

THE LTC MONITOR

Spring 2014

Long Term Care Community Coalition

Blossom South Nursing Home vs. the Federal Government

This article was written by Ken Traub & Janet Gelein, co-chairs of the Elder Justice Subcommittee of Metro Justice, Rochester NY (a member of LTCCC) and reflects the views of the authors. Their website is:
http://metrojustice.nationbuilder.com/elder_justice.

Blossom South Nursing and Rehabilitation Center (Blossom South) in Rochester, NY has been a chronic substandard one-star (“much below average”) nursing home (<http://medicare.gov/nursinghomecompare>) which, by the end of 2013, had been a Special Focus Facility for 31 months. The federal Centers for Medicare and Medicaid Services (CMS) started the Special Focus Facility (SFF) program in 1998 to address nursing homes that have persistent, serious problems. As readers of *The Monitor* know, the SFF program can be a valuable tool to improve, change ownership of or close nursing homes that are persistently failing their residents. Once a facility is selected for inclusion in the SFF

program, it receives special attention from the state, including a federally mandated requirement that the state conduct at least twice as many inspections as normal (approximately two per year). The goal is that within 18-24 months of being in the program, a facility will either develop long term solutions to its persistent problems or be terminated (under its current ownership) from participation in the Medicare and Medicaid programs. [See the Enforcements pages in this newsletter for current SFF nursing homes.]

The *Rochester Democrat and Chronicle*, in a July 14,

LTCCC Renews Call for Safe Staffing Standards as NY Mandates Managed Care for Nursing Home Residents

Staffing levels in nursing homes are critical to good care and good quality of life for both residents and direct care workers. Over the years, an increasing body of evidence has clearly shown that staffing is one of the most – if not *the* most – important factors in quality of care and outcomes for nursing home residents. Yet, a decade ago, a federal study found that 97% of facilities failed to meet one or more staffing requirements and 52% failed to meet all staffing requirements necessary to prevent avoidable harm to residents. The analysis determined that 91% lacked sufficient staff to meet five key areas (like feeding assistance and toileting) critical to resident care. Unfortunately, this situation continues today.

Frail elderly New Yorkers and their families do not need a study to know about the effects of systematic understaffing in our nursing homes. Every day our nursing home residents face conditions that undermine their health and dignity. Countless adult residents are told to ‘make’ in a diaper because the facility does not hire sufficient staff to help them get to the bathroom. Thousands of New Yorkers are given powerful, dangerous (and expensive) antipsychotic drugs – not because they have a psychotic condition, but because it makes them easier to care for. These drugs have an FDA warning against use in elderly people with dementia because they can have serious side effects, including heart attacks and strokes. Yet they are used on one in five nursing home residents in NY, often as a

form of chemical restraint.

Whether it be from abuse with drugs or by other means, or just plain neglect, every day New York families witness their loved ones withering and dying in nursing homes, not due to old age, but as a result of insufficient staffing to provide necessary care.



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Dementia Care Without Drugs Symposium Brings Together the Nursing Home Community in NYC to Learn How to Improve Care & Quality of Life

In November 2013, LTCCC held a special program in New York City on improving dementia care and reducing the use of dangerous antipsychotic drugs. The goal of this program, supported by a generous grant from the Fan Fox & Leslie R. Samuels Foundation, was to create change in dementia care in nursing homes in our community by bringing together nursing home staff, family members, LTC ombudsmen and other resident representatives to learn about the campaign to reduce antipsychotic drugging and equip them with knowledge and skills they can use to help their patients and loved ones receive appropriate dementia care that is comforting and avoids unnecessary drugging.



For more information on dementia care and the campaign to reduce the use of dangerous antipsychotic drugs on nursing home residents, visit LTCCC's dedicated webpage, "Antipsychotic Drugs & Dementia Care," at www.nursinghome411.org.



LONG TERM CARE COMMUNITY COALITION

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

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The Monitor is published quarterly by the Long Term Care Community Coalition, One Penn Plaza, Suite 6252, New York, NY 10119.

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This newsletter is made possible through the generous donations of our supporters and funding by the following foundations: The Fan Fox and Leslie R. Samuels Foundation, FJC – Foundation of Philanthropic Funds and The Robert Sterling Clark Foundation.

