

MONITOR

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

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New Report Examines Federal-State Oversight of Nursing Homes

A new report, *"Government Monitoring & Oversight of Nursing Home Care: The Relationship Between Federal and State Agencies"* has been released by LTCCC. The report indicates that although many states, including New York, have been underreporting care problems in nursing homes for a number of years, and even though the federal Centers for Medicare and Medicaid Services (CMS) is responsible for making sure that states' nursing home inspection systems are ensuring that residents are protected, there has been little improvement.

The report presents an overview of the responsibilities of CMS to monitor state performance, the standards that states must meet and the sanctions that CMS can take if a state agency is unable to meet those standards. In addition, the report discusses the reasons for the persistent inability to make sure that states, including New York, meet their obligations to appro-

“CMS does not seem to have a clear way to measure whether a state has a ‘pattern of failure...’”

priately monitor care in nursing homes. While this is a national study, the report uses New York State as a case study.

The findings indicate that:

- CMS lacks the resources to oversee state performance – they do not have the money or personnel to adequately monitor the states.
- Although federal law does not state this, CMS's state operations manual require it to consider any circumstances which may be beyond the control of the state in its choice of sanction.

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LTCCC's 2ND ANNUAL RECEPTION

Theme: Empowerment of Consumers

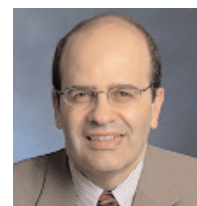
Please come and help us honor two outstanding government officials whose careers have focused on empowering consumers:



Chair, NYS Assembly
Committee on Health,
Honorable Richard N. Gottfried

and

NYS Office for the Aging
Director, Michael Burgess



A cocktail reception will be followed by an educational presentation and discussion with the honorees.

DATE: Wednesday, October 6, 2010

PLACE: Federal Hall, 26 Wall Street, Manhattan

TIME: 6 PM to 8 PM • Cocktail Party

TICKETS: \$150 (tax-deductible)

All tickets must be purchased in advance.

Federal Regulations prohibit sale of tickets at the door.

Fill out the form below and mail with your check or call for information: 212-385-0355

☐ I am happy to join you. Enclosed is my check for _____ people to attend. (\$150 per person; please make check out to "Long Term Care Community Coalition").

☐ I cannot attend, but I want to make a tax-deductible donation for \$_____.

☐ I would like to be a sponsor. Please send me the different benefits of sponsorship.

NAME (PLEASE PRINT): _____

PHONE: _____

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(MAILING ADDRESS: STREET/P.O. BOX, CITY, STATE, ZIP)

NAMES OF ADDITIONAL ATTENDEES: _____

NOTE: A LIST OF ATTENDEES WILL BE KEPT AT THE DOOR. WE WILL NOT BE ISSUING TICKETS.

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- New York State's nursing home surveillance system, housed in the state Department of Health, is not fully funded by federal or state government – it is severely understaffed and finds it hard to keep experienced inspectors.

- CMS does not seem to have a clear way to measure whether a state has a “pattern of failure,” which would lead to more severe sanctions. In a state like New York it means that it is difficult, if not impossible, to ever label the state with such a pattern even when it fails to identify serious care problems.

- In New York, CMS does not use the remedies and sanctions available to it that might help New York improve, such as directed quality assurance plans or speaking to state leaders who might effectuate change, such as the governor or legislative leaders.

The report makes a number of recommendations:

- CMS should focus on whether a state has performed well under its contract to monitor nursing home quality, rather than on whether there are circumstances beyond the control of the state.

- CMS should have less flexibility when choosing sanctions. There should be clear directions, based upon the degree of a state's failure, for when each sanction or remedy must be imposed.

- The CMS office overseeing New York must be more aggressive in its efforts and bring the issues related to the state's problems in identifying serious nursing home problems directly to the attention of those who have the ability to make change, such as the governor and state legislative leaders. Perhaps if the governor or legislature understood that the state could

lose federal funding if it does not perform adequately they would make sure that the Department of Health had the funding it needed to adequately monitor nursing home care.

