

# MONITOR

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

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## Feds Issue Guidelines on NH Resident Dignity

In April, the Centers for Medicare and Medicaid Services (CMS) announced new surveyor (inspector) guidelines for determining whether nursing homes are maintaining and supporting nursing home resident dignity and quality of life, effective June 17, 2009. The guidance addresses important areas relating to providing a home-like environment; meeting the needs and desires of residents in terms of waking up and going to sleep, dining, dressing, bathing,



etc.... The purpose of the guidelines is to clarify and ensure understanding of every nursing home's responsibility to each of its residents and to improve the survey system's performance in assuring provider accountability for meeting these standards.

It is important to note that the requirements themselves are not new. The purpose of this guidance is to *continued on page 7*

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## New Report Assesses LTC Options From Consumer Perspective

Over 200,000 people are served by New York State's Medicaid long term care (LTC) system; however, from a consumer perspective, many are not served very well. Like the state's population as a whole, the population receiving long term care

services is diverse in terms of their needs and desires and, although the current system provides a wide range of services, it often does not adequately meet the range of consumers' needs, particularly in terms of providing services in a way (and in a place) that promotes dignity and autonomy. In order to gain insight into these issues and more effectively advocate for LTC system change that is responsive to consumers' needs and desires, LTCCC assessed the different LTC programs in terms of how they are (or are not) meeting the needs and desires of New Yorkers, as well as LTC restructuring initiatives from other states, to identify ways in which the system can better meet the needs of consumers. The result is LTCCC's new report, *Long Term Care Restructuring in New York State: A Consumer Perspective*, which presents an assessment of the long term care system from a consumer perspective and provides recommendations for



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## New Report...

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the state in order to improve it. In the report, consumer needs and concerns are identified by two main sources: the results of a statewide survey of groups who work with the elderly and disabled and LTCCC's 2006 white paper, *Developing a New & Better Long Term Care System in NY State*.

New York's LTC system is complicated, as there are 12 main Medicaid funded long term care programs (detailed in the report) that fall into different categories and that have different eligibility requirements. Some programs are deemed mandatory programs (nursing homes and Certified Home Health Agencies), some are optional programs (Traditional Personal Care Program and Adult Day Health Care, for example) and some are waiver programs (Traumatic Brain Injury program and Nursing Home Transition and Diversion program). Important problems and obstacles to holistic care are evident in many of the programs and the system is further plagued by a lack of consumer direction and problems with being able to access quality care as well as appropriate care.

Receiving care at home or in the least restrictive setting is important for consumers; however, many areas of the state (rural areas especially) lack resources to provide care in the least restrictive setting in the current system. Unfortunately for consumers, institutional care is sometimes the only option.

“The report can be a useful resource now and in the future...”

Although similar problems with long term care exist nationwide, some other states have developed creative policies in order to address these challenges, such as problems of access to care in rural areas, inadequately caring for consumer needs and the lack of consumer directed programs. For example, Alaska has created a rural long term care development program with grant money that will provide consumers with home and community based services, such as the Personal Assistance Program and adult day care centers. Wisconsin has created a program called “Family Care” (FC); it was created with consumer input and money follows the person to the setting of the consumer's choice. Consumers are thus provided with a

choice about what services they can receive and have the opportunity to direct their own care. Studies have shown that consumer direction leads to feelings of empowerment, satisfaction and that it positively affects quality of life; it is thus an issue that LTCCC and other advocates believe should lie at the heart of long term care restructuring.

A full version of the report and other resources of interest are available on LTCCC's website, [www.ltccc.org](http://www.ltccc.org) ([www.ltccc.org/key/AccessToLongTermCare.shtml](http://www.ltccc.org/key/AccessToLongTermCare.shtml)). For consumers and stakeholder groups, the report can be a useful resource now and in the future for information on the different programs and ideas on how to overcome challenges to achieving the LTC that consumers want and need. □

# LTCCC

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

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## New Laws Protect Access to Justice for NH Victims

In June, two valuable new laws were passed by the NYS Legislature and signed into law by Governor Paterson. Both laws, which provide important clarifications on the rights of victims of nursing home abuse and neglect to access the justice system, were introduced by Assembly Health Committee Chair Richard Gottfried and developed with the assistance of LTCCC's directors and Deborah



Truhowsky, a senior partner at the law firm Schwartzapfel Truhowsky Marcus and a member of LTCCC's Board of Directors.

