***The LTC Journal***

**Note to Our Readers**

LTCCC is committed to providing news and information on the issues effecting residents in nursing homes, assisted living and other facilities. In addition to *The LTC Journal*, we invite you to connect with us on [**Facebook**](https://www.facebook.com/ltccc) (<https://www.facebook.com/ltccc>) & [**Twitter**](https://twitter.com/LTCconsumer) ([twitter.com/LTCconsumer](https://twitter.com/LTCconsumer)). Visit us on the Web at [**www.ltccc.org**](http://www.ltccc.org) & [**www.nursinghome411.org**](http://www.nursinghome411.org).

**The Long Term Care Community Coalition**

**Winter 2017**

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# Nursing Home Residents at Risk

## Brief Background

Federal law, and the regulations which implement the law, are the basis for all of the residents’ rights, quality of care, quality of life and other standards that exist for virtually every nursing home in the United States (every facility which receives funding from Medicaid and/or Medicare). Individual states can have additional protections (for instance, most states require that nursing homes meet or exceed certain staffing levels). However, states cannot diminish the resident protections mandated by federal law.

The primary federal law for nursing homes is the Nursing Home Reform Law, which was passed in 1987. The regulations that implemented the Reform Law were promulgated in 1991. Though there have been additions and modifications to the regulations over the years, they have never been substantially re-written – until now.

In September 2016, the Centers for Medicare and Medicaid Services (CMS, the federal agency which both pays for and oversees nursing home care) issued the first major overhaul of federal nursing home regulations in 25 years. The new regulations are being implemented in three stages: Phase 1 on November 28, 2016, Phase 2 on November 28, 2017 and Phase 3 on November 28, 2019.

## Challenges for Nursing Home Residents and Other LTC Consumers

These important protections are now at serious risk. The Affordable Care Act (aka the ACA or “Obamacare”) includes a number of important protections for nursing home residents, people who access long-term care services in other settings and senior citizens. This is because the ACA included the Elder Justice Act and Nursing Home Transparency Act. In addition, because the federal regulation came out in September, they could be subject to something called the Congressional Review Act (CRA). The CRA allows Congress to repeal recent regulations with little review or time allocated to debate. The main lobby organization for nursing homes and other LTC providers, AHCA, is [heavily lobbying](http://www.ihca.com/Files/Comm-Pub/AHCANCAL-Letter-TrumpAdmin-Attachments.pdf) for repeal of the nursing home regulations through the CRA. For more on our concerns regarding challenges to both access to care and assuring decent quality, please our brief, *Medicaid: A Lifeline for Middle Class Families*, reprinted on the following page.

## What Can You Do?

Lobbyists for the provider industry have the money and resources to have enormous influence in Washington. **Nursing home residents and other LTC consumers, their loved ones and advocates need to speak out now to their U.S. Senators and Representatives in Congress**. A 30 second phone call letting them know that you are concerned about the welfare of nursing home residents and others who depend on Medicaid services can make a difference. To be connected to you Senator or Representative call 866-426-2631. [Note: Number hosted by SEIU.]

# LTCCC Policy Brief on Medicaid



# LTCCC Holds Eighth Annual Event

On November 9, 2016, LTCCC held its annual event in support of our mission to improve care, quality of life and dignity for residents in nursing homes, assisted living and other settings. This year we were very pleased to honor New York State Comptroller Thomas P. DiNapoli for his leadership in improving integrity and fighting fraud and abuse in services provided to nursing home residents and other long term care beneficiaries across New York State.

Comptroller DiNapoli gave a very engaging and inspiring talk about how he was drawn to public service and how we can work together to meet the challenges ahead to protect the public good.