- Both CMS and State oversight agencies must be sufficiently funded to carry out their responsibilities.

For the full report, please go to www.ltccc.org. □

Cynthia Rudder Receives NY State Award

Former LTCCC executive director Cynthia Rudder (now semi-retired and LTCCC's part-time director of special projects) was awarded a NY State Office for the Aging Director's Distinguished Achievement in Aging Award at a ceremony in Albany on May 5, 2010. The award was in recognition of her lifetime of work and achievement in “Advocacy and Protecting the Rights of the Elderly.” Cynthia led LTCCC for over 25 years, has served on numerous state and national advisory councils and has been a strong and persistent voice for long term care consumers' rights throughout her career. LTCCC congratulates Cynthia for this award recognizing her important work and contributions! □



LTCCC

LONG TERM CARE COMMUNITY COALITION

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

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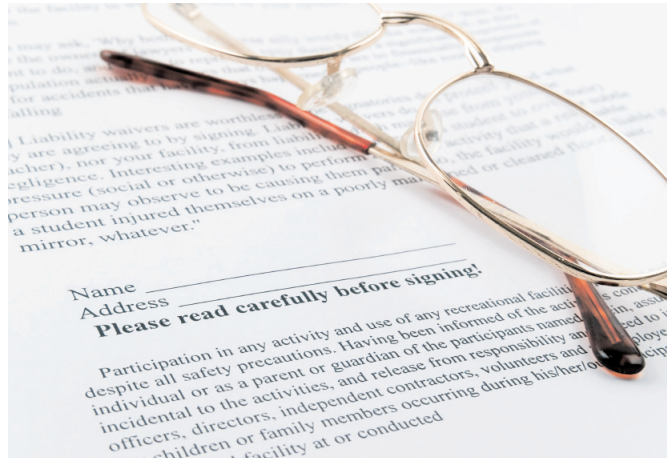
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LTCCC Publishes Brief on Assisted Living in New York:

Providers Win: Consumers Lose

LTCCC's new issue brief on assisted living in New York State argues that the assisted living marketplace in New York is a mess and, due to provider industry pressure and greed, the 2004 assisted living law has not lived up to its promise. The brief is available on LTCCC's assisted living website, www.assisted-living411.org.

Before the law passed in 2004, New York had a two-tiered system of assisted living: one for the rich and moderately wealthy and one for the poor and middle class. Now, six years later, this division is growing wider. In addition, frighteningly, the providers' "win" in their lawsuits to remove



the protection of a professional nurse in assisted living residences that care for individuals with increased frailty or dementia have put consumers at serious risk.

The issue brief highlights serious consumer safety, quality of life and financial protection concerns raised as a result of these events:

- Even though studies have indicated that the presence of professional nurse staffing in an assisted living facility has a major positive effect on resident health outcomes, because of the providers' lawsuit, as the

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Bill Proposed to Create a Demonstration Program for Transition Authorization Panels

A bill, introduced by Assemblymen Ron Canestrari and Tim Gordon, A8647C, would establish a demonstration program to study "transition authorization panels" as a way to make decisions for incapable hospital patients who do not have families or friends or legally designated representatives. These decisions involve the transition from hospital inpatient care to post-acute care, such as home care or nursing home care, when the patient is no longer in need of hospital (acute) care.

This would eliminate the need to wait for a court to appoint a guardian with the legal authority to make such a decision, which can take many months. In addition to court appointment being time consuming for the hospital, it also means that the patient who needs post-acute care is not receiving it during this time and is stuck in the hospital.

As this bill was being written, LTCCC worked with the hospital providers to make sure that both the rights of families and patients were protected. We were very pleased with their response. Most of the protections we urged were, in fact, incorporated in the bill.

This bill, if it becomes law, would put into place a transition authorization panel demonstration program at six hospitals: Crouse Hospital, Syracuse, NY, Glens

Falls Hospital, Glens Falls, NY, Memorial Hospital, Albany, NY, Samaritan Hospital, Troy, NY, University of Rochester Medical Center, Rochester, NY, and Wyckoff Heights Medical Center, Brooklyn, NY.

