

# MONITOR

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

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## State Task Force on Assisted Living Continues to Meet LTCCC Committee Focusing on Making Assisted Living Affordable

### State Task Force

According to the Assisted Living law that passed in 2004, the State Task Force was created to update and revise the requirements and regulations applicable to adult care facilities and assisted living residences to better promote resident choice, autonomy and independence. The task force has been charged to make recommendations (a) minimizing duplicative or unnecessary regulatory oversight; (b) ensuring that the indigent have adequate access to, and that there are a sufficient number of enhanced assisted living residences; (c) developing affordable assisted living; (d) promoting resident choice and independence; (e) on the evaluation tool as required by section 4657 of the public health law; and, (f) on specific standards and criteria relating to the special needs certificates required by the 2004 law.

As of this date, the Task Force has accomplished (e) and (f). As readers of *The Monitor* know, we are awaiting the final promulgation of the proposed regulations for licensed assisted living regulations now that the formal comment period ended in May. The Task Force will now focus on the other tasks. Cynthia Rudder, LTCCC's director of special projects and a member of the Task Force, with the help of LTCCC's Assisted Living Committee (made up of a number of LTCCC's organizational members), will make a number of recommendations to the Task Force on these issues.

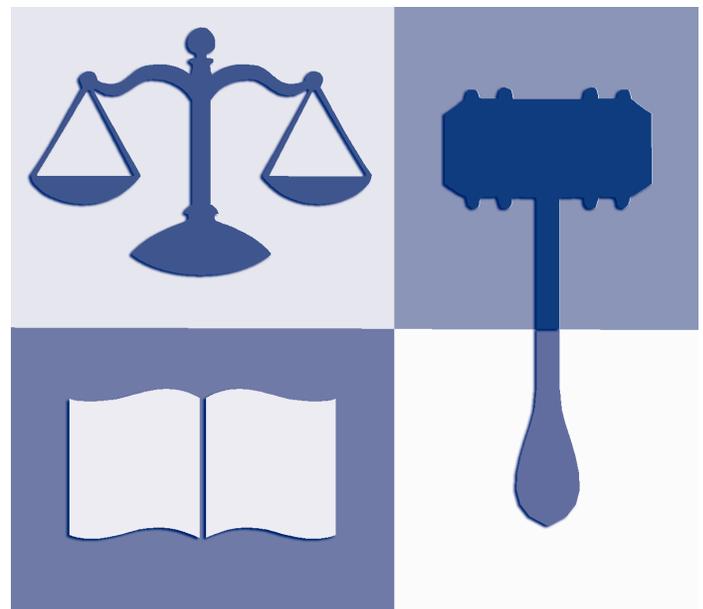
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## LTCCC's Legislative Priorities

In anticipation of a new legislative session – the first full session under Governor Eliot Spitzer – LTCCC has identified the following major legislative priorities:



### Safe Staffing Standards for Nursing Homes

Nursing homes are entrusted to care for our most vulnerable citizens, yet widespread problems persist year after year. Inadequate staffing is widely acknowledged as the most crucial factor relating to poor care. Though New York gives nursing homes a tremendous amount of public money to provide care, our nursing homes rank 30th in the nation in terms of staffing levels! New York spends the second highest amount of any state on Medicaid (the largest payer of nursing home services in NY), almost double the spending of the next highest state, yet we don't require that the nursing homes receiving our public trust and our public money be required to spend some of that money to ensure adequate care. We believe that there is something gravely wrong with this situation.

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# Affordable Assisted Living...

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One of the items on the July agenda of the Task Force will be to look at updating and revising current adult home regulations. According to the 2004 law, this task was to be conducted to better promote resident choice, autonomy and independence. Thus, we believe that the current regulations for adult homes, which all assisted living residences must follow in addition to the new regulations, must be updated to do this. LTCCC has made a number of recommendations regarding: (1) helping to ensure that people living in adult homes are offered an opportunity to move into more independent housing if they are able and want to; (2) giving more autonomy and choice to residents; and (3) giving more ability to participate in the residence policy making in terms of food, environment and activities. Please see specifics by going to [www.assisted-living411.org](http://www.assisted-living411.org). We hope the Task Force and the State will support these suggestions.