We would like to take this opportunity to thank Comptroller DiNapoli for his important work, which we hope will continue for many years, and those who attended and supported this year’s event. In addition, we would like to express a special thanks to CaringKind for hosting our event this year and to our generous supporters:

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# LTC NEWS & BRIEFS

## [MedPAC Calls for Nursing Home Pay Freeze](http://www.mcknights.com/news/medpac-calls-for-pay-freeze/article/629942/)

According to a January 6, 2017 article in McKnight’s, MedPAC (the Medicare Payment Advisory Commission) has “called for the elimination of market basket updates for skilled nursing operators in fiscal 2018 and 2019. MedPAC commissioners said that a relatively unchanged industry should be given no inflationary payment upticks, and have its reimbursement system revised.” In an [earlier article](http://www.mcknights.com/news/medpac-calls-for-nursing-home-pay-cuts-revised-pps-in-final-meeting-of-2016/article/578362/?DCMP=EMC-MCK_Daily&spMailingID=16091908&spUserID=MzY0MDcyMjM2MjQS1&spJobID=920874435&spReportId=OTIwODc0NDM1S0) (December 12, 2016), McKnight’s reported “that ‘the level of Medicare's payments remains too high.’”

## [LTC-Acquired Pressure Injury Rates Up in Recent Years, Survey Shows](http://journals.lww.com/jwocnonline/Abstract/publishahead/The_International_Pressure_Ulcer_Prevalence_TM_.99801.aspx)

A study published in December in the [*Journal of Wound, Ostomy and Continence Care*](http://journals.lww.com/jwocnonline/pages/default.aspx), has found that the incidence of pressure ulcers in the United States has declined significantly from 2006 – 2015 though the rate of long-term care facility-acquired pressure ulcers has increased in long-term care settings in recent years.

According to the Journal’s abstract, which reviewed a sample of 918,621 patients, “[t]he overall prevalence (OP) of PI [pressure injury] in all facilities declined from 13.5% (2006) to 9.3% (2015).” However, “…the long-term care (LTC) FAP [facility-acquired prevalence] rose from 3.8% in 2013 to 5.4% in 2015. The rehabilitation facility FAP was 2.6% to 2.8% over the last 3 years.”

Editor’s note: This study indicates significant distinctions between ***overall pressure ulcer rates***, which have been going down over the last ten years, and ***facility-acquired pressure ulcer rates***, which are increasing in long-term care facilities. According to CMS, the current rate of pressure ulcers in U.S. nursing homes is 7.13% (2016 Q3 data, obtained from [www.cms.gov](http://www.cms.gov) on December 26, 2016). According to the [*Journal of Wound, Ostomy and Continence Care*](http://journals.lww.com/jwocnonline/pages/default.aspx), “In the vast majority of cases, appropriate identification and mitigation of risk factors can prevent or minimize pressure ulcer (PU) formation.” [[Unavoidable Pressure Injury: State of the Science and Consensus Outcomes](http://journals.lww.com/jwocnonline/Abstract/2014/07000/Unavoidable_Pressure_Injury__State_of_the_Science.6.aspx), *Journal of Wound, Ostomy & Continence Nursing*, Volume 41 - Issue 4 - p 313–334 (July/August 2014).]

## [Maryland Attorney General Sues ‘Inhumane’ Nursing Home Provider](http://courthousenews.com/maryland-sues-inhumane-nursing-home-provider/)

Courthouse News Service reported on December 30 that MD Attorney General Brian Frosh has sued a nursing home operator for treble damages for allegedly dumping “at least 1,000 elderly residents, oftentimes at homeless shelters, after they’ve exhausted their Medicare coverage for a short-term stay.”

According to the [Courthouse News article](http://courthousenews.com/maryland-sues-inhumane-nursing-home-provider/),

Maryland Attorney General Brian Frosh notes that Medicare pays for post-hospitalization care “at substantially higher daily rates than Medicaid pays for long-term care,” making it more lucrative for unscrupulous facilities to replace one resident for someone whose care will be reimbursed at a higher rate.

Frosh filed the [complaint](http://courthousenews.com/wp-content/uploads/2016/12/mdfrosh.pdf) on Dec. 21 in Montgomery County Circuit Court, taking aim at Neiswanger Management Services, or NMS, the operator of five nursing homes across the state.

“Each year, NMS unlawfully evicts from its nursing facilities hundreds of frail, infirm, mentally ill, and physically and intellectually disabled people,” the complaint states.

Frosh says NMS gave 1,061 residents the boot between January 2015 and May 2016 – more than twice as many evictions as all other nursing homes in the state combined over the same time period.