A patient who would be eligible to have decisions made for him by this panel is one who is ready to be discharged to a post-acute care setting but lacks the capacity to consent and who does not have a guardian, health care agent or power of attorney, or a family member, friend or other representative who is reasonably available and willing to make a transition decision, and who is legally authorized to make all required transition-related financial arrangements. If a family member is reasonably available and willing to make the decision, he, and not the panel, would make the transition decision, even if he is not legally authorized to make financial arrangements. If this representative decides that the transition is suitable, the panel will decide on the financial arrangements, expending the patient's funds (or applying to Medicaid) for a limited time of 120 days, until a guardian can be appointed, if appropriate. This clarification of a family member's role was one of LTCCC's priorities. We

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Quarterly Enforcement Actions Against Nursing Homes

Selected Enforcement Actions By The NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 5 Nursing Home Personnel 3/16/10 - 6/15/10

Nursing Home	Location	Defendant	Narrative	Sentence
Fairport Baptist Homes	Fairport	Crawford, Glenda, Licensed Practical Nurse	LPN slapped a 90 year old wheelchair bound woman with dementia and then wheeled her into an activities room and barricaded the door so that she could not get out of the room.	5/11/10: One-year conditional discharge with 32 hours of community service.
Heritage Park Health Care Center	Jamestown	Blakeslee, Glenda, Certified Nurse Aide	CNA punched an 84 year old resident with dementia, with a closed fist, in the chest.	4/6/10: One-year conditional discharge and ordered to surrender her CNA certificate.
Medford Multicare Center for Living	Medford	Campo, Nicole, Licensed Practical Nurse	LPN ignored the repeated call bell of an 82 year old resident. As a result, the resident urinated in her bed and became so frustrated that she got herself into her wheelchair and wheeled herself to the nurse's station, where Campo was standing. Campo blamed a young CNA, who was fired, and wrote a false statement to the facility during its investigation. The nursing home's security cameras confirmed the resident's version of events and revealed Campo's statement to be false.	3/25/10: Three years probation with special conditions that she refrain from employment caring for any incompetent person (age, physical disability, or mental disease or defect) and complete a state-approved substance abuse program.
Northwoods Rehab ECC Troy	Troy	Gundersen, Robert Edward, Certified Nurse Aide	CNA fondled the breasts and vaginal area of a 78 year old woman who was physically helpless.	3/16/10: Ten year's probation and ordered to register as a level 2 Sex Offender, Order of Protection issued. Level 2 Sex Offenders must register with the Division of Criminal Justice Services, and reregister every three years by filing a new form, appearing at the law enforcement agency where he lives, reporting changes in address and employment.
St. Margaret's Center	Albany	Layne, Delilah, Certified Nurse Aide	CNA was charged with two incidents. In the first, while the defendant was feeding a 14-year old child, she slapped the girl's forehead and forced juice down her throat so that juice came out of her nose, later tossing the child into her crib, causing a bruise to her head. In the second incident, she plugged the nose of a 7-year old child, who uses a suction machine, so that he became upset and flailed his arms.	5/19/10: One-year conditional discharge and ordered to surrender her CNA certificate; a surcharge was also imposed

¹The unit prosecutes cases of patient abuse in nursing homes.



Quarterly Enforcement Actions Against Nursing Homes

NY State Fined 4 Nursing Homes: 3/16/10 – 6/16/10¹

Name Of Home	Location	Date Of Survey	Amount ²
Beth Abraham Health Services	Bronx	4/27/09	\$30,000
Glendale Home Schenectady County Dept.	Scotia	9/10/08	\$14,000
Julie Blair Nursing & Rehabilitation Center	Albany	6/30/08	\$6,000
Rivington House	Manhattan	3/9/09	\$14,000

¹As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL Officer at 518-474-8734 or e-mail – nhinfo@health.state.ny.us.