Both of these laws, described below, clarify and reconfirm important aspects of § 2801(d) of New York's public health law which have been misinterpreted, we felt, by a number of courts in the state. Section 2801(d) permits a resident to sue for injuries resulting from poor care or abuse in a nursing home. LTCCC strongly supports this law, not only because it provides for meaningful compensation for individ-

ual residents and families who have been harmed but also because it sends a signal to providers that they can be held accountable for abusive or negligent care.

While we were pleased to see these two bills passed into law we were very disappointed that a third bill relating to §2801(d) did not become law. This bill (A 730) addressed an unfortunate issue that has arisen in the

interpretation of §2801(d): The current law says that if a nursing home resident is awarded monetary damages to compensate for injury by a nursing home, that award shall not be subject to a Medicaid lien to pay for benefits or counted towards his or her Medicaid eligibility. However, the law does not specifically address the situation that may arise if a resident dies before the conclusion of the case. This bill clarified that this aspect of the law applies if a resident dies before the conclusion of the case. LTCCC believes

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## The Family Health Care Decisions Act

What if you were suddenly in an accident and couldn't speak for yourself? Would you want a doctor or hospital making your medical decisions? Or would you rather have your friends or family decide? What if you never wanted to continue to receive life-sustaining treatment but never formally appointed a proxy agent to speak for you?

Under current New York State law, health care facilities and in some cases judges can make health care decisions for patients

who have lost (or never had) decision-making capacity unless the patient has signed a health care proxy, has a legal guardian or has left "clear and convincing evidence" of his treatment wishes. Family and friends cannot make any medical decisions on your behalf unless you have formally appointed them as an agent by completing a proxy form or they are your legal guardian. About seventy-five to eighty percent of New Yorkers have not signed a health care proxy.

The Family Health Care Decisions Act (FHCDA), first introduced in 1993, seeks to change this by providing that in cases where a patient's "wishes are not reasonably known and cannot with reasonable diligence be ascertained" a surrogate can make the decision in accordance with the patient's best interests. The Act lists factors that must be considered when making these decisions.

**“The FHCDA would permit incapacitated individuals’ loved ones to make health care decisions on their behalf”**

While there has been widespread support of FHCDA among state advocates

and members of the New York State Legislature, a few contentious issues have caused this bill to languish for 16 years. One issue involves the potential inclusion of language to require a surrogate to consider "the impact of the [health care decision] on the fetus and on the course and outcome of the pregnancy" if the patient is pregnant. To date, this language has not been added. Some legislators are concerned

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## Enforcement Actions Against Nursing Homes

### Civil Money Penalties<sup>1</sup> Against 12 Nursing Homes – 3/1/09 – 5/31/09<sup>2</sup>

Name Of Home	Location	Survey Date	Amount
Blossom North Nursing & Rehabilitation Center	Rochester	7/18/05	\$55,705.00
Elderwood Health Care at Tioga	Waverly	12/12/08	\$3,900.00
Ellis Residential & Rehabilitation Center	Schenectady	10/24/08	\$5,000.00 <sup>3</sup>
Livingston Hills Nursing & Rehabilitation Center	Livingston	2/10/09	\$43,030.00
Long Island State Veterans Home	Stonybrook	10/22/08	\$4,900.00 <sup>4</sup>
Mercy of Northern New York	Watertown	10/24/08	\$10,000.00 <sup>3</sup>
Nathan Miller Center for Nursing Care	White Plains	11/24/08	\$45,565.00
Northwoods Rehabilitation & Extended Care Center-Troy	Troy	1/16/09	\$50,375.00
Ocean Promenade Nursing Center	Queens	2/24/09	\$3,900.00
Sunrise Nursing Home	Oswego	12/11/08	\$3,250.00
Waterview Nursing Home	Queens	12/9/08	\$30,582.50
Whittier Rehabilitation & Skilled Nursing Center	Ghent	12/30/08	\$1,625.00

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

<sup>2</sup>As 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.

<sup>3</sup>Amount does not reflect a 35% reduction as the facility did not waive its right to a hearing as permitted under law.

<sup>4</sup>Settlement agreement.