Blossom South Nursing Home vs. the Federal Government (Continued from cover)

2013 article by Patti Singer titled “City Nursing Home Among Worst In Nation,” analyzed 18 New York State Department of Health (DOH) surveys (inspections) of Blossom South between February 2010 and March 2013 that documented 169 deficiencies, of which 33 were repeat problems. The newspaper further reported that the rate of incidents and complaints for Blossom South was four times the state average. Following its August 8, 2013 survey, DOH recommended to CMS termination of Blossom South’s provider agreement. CMS subsequently notified Blossom South that it will not pay Medicare and Medicaid funds for residents admitted after August 31st and will end all payments for existing residents on October 15, 2013. According to filings by Blossom South’s attorneys, Abrams, Fensterman LLP, 98% of its residents and gross revenue come from participation in the Medicare and Medicaid programs.

On August 26, 2013, Blossom South filed for a preliminary injunction against NYS DOH and CMS to prevent them from discontinuing Medicare and Medicaid payments. Federal Judge David G. Larimer granted a preliminary injunction on August 30th. On November 4th the judge heard both Blossom South’s arguments to prevent funding discontinuation and CMS’ arguments showing that the nursing home had failed to improve upon its 27 month status as a Special Focus Facility, and was thus deserving of funding discontinuation. Before this hearing Blossom South also appealed the intended funding discontinuation to CMS Administrative Judge Carolyn Cozad who wrote in her decision: “...I find that the facility had an appalling number of deficiencies that could harm its residents, any one of which puts it out of substantial compliance with program requirements. CMS may therefore impose a penalty – including termination.”

“We believe it is shameful that New York, unlike the majority of states, does not have minimum safe staffing standards for nursing homes!”

Rochester is the fifth poorest city in the country out of the 75 largest metro areas, and contains 11 of the 12 lowest rated (1-2 star) homes in Monroe County. We believe that the *Blossom South, LLC v the Centers for Medicare and Medicaid Services* case raises serious questions about: the oversight and accountability of nursing homes in poor cities that primarily serve low income people of color and rely heavily on Medicare and Medicaid payments; the inadequate staffing levels of many nursing homes, particularly those with low ratings on Nursing Home Compare (www.medicare.gov/nursinghomecompare); and the ability and intention of substandard nursing home owners to seriously resolve their homes’ long-standing inadequacies.

On December 17 Federal Judge Larimer also ruled against Blossom South, (thus allowing CMS to proceed with discontinuation of funding. CMS then sent a “Final Termination Notice” to the Acting Administrator of Blossom South stating that they will terminate their provider agreement January 15, 2014 and that payments for services provided to residents admitted before December 17, 2013 would cease on March 17. The letter stated that “...you are required to submit a closure plan to this office within 7 days of your receipt of this notice, and notify the residents immediately of the termination.” Blossom South’s attorneys filed an appeal of Judge Larimer’s decision with the U.S. Court of Appeals on January 6th, and on January 8th asked Judge Larimer to stay his decision pending the outcome in the Court of Appeals. On January 17th Judge Larimer rejected their request stating in his conclusion: “Certainly the public has a strong interest in ensuring that nursing home residents receive adequate care. In the final analysis, that interest must take precedence over the interest of nursing homes that have been found, after a hearing, to have a demonstrated history of poor performance.”

Numerous studies have indicated that the level of direct care staffing at a nursing home is one of the most critical indicators of resident safety and quality care. The November 2013 Nursing Home Compare data showed Blossom South at 2.98 total nursing & aide hours per day per resident versus a NYS average of 3.92 and national average of 4.10. [NOTE: These data are self-reported by nursing homes and, because they are unaudited, may be inflated.] In

LTCCC Renews Call for Safe Staffing Standards (Continued from cover)

Why Do We Need Standards Now?

Every nursing home is required – and receives payment – to have sufficient staff to ensure that each and every one of its residents receives the care and services he or she needs to reach and maintain his or her highest practicable physical, emotional and social well being under the 1987 federal Nursing Home Reform Law. Importantly, this mandate is based on the needs of each individual resident, not on the level of staffing and services that the nursing home wishes to provide, based on its business model.

Unfortunately (as noted above), the “sufficient” standard established in the federal law has *not* been sufficient to ensure that most nursing homes provide adequate staff. That is why most states have passed minimum safe staffing laws to help ensure resident safety and improve accountability for the substantial public funds that go into nursing home care. From Arkansas to Maine and California to Florida, 36 states have passed laws requiring safe direct care staffing levels. Yet New York, where close to one in ten US nursing home residents live, whose taxpayers spend billions of dollars every year for nursing home care, has no minimum staffing requirement whatsoever.