## LTCCC's Assisted Living Committee and Affordability

LTCCC's Assisted Living Committee is now focusing on affordable assisted living in a number of ways. First, the committee developed draft legislation to make sure that no Medicaid funding goes to any residence unless certain criteria are met. Assemblyman Englebright, with help from LTCCC and its committee, introduced a bill (A07223) that sets standards to encourage resident independence, autonomy, privacy and freedom of choice in assisted living residences that receive medical assistance payments or reimbursement. This legislation, if passed, would require that any residence that receives Medicaid funding for assisted living would have to meet standards that

require them to: (1) be a non-institutional setting, which is integrated into the community; (2) comply with the provisions of the Americans with Disabilities Act; and (3) encourage resident independence, autonomy, privacy and freedom of choice. The Committee will work with the legislature on this bill in the next session.

Second, the LTCCC Assisted Living Committee is developing recommendations for making assisted living affordable for the indigent and middle class. It intends to release a "white paper," from the consumer perspective, for New York State policy makers, on ways to accomplish this early next year. The committee is examining available funding sources, possible incentives for developers to provide affordable housing, ways to aid consumers to help pay for room and board, supplemental programs for services, and information from other states who have been successful. The unique nature of assisted living facilities, which provide both housing and personal and medical services, is a challenge for providing affordable assisted living.

The committee will continue to meet discussing these issues in depth, bringing in experts from both New York State and other states to help it as it formulates this white paper.

**Write to Mark Kissinger, Deputy Commissioner, Office of Long Term Care, urging him to update the current adult home regulations to encourage resident independence, autonomy and choice. See page 7 for contact information. Send an email, fax or letter to policy makers on this issue. Go to [www.ltccc.org](http://www.ltccc.org) and click on our Citizen Action Center to easily send your message. □**



## LONG TERM CARE COMMUNITY COALITION

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

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## Nursing Homes In The Future

The Long Term Care Community Coalition has received funding from the New York Community Trust to conduct roundtable discussions on the future of nursing homes and issues relating to viability and accessibility of nursing homes in New York State. Problems with nursing homes such as staffing and funding continue to be impediments to quality care. These problems are widespread and well known to readers of *The Monitor*. Virtually all nursing homes in the state (approximately 97%) are short on staffing, despite the fact that staffing is widely acknowledged as the most important factor affecting quality of care. As a result, the future of nursing homes remains uncertain. Going to a nursing home is generally seen as the option of last resort. There is a strong and growing movement in this state and nationwide to

enable people who need long term care to receive that care outside of nursing homes: generally in their home or in a more community-like setting, such as assisted living. In addition, New York and other states are increasingly using managed long term care and Medicaid waivers to help people who need long term care stay out of nursing homes. Current and potential Medicaid waivers (including the so-called “Mega-Waiver”) could radically change the number of people going into nursing homes and thus the financial viability of nursing home care in New York State.

While many people may take advantage of programs to get long term care in their home or other settings, there will always be a need for nursing homes as a place where one can get professional care twenty four hours a day. The people most likely to take advantage of community services are long term care consumers who need the least amount of care and/or have family and other resources that will help them stay at home or in their communities. Thus, nursing homes will, more and more, be caring for those who are most frail, have the most acute needs and the most limited familial and financial resources. Elderly and

disabled individuals need heightened care and protection, and as health policies continue to change, it is imperative that the needs of these individuals are not sacrificed out of convenience or as cost-cutting measures.

The purpose of the roundtable discussions are to bring together state policymakers, stakeholders, and philanthropists to facilitate an understanding of these issues and discussion of how they can be addressed.

The roundtable discussions will play an important role in identifying common ground between attendees, and addressing one of the most significant problems we see arising from this change in long term care delivery: the escalated marginalization of nursing homes and the resultant impact on quality of care and life for future nursing home residents.



LTCCC is currently conducting background research to gain insight on the potential changes in long term care delivery and their impact on nursing homes as well as other relevant industry and consumer issues. This information will provide roundtable attendees with information to be used for facilitating discussion. We want to ensure that nursing homes are available for those who need or want this type of long term care, and that they are able to provide a good standard of care and quality of life. We hope that the roundtable discussions serve as a launching point for addressing the future of nursing homes, so that they can be a viable option for people who need long term care in the future. □

### New Aging Committee Chair

Jeffrey Dinowitz, representing the 81<sup>st</sup> Assembly District in Bronx, New York, was appointed as Chair of the Assembly Aging Committee. Steve Englebright, previous chair, is now chair of the Committee on Tourism, Arts and Sports Development.