### State Fines Against 17 Nursing Homes – 3/13/09 - 6/13/09<sup>1</sup>

Name Of Home	Location	Date Of Survey	Amount <sup>2</sup>
Avalon Gardens Rehab & HCC	Smithtown	5/23/08	\$2,000
Beechwood Homes	Getzville	3/4/08	\$4,000
Beechwood Homes	Getzville	6/12/08	\$2,000
Brookhaven Rehabilitation & HCC	Queens	4/25/08	\$2,000
Buena Vida Continuing Care & Rehab Center	Brooklyn	7/11/07	\$2,000
Buena Vida Continuing Care & Rehab Center	Brooklyn	11/19/07	\$4,000
Cabrini Center for Nursing & Rehabilitation	Manhattan	5/6/08	\$2,000
Cortland Care Center	Cortland	3/21/08	\$4,000
The Hamptons Center for Rehab & Nursing	Southampton	4/21/08	\$8,000
Huntington Hills Center	Melville	7/30/08	\$4,000
Morris Park Nursing Home	Bronx	7/10/08	\$6,000
Newfane Rehab and Health Care Center	Newfane	4/11/08	\$2,000
Park Nursing Home	Queens	5/14/08	\$6,000
St. Joseph's Home	Ogdensburg	5/7/08	\$1,000
Teresian House Nursing Home	Albany	4/30/08	\$4,000
Terrace Health Care Center	Bronx	5/27/08	\$8,000
Wartburg Lutheran Home for the Aging	Brooklyn	5/8/08	\$4,000
Wartburg Nursing Home	Brooklyn	5/8/08	\$2,000
Wayne County Nursing Home	Lyons	4/28/08	\$2,000
Wayne County Nursing Home	Lyons	8/7/08	\$2,000

<sup>1</sup>As 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](mailto:nhinfo@health.state.ny.us).

<sup>2</sup>Under state law nursing homes can be fined up to \$2,000 per deficiency.



# Enforcement Actions Against Nursing Homes

## The State Took Other Action Against 15 Nursing Homes – 3/13/09 - 6/19/09<sup>1</sup>

Name of Home	Location	Resident Impact <sup>2</sup>	Survey Date	Actions <sup>3</sup>
Beth Abraham Health Services	Bronx	IJ	4/27/09	CMP, Monitor, DPOC, Inservice, DOPNA
Central Park Rehabilitation & Nursing Center	Syracuse	IJ	5/26/09	CMP, Monitor, DOPNA
John J. Foley Skilled Nursing Facility	Yaphank	IJ/SQC	5/6/09	CMP, Monitor, DPOC, Inservice, DOPNA
Loretto-Oswego Health & Rehab Center	Oswego	IJ/SQC	5/11/09	CMP, Monitor, DPOC, Inservice, DOPNA
Loretto-Utica Residential Health Care Facility	Utica	IJ/SQC	4/6/09	CMP, Monitor, DPOC, Inservice, DOPNA
Medford Multicare Center for Living	Medford	IJ/SQC	4/1/09	CMP, Monitor, DPOC, Inservice, DOPNA
New Carlton Rehab & Nursing Center	Brooklyn	GG	2/27/09	DPOC, Inservice, DOPNA
Ontario County Health Facility	Canandaigua	IJ/SQC	6/1/09	CMP
Rosewood Heights Health Center	Syracuse	IJ	5/6/09	CMP, Monitor, DPOC, Inservice, DOPNA
St. Catherine LaBoure Health Care Center	Buffalo	IJ/SQC	4/17/09	CMP, DPOC, DOPNA
Sutton Park Center for Nursing & Rehabilitation	New Rochelle	IJ/SQC	6/18/09	CMP, DOPNA
Van Duyn Home & Hospital	Syracuse	IJ/SQC	5/29/09	CMP, Monitor, DPOC, Inservice, DOPNA
Westmount Health Facility	Queensbury	IJ/SQC	5/14/09	CMP, Monitor, DPOC, Inservice, DOPNA
Whittier Rehab & Skilled Nursing Center	Ghent	GG	5/19/09	DPOC, Inservice, DOPNA
Wyoming County Hospital SNF	Warsaw	GG	3/19/09	DOPNA

<sup>1</sup>As 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.

<sup>2</sup> Immediate 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.

<sup>3</sup>Civil Money Penalty (CMP): State recommends to CMS; Denial of Payments for New Admissions (DoPNA): Facility will not be paid for any new Medicaid or Medicare residents until 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; State Monitoring: state sends in a monitor to oversee correction.