²Under state law nursing homes can be fined up to \$2,000 per deficiency. These fines may be increased to \$5,000 if the same violation is repeated within twelve months and the violations were a serious threat to health and safety. These fines may also be increased up to \$10,000 if the violation directly results in serious physical harm.

NY State Took Other Action Against 17 Nursing Homes 3/8/10 - 6/17/10¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Bronx Center for Rehab & Health Care	Bronx	IJ/SQC	4/16/10	CMP, DPOC, Inservice, DOPNA
Brooklyn United Methodist Church Home	Brooklyn	SQC	3/8/10	CMP, DPOC, Inservice, DOPNA
Countryside Care Center	Delhi	IJ/SQC	6/17/10	CMP, DOPNA
Franklin County Nursing Home	Malone	GG	4/30/10	DPOC, Inservice, DOPNA
Heritage Commons Residential Health Care	Ticonderoga	IJ/SQC	6/1/10	CMP, Monitor, DOPNA
Jewish Home and Hospital for the Aged	Manhattan	GG	3/12/10	DPOC, Inservice, DOPNA
Keser Nursing and Rehab Center, Inc.	Brooklyn	IJ/SQC	4/29/10	CMP, Monitor, DPOC, Inservice, DOPNA
Loretto Utica Nursing Home	Utica	IJ/SQC	4/15/10	CMP, DPOC, Inservice, DOPNA
Marcus Garvey Nursing Home Inc.	Brooklyn	IJ/SQC	6/14/10	CMP, DOPNA
Northern Riverview Health Care Center, Inc.	Haverstraw	SQC	4/8/10	CMP, DPOC, Inservice, DOPNA
Northwoods Rehab and ECF Rosewood Gardens	Rensselaer	IJ/SQC	5/26/10	CMP, DPOC, Inservice, DOPNA
Oneida Healthcare Center	Oneida	IJ/SQC	4/2/10	CMP, Monitor, DPOC, Inservice, DOPNA
Otsego Manor	Cooperstown	IJ/SQC	4/30/10	CMP, Monitor, DPOC, Inservice, DOPNA
Ridge View Manor LLC	Buffalo	IJ/SQC	5/25/10	CMP, DPOC, DOPNA
Rosewood Heights Health Center	Syracuse	SQC	3/9/10	CMP, DPOC, Inservice, DOPNA
Somers Manor Nursing Home Inc.	Somers	IJ	3/25/10	CMP, Monitor, DPOC, Inservice, DOPNA
Wyoming County Community Hospital SNF	Warsaw	GG	4/22/10	DPOC, DOPNA

¹As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL officer at 518-474-8734 or e-mail – foil@health.state.ny.us.

²Immediate jeopardy (IJ), and substandard quality of care (SQC): The most serious level of deficiency causing harm; GG: Deficiencies that have caused isolated resident harm on two consecutive surveys.

³Civil Money Penalty (CMP): State recommends to CMS; State Monitoring: state sends in a monitor to oversee correction; Directed Plan Of Correction (DPOC): A plan that is developed by the State or the Federal regional office to require a facility to take action within specified timeframes. In New York State the facility is directed to analyze the reasons for the deficiencies and identify steps to correct the problems and ways to measure whether its efforts are successful; In-Service Training: State directs in-service training for staff; the facility needs to go outside for help; Denial of Payments for New Admissions (DOPNA): Facility will not be paid for any new Medicaid or Medicare residents until correction.

