

THE LTC MONITOR

Fall 2014

Long Term Care Community Coalition

LTCCC's New York & National Advocacy Priorities for 2014-15

The challenges facing nursing home and assisted living residents today are the worst we have seen in decades. Rather than holding nursing homes accountable for meeting the minimum standards of care (which they are paid, and agree, to achieve), more and more we are seeing state and federal agencies “collaborating” with the nursing homes that they are supposed to be monitoring. The nursing home industry has long argued that enforcement agencies should “partner” with them, rather than “punish” them when they fail to meet minimum standards (even when residents are harmed or die as a result!). Now, many of our state and federal agency leaders openly refer to the nursing homes as their partners. Meanwhile, approximately one in five nursing home residents are chemically restrained with dangerous drugs they don’t need. One out of three (1/3) Medicare rehab patients who go to a nursing home are harmed within an average of 15.5 days. Despite this, citation rates continue to fall.

Over 25 years after the federal Nursing Home Reform Law was passed, the nursing home industry is still asking residents, families and taxpayers to be patient as they learn how to provide appropriate care. It would be highly unusual for anyone to need on-the-job training for over two decades. Something is clearly very wrong when care for frail elderly and disabled people are involved and their lives are, literally, at stake.

Following are some of the major issues that LTCCC will be focusing on in the coming year, about which we think consumers and the public should be aware.

Improving Nursing Home Oversight in NY and the US

In March 2014, the US Inspector General released a study that (as noted above) found that an astounding one in three people (33%) who go to a nursing home for rehab are harmed, the majority as a result of inadequate care and monitoring. Six percent of these people die. LTCCC responded by assessing nursing home citations - have the states been taking action to identify and cite inadequate and poor care? Are they protecting residents? Are they ensuring that nursing home care (for which the public spends billions of dollars a year) meets minimum standards?

Our analysis indicated that, in fact, nursing home citations across the US have actually dropped 33% in the last year alone. On top of that (as discussed further below), our latest study of the NY State LTC Ombudsman Program found that there has been a significant drop in numbers of residents helped by ombudsman across the country (and a particularly sharp decline in NY State).

In the face of these serious challenges, LTCCC will work to build on its longstanding efforts to monitor oversight and engage policymakers on both the state and national levels. In the face of evidence of persistent, serious problems – and persistent government failure to effectively identify and punish nursing homes that neglect and harm residents – we will endeavor to use both qualitative and quantitative data to improve transparency and accountability.

Mandatory Managed Care for Nursing Home Residents in NY State

This year New York will begin requiring that people on Medicaid enroll in Managed Long Term Care (MLTC) plans in order to access nursing home care. [Editor’s Note: As of July 2014 final federal approval of the state plan is pending.] This enormous, unprecedented change will put New York’s 100,000+ nursing home resident population at risk for years to come. The majority of residents are Medicaid beneficiaries and, as a result, Medicaid policies affect all licensed nursing home care.



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LTCCC Priorities (Continued from cover)

Under MLTC, for the first time ever, private insurance plans will have a key role in our nursing home system, with the power to influence access to and quality of nursing home care. For instance, the plans are not required to contract with every licensed nursing home in the state or even in the community in which they are operating. People will be directed to go to a nursing home in their plan's network. If they want to go to a different nursing home they will have to figure out how to navigate the system and change plans. In addition, because MLTC plans are not required to contract with all licensed facilities, they will have enormous financial power over nursing homes, which will be in competition with one another to be included in plans. Typically, when a nursing home wants to cut costs it cuts direct care staff – not profits. With the majority of nursing homes already significantly understaffed, this could prove disastrous for nursing home residents, families and tax-payers, who are paying for (though often not receiving) quality care.

Thus, one of LTCCC's key advocacy areas in NY State this year will be the protection of nursing home quality and choice as the new system is implemented. We will be focusing on monitoring the system and engaging the state and federal agencies responsible for ensuring that every resident receives the quality of care to which they are entitled. For more information on our work to date on this issue, see our report, *Mandatory Managed Care in New York State Nursing Homes*, and other resources at www.nursinghome411.org (click on "NY State Issues" tab).