## Help LTCCC Go Green!



Do you use email? Access information and news online? If so, please help us save paper – and money – by subscribing to the electronic version of *The Monitor*. As an added bonus, you will get your *Monitor* a month before hard copies go out!

Send an email to [info@ltccc.org](mailto:info@ltccc.org) with the name that appears on the mailing label on the back of this issue and let us know the email address you would like the newsletter sent to. We will email you back to confirm. Thank you.

Organizations: please note that you might want to send us an organizational e-mail address in addition to that of an individual, in case of future personnel changes. Your organization is welcome to receive as many electronic editions as you choose!

## Selected Enforcement Actions of NYS Attorney General

### Medicaid Fraud Control Unit<sup>1</sup> Took Action Against 10 Nursing Home Personnel – 3/16/09-6/15/09

Nursing Home	Location	Defendant	Sentence	Narrative
Bethany Gardens Skilled Living Center	Rome	Stoddard, Sheldon L., Dietary Supervisor	3/18/09: Six months' incarceration	Defendant's girlfriend, a CNA (separately charged and convicted), stole an 89 year-old resident's gold and diamond engagement ring that her husband gave her in 1940. The girlfriend gave the ring to the defendant, who pawned the ring for \$15. The engagement ring was recovered and returned to the resident.
Forest View Center for Rehabilitation and Nursing	Queens	Paulwell, Daphne, Certified Nurse Aide	6/10/2009: Unconditional discharge	Defendant unlawfully restrained a resident by tying a bedsheet across the resident's chest and underneath her arms.
Gowanda Rehabilitation and Nursing Center	Gowanda	Sovereign, Jeanette P., Licensed Practical Nurse	4/13/2009: One-year conditional discharge and \$245 fine	Defendant failed to report and omitted from business records that a separately charged and convicted CNA unlawfully physically restrained a resident with a gait belt.
Gowanda Rehabilitation and Nursing Center	Gowanda	Perry, Jeff, Certified Nurse Aide	4/27/2009: One-year conditional discharge--surrender of CNA certificate and \$450 fine	On two consecutive nights, defendant used a gait belt to tie a resident with dementia to a chair.
Masonic Care Community of New York	Utica	Marrero, Henry, Certified Nurse Aide	4/24/2009: One-year conditional discharge--surrender of CNA certificate and right to work in nursing homes	Assigned to care for 99 year-old resident, defendant slapped resident in face three times and once in the lower abdomen.
Medford Multicare Center for Living	Medford	Francis, Jacqueline, Certified Nurse Aide	5/19/2009: Three years' probation surrender of right to care for any incompetent person	Captured by concealed camera installed in resident's room with consent of resident's family, defendant failed as required to shower resident, obtain assistance for Hoyer lift transfer, and to diaper resident. Defendant falsified business records to conceal her neglect.
Medford Multicare Center for Living	Medford	Cheslak, Betty, Certified Nurse Aide	5/20/2009: Three years' probation--surrender of right to care for any incompetent person	Captured by concealed camera installed in resident's room with consent of resident's family, defendant failed as required to perform range of motion therapy, obtain assistance for Hoyer lift transfer, turn and position resident, and to diaper resident. Defendant falsified business records to conceal her neglect.
Medford Multicare Center for Living	Medford	Purdum, Kim, Licensed Practical Nurse	5/20/2009: Three years' probation--surrender of LPN license and right to care for any incompetent person	After defendant neglected to order necessary blood tests needed to monitor dosages of Coumadin, a blood thinning medication, resident suffered internal bleeding and extensive external bruising. When resident was tested and rushed to the ER, defendant went back into the records and altered them to make it appear as if she had originally included the order.
Rosewood Heights Health Center	Syracuse	Christian, Chasity, Certified Nurse Aide	4/20/2009: One-year conditional discharge--50 hours of community service	Defendant punched a 77 year-old resident in mouth and stomach, causing bruising and swelling to resident's mouth.
Waterview Hills Rehabilitation and Nursing Center	Purdys	Obas, Pierre, Certified Nurse Aide	4/27/2009: One-year conditional discharge--surrender of CNA certificate	Defendant tied resident to her wheelchair with a bedsheet, took her to a common room, turned off the lights, and napped while the resident remained restrained.