## Enforcement Actions Against Nursing Homes

### CIVIL MONEY PENALTIES<sup>1</sup> AGAINST 12 NURSING HOMES: 3/1/07 – 5/31/07<sup>2</sup>

NAME OF HOME	LOCATION	SURVEY DATE	AMOUNT
Bridge View Nursing Home	Queens	2/7/07	\$38,317.50
Brookhaven Rehabilitation & Health Care Center	Queens	11/13/06	\$28,925.00
Folts Home	Herkimer	2/26/07	\$1,625.00
Glendale Home	Scotia	1/3/07	\$20,735.00
Harbour Health Multicare Center for Living	Buffalo	11/9/06, 12/29/06	\$41,000.00 <sup>3</sup>
Lewis County RHCF	Lowville	11/17/06	\$13,552.50
Orchard Manor, Inc.	Medina	11/14/06	\$77,044.00 <sup>3</sup>
Pines Healthcare & Rehabilitation Center	Olean	3/9/07	\$4,420.00
Riverview Manor Health Care Center	Owego	11/2/06	\$1,950.00
Rockville Skilled Nursing & Rehabilitation Center	Rockville Centre	8/28/06	\$45,225.00 <sup>4</sup>
Sutton Park Center for Nursing & Rehabilitation	New Rochelle	11/29/06	\$18,937.50 <sup>4</sup>
Syracuse Home Association	Baldwinsville	12/27/06	\$39,292.50

<sup>1</sup> Civil Money Penalties (CMPs) – a federal sanction against nursing homes that fail to comply with quality care requirements. Most are proposed by the state and approved by CMS.

<sup>2</sup> As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2345.

<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> Reduced 25% due to financial hardship and waiving of hearing.

### STATE FINES AGAINST 25 NURSING HOMES: 3/31/07 – 6/15/07<sup>1</sup>

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT <sup>2</sup>
Albany County Nursing Home	Albany	5/8/06	\$2,000
Bayview Nursing & Rehab Center	Island Park	12/2/05	\$2,000
Belair Care Center Inc	North Bellmore	3/19/02	\$2,000
Cedar Manor	Ossining	8/4/1999	\$500
The Crossings Nursing & Rehab Centre	Minoa	3/15/06	\$3,000
Eger Health Care Center	Staten Island	5/19/05	\$1,000
Eger Health Care Center	Staten Island	6/7/06	\$6,000
Grandell Rehab & Nursing Center	Long Beach	8/3/06	\$1,000
Greater Harlem Nursing Home	Manhattan	2/8/06	\$1,000
The Hamptons Center for Rehab & Nursing	Southampton	2/9/07	\$3,000
Jennifer Matthew Nursing & Rehab	Rochester	9/13/06	\$1,000
Lewis County RHCF	Lowville	11/17/06	\$4,000
Loretto Health & Rehabilitation Center	Syracuse	7/7/06	\$2,000
Michaud Residential Health Services	Fulton	1/06/06	\$3,000
Northern Riverview Health Care Center	Haverstraw	9/13/05	\$1,000
Northern Riverview Health Care Center	Haverstraw	10/3/06	\$2,500
Oceanview Nursing & Rehab Center	Queens	8/15/05	\$1,000
Oceanview Nursing & Rehab Center	Queens	7/19/06	\$1,000
Peninsula Center for Extended Care & Rehab	Queens	12/28/05	\$2,000
Regency Extended Care Center	Yonkers	11/17/05	\$2,000
Riverview Manor Health Care Center	Owego	4/12/06	\$1,000
Split Rock Rehab & Health Care Center	Bronx	12/5/05	\$6,000
St. Catherine of Siena	Smithtown	4/10/06	\$1,000
St. Josephs Home	Ogdensburg	8/3/06	\$1,000
United Helpers Canton Nursing Home	Canton	9/27/06	\$1,000
The Waters of Three Rivers	Painted Post	5/18/06	\$1,000
Whittier Rehab & Skilled Nursing Center	Ghent	9/20/06	\$2,500
Woodcrest Rehab & Residential Health Care Center	Queens	4/27/06	\$1,500

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



## Enforcement Actions Against Nursing Homes

In addition to the actions listed below, the following nursing homes are also subject to a fine. If the nursing home was found, at the time of the survey, to have given substandard quality of care (SQC) and/or to have put residents in immediate jeopardy (IJ), the most serious level of deficiencies, or to have repeated deficiencies that have caused isolated resident harm (G) it is noted in the third column. Double G means the home has received Gs in two consecutive surveys. IJ Removed means the facility was identified to have immediate jeopardy during the survey but removed the situation that caused Immediate Jeopardy prior to the end of the survey.