Improving Dementia Care

The majority of nursing home residents suffer from dementia, as do significant numbers of the elderly in assisted living and other settings. Unfortunately, rather than being provided appropriate dementia care, many of these individuals are chemically restrained with powerful and dangerous antipsychotic drugs. These drugs have an FDA "black-box warning" against use on elderly people with dementia, due to significant risk of heart attack, stroke, Parkinsonism and other serious problems. Despite the fact that nursing home standards have long prohibited inappropriate drugging, this has become a widespread problem affecting approximately one in five residents due to a number of factors, including: illegal marketing by pharmaceutical companies to long term care pharmacists, ignorant or improperly trained care staff and inadequate government oversight.

"Despite the fact that these drugs have dangerous side-effects... the NY State Department of Health rarely cited facilities for their inappropriate drugging."

Despite the fact that these drugs have dangerous side-effects and are not indicated for symptoms of dementia, LTCCC's latest study found that the NY State Department of Health rarely cited facilities for their inappropriate drugging and, when they did, almost never found that this drugging caused harm to the resident. Our ongoing assessments of national data indicate that nursing homes across the country have been unable to meet the modest drugging reduction goals that were set in 2012 with the industry itself.

LTCCC's work this year will focus on: (1) Improving both state and federal oversight of dementia care practices; (2) Engaging state and federal policymakers (including the NYS Medicaid Inspector General, NYS legislators, Governor Cuomo's staff, the US Inspector General and US congressional staff) to shine a light and crackdown on widespread inappropriate drugging practices; and (3) Educate and engage family members and nursing home staff on dementia care standards and legal requirements related to antipsychotic drugging. For more information and resources, please visit www.nursinghome411.org (click on the "Antipsychotic Drugs & Dementia Care" tab). If you would like to host a training on these issues, please contact sara@ltccc.org.

Sustaining and Improving the LTCOP

Long Term Care Ombudsman Program (LTCOP) staff and volunteers are on the front lines of ensuring decent resident care, quality of life and dignity in both nursing homes and assisted living. Yet LTCCC's latest study, *The New York State Long Term Care Ombudsman Program: An Assessment of Current Performance, Issues & Obstacles* (<http://www.nursinghome411.org/?articleid=10080>), found that the ability of the LTCOP to help residents is dropping nationwide and plummeting in New York State. At the same time, we found that funding for the program in NY State has literally flat-lined over the past decade, despite the addition of licensed assisted living in New York and persistent,

Please Join Us For LTCCC's Sixth Annual Event

Honoring



Mary Jane Koren, MD

and celebrating her outstanding contributions to improving care in nursing homes and other settings.

Date: October 22, 2014, 6-8pm

Place: Alzheimer's Association, 360 Lexington Ave, NYC

Tickets: \$200 pp. (\$150 for non-profit consumer organizations)

For tickets: Please send a check made out to "Long Term Care Community Coalition" to: LTCCC, One Penn Plaza Suite 6252, NY, NY 10119 and include name(s) of attendee(s), email addresses and phone numbers.

To advertise in the event program or for sponsorship opportunities: Please email sara@ltccc.org or call 212-385-0355 by September 15.



LONG TERM CARE COMMUNITY COALITION

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

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serious problems in both nursing home and assisted living care.

When there is no LTC Ombudsman visiting and helping residents on a regular basis, improper care and resident suffering can continue unabated. LTCCC will advocate this year for both improvements in LTC Ombudsmen's ability to advocate on behalf of residents and for increased funding in New York to ensure that the Program is viable and able to protect residents, as federal law requires. We will also monitor the managed long term care ombudsman program that NY State will be launching this year to see how effective it is in helping LTC consumers.

Safe Nursing Home Staffing in New York

Anyone who has ever been in a nursing home or studied nursing home care knows that staff are key to resident well-being. Yet New York, unlike the majority of states, does not require nursing homes to have even a set minimum number of caregivers on hand to ensure that residents are safe. Furthermore, though many violations of standards are a result of an inadequate number of care staff, facilities are rarely cited (in New York or any state) for not having "sufficient" staff as federal law requires of every nursing home in the United States that accepts Medicare or Medicaid.

LTCCC will fight for passage of the safe staffing bill in New York, and work to increase policymaker and public attention to the scandalous conditions that persist in our nursing homes – for both staff and caregivers – as a result of the NY State Senate, Assembly and Governor's failure to take this problem seriously. In addition, we will advocate for stronger enforcement actions, nationally and in NY State, when inadequate staffing results in resident harm and neglect.