<sup>1</sup>The unit prosecutes cases of patient abuse in nursing homes.

## New Federal Guidelines ...

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clarify and illustrate how surveyors are to gauge whether a facility is meeting the minimum standards that have been in place since the passage of the Nursing Home Reform Law in 1987.

Following are a sampling of what surveyors should see when they inspect nursing homes to make sure that providers are meeting standards related to resident dignity, autonomy and quality of life. The full guidelines, with more detailed information, and other relevant materials can be accessed on LTCCC's website at [nursinghome411.org/nhdignity.php](http://nursinghome411.org/nhdignity.php).

**Visiting Hours:** Immediate family or other relatives should not be subject to visiting hour limitations or other restrictions not imposed by the resident. Likewise, subject to "reasonable" restrictions, facilities must provide 24-hour access to other non-relative visitors who are visiting with the consent of the resident, as well as certain government officials and ombudsmen.

**Resident Clothing:** Facilities should be "encouraging and assisting" residents to dress in their own clothes in accordance with their preferences rather than hospital-type gowns.

**Dining:** Resident autonomy and dignity should be promoted in resident dining, by avoiding the use of things like bibs and plastic cutlery, ensuring that staff interact with residents (not stand over them or converse with each other while helping residents), etc...

**Privacy:** "Maintaining resident privacy of body including keeping residents sufficiently covered, such as with a robe, while being taken to areas outside their room, such as the bathing area..."

**Schedules:** "Residents have the right to have a choice over their schedules, consistent with their interests, assessments and plans of care." Choice over "schedules" includes (but is not limited to) choices over the schedules that are important to the resident, such as daily waking, eating, bathing, and the time for going to bed at night. Residents have the right to choose health care schedules consistent with their interests and preferences, and the facility should gather this information in order to be proactive in assisting residents to fulfill their choices. For example, if a resident mentions that her therapy is scheduled at the time of her favorite television program, the facility should accommodate the resident to the extent that it can. If the resident refuses a bath because he or she

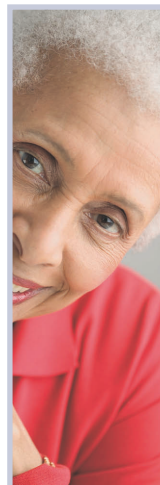
prefers a shower or a different bathing method such as in-bed bathing, prefers it at a different time of day or on a different day, does not feel well that day, is uneasy about the aide assigned to help or is worried about falling, the facility should make the necessary adjustments.... The facility staff should meet with the resident to make adjustments in the care plan to accommodate his or her preferences.



If you live in, work in or visit a nursing home keep an eye out for resident dignity and autonomy issues. Are family members being limited to visit at only certain times? Are aides placing bibs on all the residents in the dining room? Do they talk with the residents they help, or stand over them? If you are there during an inspection, are surveyors addressing these issues? Are they engaging residents and family?

If you see cases where the dignity and autonomy requirements are not being honored please let us know. Send an email to [info@ltccc.org](mailto:info@ltccc.org) with "Dignity Concern" in the subject line and specific information. Or mail to Dignity Concerns, c/o LTCCC, 242 West 30th Street, Suite 306, NY, NY, 10001.

PLEASE NOTE THAT ANY INFORMATION WE RECEIVE WILL BE KEPT CONFIDENTIAL (UNLESS YOU INDICATE OTHERWISE) AND USED TO SUPPORT OUR SYSTEM & POLICY ADVOCACY. We will acknowledge receipt of your information but unfortunately do not have the capacity to undertake individual advocacy. If necessary we can direct you to another organization for help.



Please take a moment now to support LTCCC! Your dollars will directly support our vital work and help to make a difference in the lives of our most vulnerable citizens. In these difficult economic times, our work is needed more than ever to ensure that providers don't cut corners and standards are upheld. You can make a tax-deductible donation with a credit card by going to our website, [www.ltccc.org](http://www.ltccc.org) (click on the "Donate Now" button), or you can send a check to Long Term Care Community Coalition, 242 West 30th Street, Suite 306, New York, NY 10001.

## New Laws Protect...

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that this bill is crucial because it removes a potential disincentive to taking legal action when a resident's care has been so bad that the resident has actually died, rather than recovered from (or is able to live with) his or her injuries. It prevents a result that is both grossly unjust and contrary to the clear intent of the law. Following is a description of the two bills that passed into law.