The need for a safe staffing law has never been greater than it is now, as New York implements sweeping changes to its long term care system. This year New York is starting a new requirement that nursing home residents on Medicaid enroll in Managed Long Term Care (MLTC) plans. This enormous, unprecedented change will put all of New York’s 108,000+ nursing home residents at risk. 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. People in the New York Metro area who are first accessing nursing home care will be required to join a plan starting in March, and the system will be rolled out across the state in the coming months. Current residents are not required to join a plan.

Rather than having the choice of any nursing home, under MLTC, people will have to choose among the nursing homes that their plan contracts with. LTCCC’s recent study, *Mandatory Managed Care in NY State Nursing Homes* (available at www.nursinghome411.org) found that many plans are contracting with nursing homes that have significant problems, including low staffing. While individuals will have the right to leave a plan to go to a nursing home in a different plan, this will likely be very difficult for most people to do. It is extremely unlikely that MLTC plans will encourage their members to disenroll. And, as of now, resources and information for the public is extremely limited.

Blossom South (Continued)

Monroe County, Nursing Home Compare’s ratings of the twelve substandard homes (having a 1-2 (out of 5) Overall star rating) average 2.75 Staffing stars versus 3.81 for the seventeen nursing homes that had a 4-5 Overall star rating.

We believe it is shameful that New York, unlike the majority of states, does not have minimum safe staffing standards for nursing homes! Legislative bills to correct this serious deficiency have been languishing in NYS Senate and Assembly committees for years. We call on all NYS groups and citizens interested in improving nursing homes to work together to motivate legislators to pass a safe staffing law this year.

What Can You Do?

New York does not have safe staffing standards because most of our policymakers do not think this is an important issue. Please let them know that that **you** support safe staffing! You can send a free message to Governor Cuomo and your state legislators by going to the LTC Citizen Action Center on www.ltccc.org (right side of page) and clicking on “Speak Out to Support Safe Staffing in Nursing Homes.”

New York is moving to **Mandatory Managed Care** for nursing home residents **this year**. The state is saving money. The providers have powerful lobbyists in Albany to protect their interests. **Who is looking out for nursing home residents?** Please call or send a message now. Let our state leaders know NY should not put profits over basic resident safety.



Selected Enforcement Actions of the Medicaid Fraud Control Unit in the NY State Attorney General's Office: 9/16/13 - 12/15/13

