovernorContactForm.php>.

Note: Now that we are coming to the end of the legislative session, it is critical that legislators and Governor Cuomo hear from as many people as possible that this is an important issue!

We're on the Web!

www.ltccc.org: Our main website, with access to all of our issues, policy briefs and research.

www.assisted-living411.org: For information on assisted living, including consumer issues and policies.

www.nursinghome411.org: For information on developments in nursing home care, regulation and policy issues.

LTCCC Links of Interest

[View](#) the latest enforcement actions against nursing homes in New York State.

[Read](#) the latest edition of LTCCC's quarterly newsletter, *The Monitor*.

LTCCC's dedicated [webpage on antipsychotic drugs and dementia care](#).

Latest LTCCC Reports

[***Antipsychotic Drug Use in NY State Nursing Homes: An Assessment of Progress in the National Campaign to Reduce Drugs and Improve Dementia Care***](#)

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[***Piecing Together Quality Long-Term Care: A Consumer's Guide to Choices and Advocacy in New York***](#)

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