### **A763: An act to amend the public health law, in relation to private rights of action by patients in residential health care facilities**

This law provides an important clarification of a nursing home resident's right to private action when they have been the victim of neglect or abuse. Section 2801(d) specifies that "the remedies provided in this section are in addition to and cumulative with any other remedies available to a patient..." Despite this clear language, vulnerable residents who have been harmed by abuse or neglect have experienced barriers to bringing actions under this section of the law in a number of courts.

As the bill's supporting language noted, "Some courts have erroneously said that the section only applies to suing for violations... relating to religion,

privacy, consent, physical and chemical restraints and visitors. ...This bill would make it clear that the statute means what it says – that the right to sue applies to any injury to the patient by the nursing home. ...This bill will also establish in plain language that the right to sue extends to injuries against physical and emotion health, financial injury as well as death..."

### **A724: An act to amend the public health law, in relation to retaliation by residential health care facilities where a patient asserts a private right of action**

This law relates to a nursing home resident's right to make a legal claim against a nursing home for neglect or abuse that has caused harm without fear of retaliation by the nursing home. It also has an important provision protecting a facility employee from retaliation for giving evidence or testimony in such a case.

LTCCC felt that both of these protections are crucial to ensure that problems of abuse and neglect are identified and effectively addressed. Many people are afraid to come forward and make a claim when there is abuse or neglect out of fear of retaliation. When residents and workers are afraid to speak out about neglect and abuse, problems can fester, causing more serious and widespread injuries and even death to vulnerable nursing home residents. □

## NY State Licensed Assisted Living Now on the Web

The NYS Department of Health now lists the assisted living facilities that have been approved for licensure on its website at [www.health.state.ny.us/facilities/assisted\\_living/](http://www.health.state.ny.us/facilities/assisted_living/). These are the facilities that have been licensed under the new Assisted Living Law (passed in 2004) and subject to the standards and consumer protections that the law requires.

This is important information for consumers and people that work for them. As readers of *The Monitor* know, it took many years for NY to pass an assisted living law with meaningful consumer protections. Many assisted living facilities have been operating with no standards, minimum requirements or consumer protections relating to quality of care or quality of life. Other facilities have been licensed as adult homes or enriched housing. As more and more facilities go through the licensing process (there are 14 licensed facilities as of press time), consumers will finally have some clarity as to what the facilities in their communities are supposed to provide and their rights and obligations under the law.

It is very important to remember that even with the new law, the different types of assisted living can be confusing and misleading for consumers. In order to add clarity for consumers and other stakeholders, LTCCC's assisted living information website, [www.assisted-living411.org](http://www.assisted-living411.org), has valuable free guides on assisted living and a dedicated page "Assisted Living in NY" which describes the law, the issue of "Assisted Living Program vs. Assisted Living Residences" and has links to the list of NYS licensed residences, residents rights and more.

### **What You Can Do**

Though only a small number of facilities have been licensed so far, LTCCC urges all consumers to access this list when they are in – or looking for – assisted living. If the facility you are interested in is not listed, ask them why. Are they applying for licensure? Are they applying for Special Needs or Enhanced Certification (if you are interested in dementia care or aging-in-place)? □



## NYS Legislative Roundup: Bills LTCCC Supported

There were a number of bills affecting LTC consumers in the 2008-9 New York State legislative session. Following are summaries of the bills that LTCCC supported which, as this newsletter went to print, have not been acted upon due to the turmoil in the Senate. Many of these bills have important protections and we hope to see them move forward in the next session. [See separate article in this issue, “New Laws Protect Access to Justice for NH Victims,” on two important bills that did pass.] Later this year, LTCCC will be initiating a new page on our website, [www.ltccc.org](http://www.ltccc.org), with information on bills we have identified as important to consumers.

Senator Tom Duane (D) has introduced a companion bill (S03844) to the Assembly’s **Nursing Home Diversion Act** (A1721). LTCCC helped to develop and strongly supports this bill, which would prevent nursing homes from admitting new residents when the nursing home’s staffing levels are so low that they fall below the level identified in a federal study as having a high likelihood of harm to residents. Similar to the policy commonly practiced by hospital ERs, when they have insufficient staffing or supplies to handle additional patients safely, these nursing homes would go on diversion until their staffing levels reach or exceed the minimum safety level (either by raising their staffing levels or through resident attrition).