NMS usually accused the evictees of not paying for their care, but the complaint says the real reason for this inhumane conduct is maximizing reimbursements from taxpayer-funded public health insurance programs.

## Low Performing Nursing Homes Among Facilities Now Receiving Millions From NY State “Universal Settlement”

As readers of The LTC Journal know, LTCCC has serious concerns about the so-called Universal Settlement, in which taxpayers are giving NY State nursing homes $850 Million to settle past claims that the Medicaid rate of payment they received was insufficient.

LTCCC’s key concerns include:

1. Funds are being awarded to facilities regardless of whether or not the claim that their reimbursement was insufficient are legitimate;
2. Not a single dollar of the taxpayer funds are required to go toward staffing or anything that benefits residents.
3. Facilities will receive additional money even if residents were abused or neglected during the time for which they claim they are owed more money;

The state has handed disbursement of the $850 Million to two of the nursing home industry’s law firms: [Hinman Straub PC](http://hinmanstraub.com/practice-areas/government-relations/lobbying-ethics-and-elections-compliance/) and [O’Connell and Aronowitz](https://www.oalaw.com/practice-areas/). While there are published lists of the facilities that have outstanding rate litigation and appeal (see, for example, links at <http://www.leadingageny.org/providers/nursing-homes/reimbursement1/medicaid/universal-settlement-update/>), little is known about exactly which facilities are getting the money and how much they are to receive. Following are links to news articles on Universal Settlement disbursements.

1. [CNR to Receive $1.68 Million from Medicaid After Filing 40 Appeals](http://geneseesun.com/cnr-to-receive-1-68-million-from-medicaid-after-filing-40-appeals/). The Livingston County Center for Nursing and Rehabilitation (CNR) is a two-star (below average) facility according to Nursing Home Compare (accessed Feb 12, 2017). In its latest inspection (September 2016) it was found to have 10 deficiencies, close to double of the state average of 5.8. Citations include deficiencies related to the following minimum standards of care:
	1. F-278: “Make sure each resident receives an accurate assessment by a qualified health professional”
	2. F-282: “Provide care by qualified persons according to each resident's written plan of care”
	3. F-329: “1) Make sure that each resident's drug regimen is free from unnecessary drugs; 2) Each resident's entire drug/medication is managed and monitored to achieve highest well being.”
2. [Franklin County will receive nearly $250,000 as part of Medicaid reimbursement dispute settlement](http://www.thedailynewsonline.com/mtg01/franklin-county-will-receive-nearly-250000-as-part-of-medicaid-reimbursement-dispute-settlement-20160229). According to this February 2016 article in [The Daily News](http://www.thedailynewsonline.com/mtg01/franklin-county-will-receive-nearly-250000-as-part-of-medicaid-reimbursement-dispute-settlement-20160229), “County Manager Donna Kissane said the county would be receiving $242,807 over five years, minus any legal fees, as part of what is being called the universal settlement of nursing home appeals/litigation. Kissane said the county would receive the money for the now-defunct Franklin County Nursing Home, as the money was assigned before the facility closed last year.”
3. [County prepares for battle over Medicaid funds](http://www.suncommunitynews.com/articles/the-sun/county-prepares-for-battle-over-medicaid-funds/). This January 2016 article in [The Sun newspaper](http://www.suncommunitynews.com/articles/the-sun/county-prepares-for-battle-over-medicaid-funds/) reports on the controversy over “as much as $320,000” in Universal Settlement funds possibly due to Essex County in relation to the nursing home which it sold to Centers Health Care, a nursing home chain. According to the article, “Since the adjustments cover the time period from January 2012 backwards, the money belongs to them. The purchasing agreement also stipulated all future rate adjustments would go to the county. County Attorney Dan Manning said he was unaware of the settlement, which was two years in the making, until his colleagues in other counties who sold their nursing homes mentioned it to him.”