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
Baptist Health Nursing & Rehabilitation	Schenectady	Rogers, Kelly, Certified Nurse Aide	CNA Kelly Rogers, while employed at Baptist Health Nursing and Rehabilitation Center, Scotia, NY, attempted to transfer Resident I.O. from her wheelchair to her bed without the assistance of another aide in violation of the care plan, and the resident sustained a laceration to her left calf requiring 27 stitches. Rogers initially denied transferring the resident in violation of the care plan and asked another CNA to help her cover up her error.	11/14/2013: Fine of \$305 and CNA certificate was suspended by the Department of Health on 7/9/2013.
Champlain Valley Physicians Hospital	Clinton	Falsetta, Katherine R., Registered Nurse	RN Falsetta falsified patient records in an attempt to divert narcotics from CVPH. Falsetta removed two doses of Morphine for a patient not under her care. Further review of PIXIS activity for Falsetta shows she removed an additional nine, 4mg doses of Morphine meant for another patient.	12/10/2013: Three-years probation and required to participate in the SPAN program and comply with any and all discipline sanctions required by NYS Education Department.
Crown Center for Nursing & Rehabilitation	Cortland	Doran, Jodi, Certified Nurse Aide	Doran, a CNA, stole cash from the wallet of a resident.	12/4/2013: One-year conditional discharge; fifty hours of community service and \$30 in restitution.
Diamond Hill Nursing & Rehab Center	Rensselaer	Riley, Anne Theresa, Registered Nurse	Defendant stole an undetermined quantity of Percocet and made false entries in the MAR indicating that she administered the medication to residents.	12/2/2013: Three-years probation and surrender of nursing license within 30 days of plea.
Loretto Health and Rehabilitation Center	Onondaga	Chaney, Carl, Certified Nurse Aide	Chaney, a CNA, transferred a resident by hand instead of the Hoyer lift as ordered. The resident fell during the transfer and was injured.	10/3/2013: One-year conditional discharge and thirty-five hours of community service.
Maplewood Health Care and Rehabilitation	Saint Lawrence	Davis, Krysta, Licensed Practical Nurse	Davis, a LPN, failed to provide medications to four residents but documented in the MAR that the medications had been administered.	10/16/2013: Three-years probation, fifty hours of community service and \$250 fine.
Park Ridge Nursing Home	Monroe	Glenn, Groven, Certified Nurse Aide	On November 5, 2012, defendant recklessly caused physical injury (bruising and abrasion to left knee and ankle) to an 83 year-old resident for whom he was providing care as a CNA in a nursing home. The defendant also engaged in other illegal and inappropriate conduct against the resident such as throwing food at her. The entire incident was captured on a surveillance camera at the home.	9/25/2013: Three-years probation and must continue in mental health therapy sessions.
The Pines at Catskill Center	Greene	Mason, Chelsea, Licensed Practical Nurse	Mason, a LPN, left two cups of poured medications for two residents unattended at the bedside of a resident. The resident consumed both sets of medications, including four different types of blood pressure medications. Mason failed to immediately report the medication error and resident became unresponsive. After resident was transported to the hospital, Mason reported her error to a nurse supervisor.	10/18/2013: Fine of \$100. Sanctions on LPN license to be determined by the NYS Department of Education.
Queens Blvd Extended Care Facility	Queens	Pickens, Areatha, Licensed Practical Nurse	The defendant falsified an accident report and a medical chart in order to cover up the fact that she returned a resident to bed following a fall. The resident suffered a fractured hip which was not discovered until several hours after the fall.	12/3/2013: One-year conditional discharge.
St. Anns Home for the Aged	Monroe	Brown, Ericha, Certified Nurse Aide	Brown, a CNA formerly employed at St. Ann Home in Rochester, recorded a video on her smart phone, of a nursing home patient where Brown and other employees harassed and teased the patient. Brown then posted the video on her Facebook page.	11/19/2013: One-year conditional discharge and twenty hours of community service.
Van Duyn Home and Hospital	Onondaga	Cooke, Balisa, Certified Nurse Aide	Cooke, a CNA, stole rings from the hand of one resident and attempted to steal rings from the hand of another resident.	12/2/2013: Five-years probation and \$1,200 in restitution.
Van Rensselaer Manor	Rensselaer	Uzzo, Cynthia J., Licensed Practical Nurse	LPN at Van Rensselaer Manor gave unnecessary dose of insulin to resident, causing hypoglycemic episode. Upon learning about episode, LPN changed medical record to cover up her mistake and asked a nursing supervisor not to report the incident.	9/24/2013: Three-years probation.

Federal Civil Money Penalties¹ Against NY Nursing Homes: 9/01/13 - 11/30/13²

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
Avon Nursing Home	Avon	9/6/13	\$9,500.00 ⁴
Avalon Gardens Rehab & Health Care Center	Smithtown	5/14/13	\$29,800.00 ⁴
Barnwell Nursing & Rehab Center	Valatie	9/26/13	\$10,000.00 ⁴
Hornell Gardens	Hornell	7/12/13	\$8,550.00 ⁴
Katherine Luther Residential Health Care & Rehab	Clinton	6/14/13	\$4,550.00 ⁵
Monroe Community Hospital	Rochester	3/29/13	\$4,550.00 ⁵
Our Lady of Hope Residence	Latham	11/21/12	\$1,625.00 ⁵
Park Nursing Home	Queens	4/9/13	\$5,550.00 ⁴
Riverhead Care Center LLC	Riverhead	7/26/13	\$28,500.00 ⁴
Rosewood Rehab & Nursing Center	Rensselaer	8/26/13	\$27,690.00 ⁵
Saratoga Care Nursing Home	Saratoga	8/8/13	\$14,100.00
Suffolk Center for Rehab & Nursing	Patchogue	6/6/13	\$36,660.00 ⁵
Westgate Nursing Home	Rochester	6/28/13	\$6,337.50 ⁵

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 Facility still has Independent Informal Dispute Resolution (IIDR) and/or Appeal rights related to the fine imposed. IIDR is a right provided under the 2010 federal Affordable Care Act that allows facilities that have been found to have failed to meet minimum standards to dispute the deficiencies that led to the imposition of a CMP. The law also allows for CMS to collect and place the imposed CMPs in an escrow account pending this process.

⁵ Amount reflects a 35% reduction as the facility waived its right to Appeal as permitted under law.