**Ombudsman Program Expansion Bill** A02548 clarifies the definition of assisted living residences and other facilities providing similar residential and care services to fall within the purview of the Long Term Care Ombudsman Program. According to the bill’s legislative justification, “There has been some concern that the Long-Term Care Ombudsman program is being refused entrance into assisted living residences, due to some ambiguity in the State law. This bill cures any such ambiguity by requiring that all assisted living residences be notified of the requirement to allow long-term care ombudsmen access to their facilities.”



**New ALP Protections Bill** A07654 would amend the Public Health and Social Services law to extend the same protections currently granted to residents of “enhanced assisted living residence” (EALR) beds to those in “assisted living program” (ALP) beds. The needs of individuals in the ALP program are similar to those in the enhanced assist-

ed living residence. In fact individuals in the ALP program may need even more care since they must be nursing home eligible in terms of care needs to qualify for an ALP bed. However the staffing requirements of the ALP program are less than those of the enhanced assisted living residence. LTCCC strongly supports this bill because it would apply the 2004 ALR law and the regulations of EALR to all new ALP beds and in five years would phase in (to this requirement) the currently existing ALP beds. Thus, the higher level of nursing care that EALR residents can rely on would be extended to ALP residents. In addition, this legislation would permit assisted living residences to apply for ALP beds. Furthermore, the bill helps to achieve the original intent of the 2004 ALR law by reducing consumer confusion over the many different types of care providers available and the requirements they must meet. This bill was sponsored by Assemblyman Richard Gottfried (D).

**Air Conditioning Fee Schedule Bill** A05681/S3801 would require the Commissioner of Health to establish fees for the “use, maintenance, and repair of air conditioners used by residents of adult homes, enriched housing programs, and residences for adults.” The Commissioner must consider fluctuating energy costs, and adjust the fees accordingly. The goal of this bill is to prevent adult homes from charging residents exorbitant fees for air conditioner usage. Research has shown that air conditioning is crucial for those who are at risk for heat-related illnesses the elderly, people with mental illness and people with chronic diseases. Assemblyman James Brennan (D) sponsored this bill.

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## Family Health Care...

*continued from page 3*

about how this would be interpreted by the courts. Another issue that has caused disagreement has been the inclusion of domestic partners in the priority list of individuals who could be considered as surrogates. As of the date this newsletter went to press, both the Senate and the Assembly bills include domestic partners and the Senate bill has passed.

Other groups were concerned that the bill seems to work only for those who want to discontinue treatment and that some care providers might decide to withhold treatment because the provider believes the patient's quality of life will be poor even if the treatment works. Through negotiations between these groups and some legislators, a stipulation has been included that if the surrogate and the provider disagree as to whether treatment should continue, the patient can be transferred to another facility with care continued until the transfer is complete.

The FHCDA (bills A07729/ S3164 in the Spring 2009 legislative session), if finally passed, would allow surrogates to make all health care decisions that the patient would be able to make himself, in the absence of a guardian or proxy form. Surrogates are supposed to make these decisions according to the patient's best interests and taking into account any "medical condition and other concerns and values that a reasonable person would consider." The decision to withhold or withdraw life-sustaining treatment can be made by a surrogate only if the patient has an illness or injury that is expected to cause death in the next six months, is permanently unconscious, or treatment would involve such pain, suffering or

other burden that treatment would reasonably be deemed inhumane or extraordinarily burdensome and the patient has an irreversible or incurable condition. In residential care facilities, this decision can be made for someone who is not terminally ill or unconscious if a court or an Ethics Review Committee including at least one physician determines that treatment or withholding treatment is in accord with the best interest of the patient. The Family Health Care Decisions Act has no bearing on a decision to withhold cardiopulmonary resuscitation.

LTCCC and other concerned consumers believe medical treatment decisions are best made in the context of the family or other personal relationships and that this, with appropriate safeguards, is what most people would want or choose for themselves. They will be able to guide health care professionals in the care of their loved ones to ensure that they are provided not only with better quality health care but better quality of life. By detailing who, how and when decisions must be made, the FHCDA ensures that every patient has their voice heard when they cannot speak for themselves.