Federal Civil Money Penalties¹ Against 11 Nursing Homes: 3/1/10 – 5/31/10²

Name Of Home	Location	Survey Date	Amount
The Brightonian	Rochester	2/12/10	\$3,250.00 ³
Center for Nursing & Rehabilitation SNF	Brooklyn	1/29/10	\$20,800.00 ³
Grandell Rehabilitation and Nursing Center	Long Beach	1/26/10	\$32,207.50 ³
Loretto Utica Residential Health Care Facility	Utica	12/16/09	\$61,909.90 ^{3,5}
Marcus Garvey Nursing Home	Brooklyn	5/18/06	\$113,395.20 ^{4,5}
Oceanside Care Center, Inc.	Oceanside	1/29/10	\$45,467.50 ³
Park Ridge Nursing Home	Rochester	2/5/10	\$9,360.00 ³
St. Joseph Nursing Home	Utica	12/14/09	\$2,697.50 ³
Sunrise Nursing Home	Oswego	2/5/10	\$3,900.00 ³
Wayne Health Care	Newark	1/8/10	\$3,250.00 ³
Westmount Health Facility	Queensbury	2/25/10	\$4,550.00 ³

¹Civil Money Penalties (CMPs) – a federal sanction against nursing homes that fail to comply with quality care requirements.

²As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2220. This list will be posted on LTCCCs website every three months.

³Amount reflects a 35% reduction as the facility waived its right to a hearing as permitted under law. Original fine was 35% higher.

⁴Amount reduced 25% due to financial hardship. Original fine was 25% higher.

⁵Includes interest at 11.25% for paying in installments.

law stands, no licensed assisted living residence – even those holding themselves out as providing special care for dementia and safety for people who wish to age in place and avoid a nursing home as they become more frail – is required to have a licensed caregiver on their staff at any time.

- The two-tiered system of assisted living in New York State continues unhindered. The Medicaid Assisted Living Program (ALP) has been around in New York for many years.

Since assisted living in New York State mainly caters to a private market, it is (arguably) the best way for people on Medicaid who qualify for nursing home care but could be safely cared for in a less institutional setting to avoid nursing home placement and access the benefits of assisted living. Unfortunately, though there are a number of ALP facilities that provide good quality of life and care for their residents, in too many cases the ALP program has functioned as a means by which adult homes can access much higher reimbursement rates (than the normal licensed adult home rate) without having to show that they are meeting any quality of life criteria associated with assisted living, such as resident dignity and autonomy, a home-like environment, respect for individual preferences, etc... or by classifying residents who are not eligible (do not require nursing home services) as ALP residents. Rather than dealing with the need to develop affordable assisted living that is consistent with the 2004 assisted living law (and because adult home providers lobbied successfully), the state decided to just greatly expand the number of ALP “slots.”

- Action on affordable assisted living in New York is at a standstill. Ironically, one of the key requirements of the 2004 assisted living law was the mandate that the state take concrete steps toward increasing the availability of affordable assisted living. Unfortunately this task has been on hold for years, first because the regulations were being written and then because the providers filed a lawsuit. In the meantime, lower and middle income New Yorkers continue to be funneled into the Assisted Living Program, if they have access to Medicaid benefits,

while those who do not qualify for Medicaid are on their own.

- The assisted living marketplace is a mess. One of the goals of the 2004 assisted living law was to make the assisted living marketplace easier to understand and navigate for consumers. At that time, consumers looking for assisted living faced a variety of confusing options: from licensed

adult homes and enriched housing (which range from terrible places that had become notorious for providing inhumane conditions to very nice (generally expensive) places that provide a more home-like environment) to unlicensed facilities that provide home and care (often significant care, such as dementia services) to the frail elderly and disabled without any state standards or oversight whatsoever. Unfortunately, the law and regulations that followed, especially after the result of the provider industry’s lawsuits, have made the marketplace even more confusing and unfair for consumers.

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The brief lists a number of specific recommendations for the state. The state should:

- Move forward on meaningful and equitable affordable assisted living for New Yorkers.

- Vigorously enforce current regulatory requirements, particularly for adequate staffing.

- Ensure adequate funding to support appropriate Department of Health and Long Term Care Ombudsman staffing levels and training.

The brief also lists a number of recommendations for assisted living consumers:

- Buyer Beware! It is crucial to protect yourself by being a knowledgeable & critical consumer.

- Take Action. It is important that consumers and their loved ones speak out about any problems that they see.