Special Focus Facilities in New York State: As of December 31, 2013

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 participation in the Medicare and Medicaid programs. Termination usually means that a facility is sold to a new operator or closed. Due to resource limitations, only 136 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) As a result of federal sequestration cutbacks, in 2013 CMS significantly curtailed this program. As a result there are many nursing homes that qualify to be in the SFF Program because of their extremely poor record, but are not. LTCCC recommends that consumers consider any facility with a one star overall rating on Nursing Home Compare (www.medicare.gov/nhcompare) to be the equivalent of an SFF. (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.

Facilities Newly Identified as a SFF	Facilities That Have Shown Improvement	Facilities That Have Not Improved	Facilities That Have Recently Graduated from the SFF Program	Facilities No Longer Participating in the Medicare and Medicaid Program
None	None	Blossom South Nursing And Rehabilitation Center (31) *	Mercy Living Center (9)	None
		Rosewood Heights Health Center (21)*	Pleasant Valley (20)	
			Van Duyn Home And Hospital (25)	
			Wingate at Beacon (11)	

Selected Actions of the NYS Office of the Medicaid Inspector General: 9/16/13 - 12/15/13

The Office of the Medicaid Inspector General (OMIG) works to protect 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). A single provider can receive multiple exclusions, based on different indictments and convictions. This multiple exclusion process works to protect residents of long term care facilities, because it ensures that even if one type of exclusion is overturned, the abusive provider is still banned from receiving Medicaid funds based on other convictions.

Please note: In addition to the actions listed below, all of the providers which were reported as having actions taken against them by the Medicaid Fraud Control Unit in previous newsletters have been excluded by OMIG. Please see our newsletter archives at www.ltccc.org/newsletter for their names. Exclusion means that no payments will be made to or on behalf of any person for the medical care, services or supplies furnished by or under the supervision of the defendant during a period of exclusion or in violation of any condition of participation in the program. Additionally, any person who is excluded from the program cannot be involved in any activity relating to furnishing medical care, services or supplies to recipients of Medicaid for which claims are submitted to the program, or relating to claiming or receiving payment for medical care, services or supplies during the period. OMIG may take a variety of exclusion actions against a provider based upon: indictments; convictions; consent orders or HHS exclusion.

Nursing Home	Defendant	Location	Narrative	OMIG Exclusions Based Upon:
Daughters of Sarah Nursing Home	Rashawn Owens, CNA	Albany	While giving care to an elderly person, Mr. Owens forcibly pried the legs of the patient apart, thereby fracturing the resident's femur.	HHS Exclusion: 9/19/2013 & MFCU Conviction: 5/7/2013
Hurlbut Nursing Home	Gloria Thomas	Rochester	While working as an office manager of a nursing home, Ms. Thomas stole \$21,246.35 from patient funds for her own use. She also stole \$585 worth of Wegman's gift cards and \$464 worth of money orders from the nursing home for her own personal use.	HHS Exclusion: 10/20/2013 & MFCU Conviction: 5/5/2013
Pathways Nursing and Rehabilitation Center	Elesia Howard, CNA	Niskayuna	While bathing an elderly woman with chronic respiratory failure, Ms. Howard first verbally abused her patient, and then grabbed and pinched the resident's nipple.	HHS Exclusion: 5/20/2013 & MFCU Conviction: 5/5/2013
Roscoe Regional Rehabilitation & Residential Health Care Facility	Miranda Ackerly, LPN	Roscoe	Ms. Ackerly made false entries into diabetic patients' charts that she had administered blood sugar tests when she had not performed these vital tests.	HHS Exclusion: 4/18/2013 & MFCU Conviction: 5/2/2013

We Need Your Help! Please Support the Fight to Improve Care, Dignity & Quality of Life for Nursing Home & Assisted Living Residents.

LTCCC depends on the generosity of our supporters to provide a strong voice every day for the frail elderly and disabled who rely on long term care in nursing homes, assisted living and other settings. We work to ensure that people are treated with dignity, and that their basic rights to decent care and services are protected.

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://iGive.com/welcome/warmwelcome.cfm?c=27668>.

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 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 the inside back cover of this issue.

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To write to your representative
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letters to him or her at NYS
Assembly, Albany, NY 12248.
The general switchboard for the
Assembly is 518-455-4000. In
addition to your personal
representative, it is important
that the following leaders hear
from you:

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

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New York State Senate:
To write to your Senator,
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