Protecting Assisted Living Residents & Families

In recent years the assisted living industry has experienced tremendous growth. However, the lack of sensible standards threatens not only the safety of vulnerable residents but also the future viability of the industry, which increasingly seeks to position itself as the alternative to nursing homes for residential care that provides safety and peace of mind in a less institutional setting.

Though increasing amounts of public and private funds are going toward assisted living care, there is little accountability or even sensible minimum standards to ensure that living conditions are decent, that care is appropriate and that things like monitoring and medication management are conducted by staff who we can count on to have the necessary training and skills. The result: taxpayer funds and New Yorkers' lifetime savings going toward "Home & Community Based Care" that can be as institutional as a nursing home, families being promised significant dementia care by companies that refuse to have nurses in their facilities and an enforcement system so outdated that fines for violations – even those that cause harm – have not increased in over thirty years.

To address these problems, LTCCC will continue our campaign to pass legislation in New York to (1) Require minimum training programs for care aides (NYS Legislative Bill A4467/S1663); (2) Require an RN on staff in assisted living facilities that wish to provide significant, high-level dementia care or aging in place services (A05168/S01417) and (3) Strengthening enforcement when assisted living facilities fail their residents (A05201/S01662). For example, fines have not been raised in over 35 years, making enforcement actions virtually irrelevant to most facilities. We will also work to ensure, particularly in New York, that states are meeting the new federal guidelines for assisted living that accept public funds.

What Can You Do to Support These Priority Issues?

1. Contact your NY & US representatives and let them know you care about these issues. Unfortunately, our political leaders won't think these issues are important until they hear from their constituents. Please make a call or send a message now. See the back cover for contact info.
2. Join LTCCC's free Action Alert List to receive our monthly E-Newsletter and/or our NY State LTC Consumer Listserv by emailing info@ltccc.org.
3. If you believe that advocacy on these issues is important, please consider supporting LTCCC. **All** donations are 100% tax-deductible. **Every** dollar goes to sustaining our work to protect the elderly and disabled. **Any** amount is truly appreciated! Details for contributing are on Page 7.

Selected Enforcement Actions of the Medicaid Fraud Control Unit in the NY State Attorney General's Office: 3/16/14 - 6/15/14

The Medicaid Fraud Control Unit (MFCU) prosecutes cases of Medicaid fraud and patient abuse in nursing homes. To report fraud, abuse or neglect go to <http://www.ag.ny.gov/comments-mfcu> or call (800) 771-7755. Note: A sentence of “conditional discharge” means if similar act is committed during the time period defendant can be brought back to court.