Send a message to your assembly representative and the governor and let them know that you support the Family Health Care Decisions Act. Go to [www.ltccc.org](http://www.ltccc.org) and click on the Citizen Action Center on the right hand side to send an email or letter. Let's make sure that this bill does not wait another 16 years for passage!

## Legislative Roundup...

*continued from page 9*

**Mandatory Penalty Enforcement and QUIP Bill A08185/S03297** relates to the appointment of a temporary operator or voluntary receiver of adult care facilities, death and felony crime reports, ban on admissions and approval of applications for establishment of adult care facilities.

This legislation contains many provisions that will strengthen oversight, improve the quality of life and care and strengthen the rights of residents in adult homes and enriched housing. Among the provisions: the bill allows a penalty to be given to a facility even if

it corrects a violation if the violation was a repeat from the last inspection; and the bill offers strong consumer protection by permitting the Department to put a ban on admissions to an adult home or enriched housing program until all "conditions which constitute an imminent danger to the health, safety, or welfare of any resident" are remedied. There are some changes we would like to see in this bill, such as maintaining yearly surprise inspections for all facilities, even those receiving the department's highest rating. This bill was first sponsored by Senator Tom Duane in the Senate and has since died in committee. Assemblyman Richard Gottfried (D) has sponsored it in the Assembly.



**LONG TERM CARE COMMUNITY COALITION**

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

*Celebrate With Us!*

Please Join Us in Honoring  
The Medicaid Fraud Control Unit of The Office of The Attorney General  
Followed by an Educational Session with the Honorees

DATE: Wednesday, October 7, 2009  
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

The Unit – originally known as the Office of the New York State Special Prosecutor for Nursing Homes, Health and Social Services – was created in January 1975 following the revelation of widespread and shocking abuses plaguing the State’s nursing home industry. The exposure of the 1974 scandals drew national attention then and this unit continues to draw attention today, using new investigative methods to uncover abuse while providing creative settlement agreements to hold poor performers accountable, mandating quality of care improvements and investments to serve our elderly and disabled with the care and respect they deserve.

*Honorees*

**Charles J. “Joe” Hynes**, the current District Attorney of Kings County, New York, was appointed by Attorney General Louis Lefkowitz and Governor Carey as the first Special State Prosecutor to investigate nursing home fraud. Hynes’ office launched a comprehensive attack on Medicaid fraud, and his Medicaid Fraud Control Unit eventually became a national model.

**William J. Comiskey**, Deputy Director from 2002 to 2008, was the first Deputy Director to use hidden cameras to monitor resident neglect.

**Heidi Wendel**, the current Deputy Director, continues to fight for nursing home residents. The New York MFCU was given the Inspector General’s State Fraud Award for 2008 as the top Medicaid Fraud Control Unit of federal fiscal year 2008. On June 2, 2009, the New York MFCU received the award in Washington, D.C. from the HHS Inspector General.

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*Dear LTCCC,*

I am happy to join you in honoring the Medicaid Fraud Control Unit of the Office of the Attorney General. Enclosed is my check for \_\_\_ people to attend (\$150 per person; please make check out to “Long Term Care Community Coalition”).

Name (Please print): \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_  
(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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## Action Alert Mailing List

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(518) 474-7330

**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](mailto:speaker@assembly.state.ny.us)

Assemblymember Richard N. Gottfried, Chair  
Committee on Health  
[gottfr@assembly.state.ny.us](mailto:gottfr@assembly.state.ny.us)

Assemblymember Jeffrey Dinowitz  
Chair, Committee on Aging  
[dinowij@assembly.state.ny.us](mailto: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](mailto:masmith@senate.state.ny.us)

Senator Pedro Espada, Jr.  
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Senator Jeffrey Klein  
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Senator Ruben Diaz  
Chair, Committee on Aging  
[diaz@senate.state.ny.us](mailto:diaz@senate.state.ny.us)

Senator Thomas Duane  
Chair, Committee on Health  
[duane@senate.state.ny.us](mailto:duane@senate.state.ny.us)

To obtain the names of your personal state government representatives, go to The Citizen Action Center on our website: [www.ltccc.org](http://www.ltccc.org).

**FEDERAL OFFICIALS:**

To contact your federal representatives visit our action alert center at [www.ltccc.org](http://www.ltccc.org) or call the congressional switchboard 202-225-3121.