The brief was widely distributed to policy makers. □

“...due to provider industry pressure and greed, the 2004 assisted living law has not lived up to its promise.”

Bill Proposed *continued from page 3*

wanted to make sure that even if a family member did not have a financial power of attorney, he or she would be able to make the transition decision for an incapable patient. However if the patient (who can) objects, he is not considered to be an eligible patient for this program.

Another priority of LTCCC was that the panel include a member who was an advocate for the patient and did not have a financial interest in the outcome. Thus, the bill states that the panel will consist of three members: one designated by the hospital, one by the local social services commissioner and one by the New York state office of the Long Term Care Ombudsman. In addition, no person who is a health care professional actively involved in the treatment of the patient may serve on a panel making decisions for that patient.

Reports on the panels' decisions will be sent to the commissioner of health who will send it to the legislature and, as LTCCC requested, will make the information public. Among the information in the report: the type of post-acute care requested; the categories of persons who addressed the panel; the number of unan-

imous and non-unanimous panel votes; whether the order called for transition-related financial arrangements and if so whether those arrangements were successfully made; whether the patient and/or a family member objected to the panel's decision; and any data or other information available to the administrator regarding the impact of the demonstration on the hospital's average inpatient length of stay. In addition, it will include an evaluation by the participating hospital, the local social services department, and, as we requested, the New York State Office of Long Term Care Ombudsman regarding whether transition authorization panels adequately protected the interests and rights of patients including their interest in being transitioned to the least restrictive setting reasonably available, and the success of the transition plans approved by the program in meeting the needs of patients and their recommendations for amendments to the law, and recommendations regarding the merit of extending this demonstration program or adopting a permanent and state-wide transition authorization program. □

LTCCC Board of Directors Update

Board Elections

LTCCC held its biennial board elections at the meeting of our members on June 21, 2010. The entire slate of candidates were re-elected for a two year term. Congratulations to Geoffrey Lieberman, Deborah Truhowsky, Martin Petroff and Lisa Wickens!

Two Members Retire

Two LTCCC board members retired prior to the election: Judy Brickman and Helene Wolff.

Judy Brickman served on LTCCC's board for many years. She was the Long Term Care Coordinator at the New York City Department for the Aging for fifteen years. For the next seven years she was a consultant in that agency's Alzheimer's and Long Term Care unit. She is now retired and remains active in many volunteer agencies.

Helene Wolff joined the LTCCC board in 2007. She is a consultant specializing in editorial projects, marketing, and grant writing, primarily for non-profit organizations. She served for many years as Public Affairs Director of the New York City Department for the Aging.

LTCCC sends thanks and appreciation to both Judy and Helene, who each contributed significantly to LTCCC's work. Their efforts and support over the years was very valuable!

Carol Rodat Joins Board

Carol Rodat was elected to LTCCC's board of directors at a special meeting of the board on June 28, 2010. Since 2005, Carol Rodat has served as the New York Policy Director for PHI (formerly the Paraprofessional Healthcare Institute), a national not-for-profit organization located in the South Bronx that is dedicated to improving the quality of care by improving the quality of the jobs in long-term care. Prior to joining PHI, Carol served for over a decade as the President and CEO of the Home Care Association of New York State, a statewide organization representing over 300 providers of home care services throughout the state. She is the author of a number of publications on healthcare and workforce issues and has served on numerous advisory committees addressing health care in New York. Welcome Carol! □



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New York State Assembly:

To write to your representative in the Assembly, address your letters to him or her at NYS Assembly, Albany, NY 12248. The general switchboard for the Assembly is 518-455-4000.

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

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

Assemblymember Jeffrey
Dinowitz
Chair, Committee on Aging
dinowij@assembly.state.ny.us

New York State Senate:

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

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

Senator Malcolm Smith
Temporary President
masmith@senate.state.ny.us

Senator Pedro Espada, Jr.
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espada@senate.state.ny.us

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

FEDERAL OFFICIALS:

To contact your federal representatives visit our action alert center at www.ltccc.org or call the congressional switchboard 202-225-3121.