Nursing Home	Location	Defendant	Narrative	Sentence
Blossom North Nursing and Rehab Center	Monroe	Harding, Savannah, Licensed Practical Nurse	Savannah Harding was one of 11 health care providers charged as a result of a hidden camera investigation at Blossom North Nursing Home in Rochester, New York. Harding was assigned to provide care to resident M.P., a double, above-the-knee amputee with a history of right-sided paralysis of the arm and hand, type-2 diabetes, impaired cognition, blood pressure fluctuations, glaucoma, the need for a Foley catheter, and numerous other ailments rendering him totally dependent upon the assistance of personnel at the home for his daily needs. Harding admitted that she neglected M.P. in that she failed to administer M.P.'s physician prescribed eye drops in a timely and appropriate manner. Harding also admitted to improper documentation of the administration of the eye drops.	6/2/2014: Two-Years Probation, Conditional Discharge, 24 Hours of Community Service, \$500 fine, and signed a Consent Order from the Department of Education to suspend her license for two years.
Campbell Hall Rehab Center	Orange	Kaufman, Stephanie, Registered Nurse	Defendant received a delivery by the nursing home's contract pharmacy of a residents' blister pack containing 90 Oxycodone pills, did not log it in as received, and stole the blister pack of pills.	4/24/14: Three-Years Prison on plea to CPC3d and One-Year concurrent on plea to Petit Larceny.
Elderwood Health Care at Maplewood	Erie	Dibello, Alissa M., Certified Nurse Aide	Falsely documented provision of services.	4/10/2014: Fifteen-Days in Jail and \$125 surcharge. Also executed an Affidavit of Surrender of CNA Certificate.
Evergreen Commons	Rensselaer	Fantini, Greg, Certified Nurse Aide	On June 8, 2013, at approximately 7:00 p.m., Gregory Fantini, C.N.A. at Evergreen Commons Nursing Home, was caring for a resident, failed to follow the resident's care plan by leaving her unattended in the bathroom for toileting, the resident toileted herself, pushed her call light for assistance, and when no one responded she attempted to transfer herself from the toilet to her wheelchair and fell, hitting her head and fracturing her left hip. Fantini was charged with one count of Endangering the Welfare of an Incompetent or Physically Disabled Person, a class E Felony, and other related charges.	3/24/2014: One-Year Conditional Discharge, \$175 surcharge, \$25 Crime Victims Fee to be paid by May 21, 2014. Surrender of CNA certificate.
Genesee County Nursing Home	Genesee	Waclawski, Sarah, Certified Nurse Aide	Failed to follow care plan, caused patient to fall and suffer injury, failed to report incident.	5/13/2014: One-Year Conditional Discharge, 15 Days participation in the Genesee County Sheriff's Dept. Weekend Work Program in lieu of incarceration. Fine of \$250 and a \$120 surcharge was imposed.
Highland Nursing Home Inc.	Saint Lawrence	Vice, Wendy, Billings/Admissions Clerk	The defendant forged documents and stole money from individual residents trust accounts.	3/27/2014: Three-Years Probation and 50 Hours of Community Service.
James G Johnston Memorial Nursing Home	Broome	Baker, Danyelle, Certified Nurse Aide	The defendant admitted to stealing the cellular phone of a resident and admitted to utilizing the phone to make phone calls and to sending text messages without the resident's permission.	5/9/2014: Re-sentence of Ten-Months Jail.
Our Lady of Peace Nursing Care Residence	Niagara	Sauter, LeaRae, Licensed Practical Nurse	Stole Lortab from facility.	6/10/2014: Three-Years Probation, \$200 fine, ordered to provide a DNA sample and continue with her drug addiction treatment program.
Van Duyn Home and Hospital	Onondaga	Rancier, Mary, Registered Nurse	The defendant neglected a patient by failing to provide timely, consistent, safe, adequate and appropriate services, treatment and care to a patient. Over a weekend period, she marked residents' charts that she had performed doctor-ordered treatments that included changing dressings but had not performed the care.	5/21/2014: One-Year Conditional Discharge and 25 Hours of Community Service.
White Oaks Nursing Home	Nassau	Fulton, Lesia; Certified Nurse Aide	Defendant, a CNA at White Oaks Nursing Home, performed a one-person Hoyer Lift transfer of an elderly resident who fell and received minor injuries. The defendant falsely reported to the facility in writing that she was assisted during the transfer by another CNA, as required by the resident's plan of care. The other CNA was not present for and did not assist the defendant with the transfer.	4/11/14: Three-Years Probation Supervision, \$175 surcharge, \$25 Crime Victims Assistance Fee, \$50 DNA Collection Fee and surrendered her nurses aide certificate. Signed an affidavit agreeing not to work caring for incompetent, elderly, infirm or disabled persons for a minimum of three years from the date of sentence.
Wingate at Dutchess	Dutchess	Klaproth, David, Licensed Practical Nurse	In February 2013, Defendant failed to administer medications, which were to be provided through a gastronomy tube via pistol syringe, to two residents.	4/1/2014: One-Year Conditional Discharge, 100 Hours of Community Service, \$1,000 Fine and surrender of his nursing license. Alternative sentence of 30 days in jail.
Wingate at Ulster	Ulster	Rodriguez, Kimberly, Licensed Practical Nurse	In March 2011, after Defendant became aware that she failed to enter a medication order on a residents' monthly Medication Record, Defendant forged nurses initials on the record to indicate the medication was administered when it was not.	4/10/2014: Two-Years Probation.
Wingate at Ulster	Ulster	Kaufman, Stephanie, Registered Nurse	In May 2011, Defendant stole a pack of Oxycodone pills, containing 49 pills, and a pack of Percocet pills, containing 30 pills, from the vent unit's discontinued narcotic supply.	5/1/2014: Six-Months Jail for each, consecutive to one another and concurrent with sentence in Orange County.