The nursing home, is now called the Essex Center. [Its website states](http://centershealthcare.com/essex_center/) “We’re a community of 100 friends, neighbors, parents and grandparents living life to the fullest!” Its Nursing Home Compare page lists it as a one-star facility (the lowest possible rating). Its most recent survey on Nursing Home Compare (December 2015) included the deficiencies for the following minimum standards:

1. F-314: “Give residents proper treatment to prevent new bed (pressure) sores or heal existing bed sores”
2. F-371: “Store, cook, and serve food in a safe and clean way”
3. F-225: “1) Hire only people with no legal history of abusing, neglecting or mistreating residents; or 2) report and investigate any acts or reports of abuse, neglect or mistreatment of residents.”

Editor’s Note: The three nursing homes discussed above were found as a result of several internet searches for nursing homes and universal settlement. There are hundreds of other nursing homes across New York that have received a portion of the $850 Million. We urge residents, families, policymakers to ask their nursing homes if they have a received a portion of the Universal Settlement and, if so, what are they doing with the funds? Is any of the money being used to improve the lives of their residents and care staff?

## [Study Results: Antipsychotic Drugs Significantly Increase Risk of Premature Death Among Alzheimer's Patients](http://www.upi.com/Health_News/2016/12/27/Antipsychotic-drugs-may-up-risk-of-early-death-in-Alzheimers-patients/5661482875199/)

In December, the UPI reported on a Finish analysis of close to 58,000 individuals who were diagnosed with Alzheimer’s Disease between 2005 and 2011. According to the UPI report

The risk of death was highest when patients first started taking antipsychotics, but the increased risk persisted with long-term use of the drugs.

Patients who took two or more antipsychotic drugs at the same time were nearly twice as likely to die early than those who took one antipsychotic.

Although the study found an association between antipsychotic drug use and a higher risk of dying, it cannot prove a cause-and-effect link.

But, the researchers… said their findings support previous studies.

## Study Results: Antipsychotic Drugs + Other Drugs May Increase Risk of Death

On January 31, 2017, McKnight’s reported on a study in European nursing homes which found that “Nursing home residents with cognitive impairment may face an increased risk of death if they receive an antipsychotic medication along with other drugs….” The study, published in the [Journal of Clinical Psychiatry](http://www.psychiatrist.com/JCP/article/Pages/2017/v78n01/v78n0112.aspx), concluded that “Antipsychotics should be used with extreme caution especially among those individuals receiving concomitant cardiovascular or psychotropic medications.”

# LTCCC Resources For Residents, Families, Ombudsmen & Advocates

## NEW!: Free Training Programs for Residents, Families, LTC Ombudsmen & Advocates

LTCCC is pleased to announce that it is now providing free monthly programs on the new nursing home standards for residents and families and those who work with them.

**Background**: In November 2016 the federal agency, CMS, initiated comprehensive changes to the basic standards of care and dignity for all U.S. nursing home residents.

**Why Attend?**: It will be crucial for residents, families and those who work with them to (1) know what their rights are and (2) be equipped to advocate for good care as the new regulations are being implemented. There will be a lot of confusion as to what is now required to ensure that residents receive good care and are treated with dignity. Each month, participants will learn about a specific standard relevant to good care.

**To attend**: Email sara@ltccc.org or call 212-385-0355 for information on the program schedule and how you can access via your phone or computer.

## [Fact Sheet: Medicare Coverage of Skilled Nursing & Skilled Therapy Services](http://www.ltccc.org/publications/documents/LTCCCFactSheetImprovementStandardSept2016_000.pdf)

Accessing physical therapy and other skilled services can be a challenge for nursing home residents and the families, LTC Ombudsmen and advocates who work with them. Too often, we have been told, therapy services are denied or terminated because a determination has been made that the individual is no longer improving or has “plateaued.” In fact, **improvement is not required** to obtain Medicare coverage for skilled nursing and skilled therapy services, including physical therapy. This Fact Sheet provides information that can be useful in understanding an individual’s right to receive therapy services and accessing those services.