Federal Civil Money Penalties¹ Against NY Nursing Homes: 3/1/14 - 5/31/14²

Federal CMPs are one of a number of remedies that the state and federal governments can use when a nursing home fails to meet minimum standards. Typically, when a nursing home is found to be failing to provide the quality of care, quality of life and/or other conditions that it promises to provide in order to receive Medicaid or Medicare money other remedies, such as requiring a “plan of correction,” are implemented first.

Name of Home	Location	Survey Date ³	Amount
Avalon Gardens Rehabilitation & Health Care Center ⁵	Smithtown	5/14/2013	\$19,370.00 ⁴
Barnwall Nursing & Rehabilitation Center	Valatie	9/26/2013	\$10,000.00
Hill Haven Nursing Home	Webster	12/6/2013	\$77,935.00 ⁴
South Point Plaza Nursing & Rehabilitation Center	Island Park	12/12/2013	\$14,917.50 ⁴
Teresian Home Nursing Home Co ⁵	Albany	11/25/2013	\$25,350.00 ⁴
Woodhaven Nursing Home	Port Jefferson Station	12/18/2013	\$21,937.50 ⁴

¹ Civil Money Penalties (CMPs) – a federal monetary sanction against nursing homes that fail to comply with minimum standards.

² As reported by CMS. For further details contact the CMS FOIA Officer at 212-616-2220.

³ Date of initial survey. In some instances the facility may have been revisited.

⁴ Amount reflects a 35% reduction as the facility waived its right to Appeal as permitted under law.

⁵ Citation was published previously in the *Monitor*. CMP since reduced by 35% because appeal rights were waived.

Special Focus Facilities in New York State: As of June 19, 2014

The federal Special Focus Facility (SFF) Program was created to address the widespread problem of nursing homes that have persistent, serious problems. Once a facility is selected for inclusion in the Program it receives special attention from the state, including at least twice as many surveys as normal (approximately two per year). The goal is that within 18-24 months of being in the Program a facility will either: (1) develop long term solutions to its persistent problems or (2) be terminated from the Medicare and Medicaid programs. Termination usually means that a facility is sold to a new operator or closed. Due to resource limitations, only a small number of nursing home across the country are selected for participation in the SFF Program at any given time, though many more would “qualify” due to their poor care.

Important Notes: (1) There are many more nursing homes that qualify to be an SFF (because of their extremely poor record) but are not due to program limitations. **LTCCC recommends that consumers consider any facility with a one star overall rating on Nursing Home Compare (www.medicare.gov/nursinghomecompare) to be the equivalent of an SFF, amongst the worst in the country.** (2) Numbers in parentheses below indicate the number of months a facility has been an SFF. An asterisk means the facility is a repeat SFF.

Newly Identified as a SFF	Shown Improvement	Not Improved	Recently Graduated from the SFF Program	No Longer Participating in the Medicare and Medicaid Program
None	Rosewood Heights Health Center (27)*	None	None	Blossom South Nursing And Rehabilitation Center (32) *

The Wall of Shame: Two Nursing Homes With Similar Stories of Poor Care & Greed

Following years of seriously poor resident care and sustained failure to meet even minimum requirements, this year Blossom South Nursing Home in Rochester was finally removed from the Medicaid & Medicare programs and Medford Multicare Center owners and staff are now facing serious charges by the NYS Attorney General (as well as a private lawsuit). However, that has not stopped the operators of these facilities from seeking profits. According to the *Democrat & Chronicle*, Blossom South’s owner is trying to turn his facility into a shelter for immigrant children. Meanwhile, the Medford facility is now marketing itself as “The LUX” with an “excellent rehabilitation program” according to its operator. **Note:** Current charges against Medford staff and owners include negligence of a 72 year old rehab patient leading to her death, fraud, long term “criminal misconduct” and “corporate looting.”

Selected Actions of the NYS Office of the Medicaid Inspector General: 3/16/14- 6/15/14

The Office of the Medicaid Inspector General (OMIG) has responsibility for protecting NY State citizens residing in long term care facilities by making sure that those responsible for their care do not engage in abusive and fraudulent activities. This is done through OMIG's working to ensure that those who are enrolled as providers in the Medicaid program are properly vetted; investigating allegations of fraud and abuse within long term care facilities; and excluding providers who have abused their positions as caregivers. In addition to conducting their own investigations, OMIG makes determinations to exclude based on other agency actions, including the State Education Department (SED), the Medicaid Fraud Control Unit (MFCU), and Human Health Services (HHS).

Note: In addition to the actions listed below, all of the providers which we previously reported as having actions taken against them by the MFCU have been excluded by OMIG. See our newsletter archives at www.ltccc.org/newsletter for their names.

Nursing Home	Defendant	Location	Narrative	OMIG Exclusions Based Upon:
Absolut Center for Nursing and Rehab	Brandon Newby, Housekeeper	Westfield	While employed as a housekeeper, Mr. Newby stole from a medicine cart 16 Lorab tablets, designated for a patient.	HHS Exclusion 5/20/2014 & MFCU Conviction 11/27/2013
Colonial Park Rehabilitation and Nursing Center	Erin Marra, LPN	Rome	Ms. Marra stole narcotic pain medications prescribed to patients of the nursing home.	HHS Exclusion 5/20/2014 & MFCU Conviction 11/26/2013
Elderwood at Crestwood	Jason DiBartolomeis, CNA	Wheatfield	Mr. DiBartolomeis left a resident alone in bed while providing care. The resident then fell out of bed and onto the floor, sustaining a hip fracture. Mr. DiBartolomeis then put the resident back in bed without using the required mechanical lift, without summoning medical help, and without alerting supervisory staff that the resident had fallen.	HHS Exclusion 2/20/2014 & MFCU Conviction 12/2/13
Glendale Nursing Home	Judith Sanders, RN	Glenville	Ms. Sanders wrongfully administered 10 mg. of Roxanol (morphine) to an elderly resident with dementia. This led to the resident being hospitalized due to a narcotic overdose. Sanders also failed to administer medications to two other residents on eight separate occasions.	HHS Exclusion 1/20/2014 & MFCU Conviction 11/27/13
Hampton Center for Rehabilitation and Nursing	Nancy Szydlowski, Administrator	Southampton	While working as a nursing home administrator, Ms. Szydlowski covered up the fact that a resident had eloped. The resident was found by an off-duty employee five hours later, walking on the Montauk Highway. Ms. Szydlowski then failed to report the incident to DOH, although someone else did. When a DOH investigator requested the resident's chart, Ms. Szydlowski instructed the nursing supervisor to falsify a nursing note so as to indicate that the resident was stopped in the vestibule and returned to her unit. She then provided the falsified note to the DOH investigator.	MFCU Conviction 11/27/2013
Morningstar Residential Care Center	Taylor Tice, LPN	Oswego	Mr. Tice stole Oxycotin from a blister pack prescribed to a patient suffering from severe arthritic pain. Mr. Tice swapped out the Oxycotin and replaced it with Simvastatin, putting the patient at risk of receiving non-prescribed medication in lieu of correct pain medication.	HHS Exclusion 5/20/2014 & MFCU Conviction 12/2/2013
Pleasant Valley Nursing Home	Tiffany Vanalen, LPN	Argyle	Ms. Vanalen was responsible for administering Synthroid to five residents, and documented in the Medication Administration Record that the drug was administered. A review of the blister packs for each resident showed that none of the medication was removed from the packs.	HHS Exclusion 5/20/2014 & MFCU Conviction 11/26/2013

We Need Your Help! Please Support LTCCC's Work to Improve Care, Dignity & Quality of Life for Nursing Home & Assisted Living Residents.

Please consider supporting LTCCC this year, as we continue to face significant challenges to continuing our work. You can send a check to "Long Term Care Community Coalition" at One Penn Plaza, Suite 6252, NY, NY 10119 or donate on-line at <http://ltccc.org/ltccc.orgsupport.shtml>.

All donations are 100% tax-deductible. Any amount is truly appreciated!

Visit www.ltccc.org, for our reports, consumer resources & action alerts. E-mail info@ltccc.org to subscribe to this and/or our monthly LTC E-Newsletter. To support our work to improve care, dignity & quality of life for residents in nursing homes and assisted living, please see inside (back cover).

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