## [Fact Sheet: Admission & Discharge Rights in NY State Nursing Homes](http://www.ltccc.org/publications/documents/LTCCCFactSheetNYNursingHomeDischargesNov2016.pdf)

LTCCC has learned that some nursing homes are telling people that the facility only provides short-term rehab services and does not provide long-term care. Some people who go into a facility for short-term care and wind up needing long-term care are even being told that they will need to go to another facility. The reason for this is that short-term rehab services tend to pay much more than long-term care services. However, since most nursing home care is paid for through public programs (Medicare and Medicaid), there are important standards to protect residents from unfair discharge or transfer. This Fact Sheet provides information on the important state and federal rights that residents can use to protect themselves.

## Updated: [*Piecing Together Quality Long-Term Care: A Consumer's Guide to Choice and Advocacy in New York*](http://www.ltccc.org/publications/documents/LTCCCConsumerGuidePiecingTogetherQualityLTC.pdf)

In 2013, with funding from the National Consumer Voice, LTCCC adopted a national guide for consumers and those that work with them on accessing long-term care. The purpose of the guide is to help individuals facing LTC decisions gain a better understanding of their choices and options and how they can advocate for themselves to get the services they need and want. In November 2016 we updated this guide to provide current information and links to outside resources.

# LTC Ombudsman Program Seeks Volunteers in NY State

The LTC Ombudsman Program (LTCOP) is dedicated to ensuring that residents in long term care facilities have good care and are treated with dignity. Being an Ombudsman volunteer is both challenging and rewarding. Volunteers receive extensive training to advocate for, educate and empower family members and residents living in nursing homes, assisted living, and family type homes. They can make a big difference in the lives of some of the most vulnerable people in our communities.

The LTCOP is seeking volunteers who can contribute a minimum of two hours a week to help residents in facilities in their communities. The Hudson Valley LTCOP currently has volunteer opportunities in Dutchess, Ulster, Orange, Sullivan, Columbia and Greene counties. To volunteer in the Hudson Valley, please call 845-229-4680 or email Gloria@hudsonvalleyltcop.org. To volunteer in another area of New York State, please go to the “Who is My Ombudsman” page on the NYS LTC Ombudsman Program’s website: <http://www.ltcombudsman.ny.gov/whois/index.cfm>.

# NY State Nursing Home Enforcement Actions

## Where to Find the Latest NYS Nursing Home Enforcements & Penalties

LTCCC is now posting all available enforcement actions from the state and federal governments on our dedicated website page, [New York State Nursing Home Enforcements](http://www.ltccc.org/enforcements/archives.shtml) (<http://www.ltccc.org/enforcements/archives.shtml> ). While in the past we have posted quarterly data on our website and in our newsletter, these data will now be provided in files that cover each calendar year in its entirely. This way, visitors can look in one file to see any recent citations, rather than having to view separate files for individual quarters.

In addition, we are now posting on the [Enforcements page](http://www.ltccc.org/enforcements/archives.shtml), on an annual basis, all of the NY State nursing home deficiencies that are currently on the federal website, [Nursing Home Compare](https://www.medicare.gov/nursinghomecompare/search.html). Nursing Home Compare provides information on nursing home staffing, inspections and quality for the last three years. We believe that this information will be useful to consumers, families and LTC Ombudsmen now and in the future, since it will enable them to access current and historical information on nursing homes in their communities.

For information on all U.S. nursing homes, our [www.nursinghome411.org](http://www.nursinghome411.org) website has user-friendly information, including rates of antipsychotic drugging, staffing levels, star ratings and more. This information is provided in Excel files which we have formatted to make them as easy-to-use as possible. The files can be searched for an individual facility’s name, a listing of facilities by city or state, etc…

LTCCC offers trainings for LTC ombudsmen and other groups on how to use this and other publicly available information effectively, to understand the quality of care nursing homes are providing and to support advocacy for better care. Email info@ltccc.org for more information.

***The LTC Journal***

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**Staff**: Richard J. Mollot, Executive Director; Sara Rosenberg, Office Manager; Gloria Murray, Ombudsman Program Director; Theresa Norbom, Ombudsman Program Specialist; and Denise Battistoni, Ombudsman Program Specialist.

**Board of Directors**: Deborah Truhowsky, Esq., President; Joan Burke; Geoffrey Lieberman; Martin Petroff, Esq.; and Jeanette Sandor.

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