<b>The State Took Other Action Against 25 Nursing Homes 3/16/07 - 6/15/07<sup>1</sup></b>					
NAME OF HOME	LOCATION	IJ,SQC or G	SURVEY DATE	CMP <sup>2</sup>	ACTIONS <sup>3</sup>
Betsy Ross Rehab Center	Rome	IJ/SQC	5/1/07	x	State Monitor, DPOC, Inservice, DOPNA
Bishop Charles Waldo Maclean	Queens	IJ/SQC	4/6/07	x	State Monitor, DPOC, Inservice, DOPNA
Blossom Health Care Center	Rochester	IJ/SQC	3/23/07	x	State Monitor, DPOC, Inservice, DOPNA
Bronx Lebanon Special Care Center	Bronx	IJ/SQC	5/10/07	x	State Monitor, DPOC, Inservice, DOPNA
East Rockaway Progressive Care Facility	Lynbrook	GG	4/10/07		DPOC, DOPNA
Ellis Residential and Rehab Center	Schenectady	IJ/SQC	5/2/07	x	DPOC, Inservice, DOPNA
Evergreen Commons	East Greenbush	IJ/SQC	5/21/07	x	DPOC, Inservice, DOPNA
Grace Manor	Buffalo	IJ	4/20/07	x	DPOC, Inservice, DOPNA
Grand Manor	Bronx	GG	4/11/07	x	
Harbour Health Multicare Center for Living	Buffalo	IJ/SQC	5/31/07	x	DPOC, Inservice, DOPNA
Livingston Hills Nursing & Rehab Center	Livingston	GG	6/7/07		DPOC, Inservice, DOPNA
Marcus Garvey	Brooklyn	GG	3/28/07		DPOC, Inservice, DOPNA
Mayfair Care Center	Hempstead	GG	4/19/07		Inservice, DOPNA
Midway	Maspeth	IJ/SQC	4/16/07		DPOC, Inservice
Northwoods Rehab & Extended Care Facility-Cortland	Cortland	GG	3/29/07	x	DPOC, Inservice, DOPNA
Northwoods Rehab & Extended Care Facility-Hilltop	Niskayuna	GG	5/15/07		DPOC, Inservice, DOPNA
Rockville Skilled Nursing & Rehab Center	Rockville Centre	GG	3/29/07		DPOC, Inservice, DOPNA
Schuyler Hospital & LTCU	Montour Falls	SQC	5/11/07	x	DPOC, Inservice, DOPNA
Terence Cardinal Cooke	New York	GG	5/17/07	x	DOPNA
Van Duyn Home & Hospital	Syracuse	IJ/SQC	3/30/07	x	State Monitor, DPOC, Inservice, DOPNA
The Waters of Eden	Eden	SQC	3/20/07	x	State Monitor, DPOC, Inservice, DOPNA
Whittier Rehab & Skilled Nursing Center	Ghent	GG	6/7/07	x	DPOC, Inservice, DOPNA
Williamsville Suburban Nursing Home	Williamsville	IJ/SQC	4/24/07	x	DPOC, Inservice, DOPNA
Willow Point Nursing Home	Vestal	GG	4/6/07		DPOC, Inservice, DOPNA
Woodcrest Rehab & Residential Health Care Center	Queens	IJ/SQC	6/5/07	x	DPOC, Inservice, 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> Recommendation to CMS.

<sup>3</sup> 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; Termination means the facility can no longer receive reimbursement for Medicaid and Medicare residents.

## Legislative Priorities...

*continued from page 1*

To address our serious staffing problem, LTCCC has supported “safe staffing” bills in the New York Assembly and Senate for many years. Unfortunately, such a bill has yet to come close to enactment. Thus, in the last legislative session, we worked closely with Assembly Health Committee Chair Richard Gottfried to develop a new bill that would address the urgent needs of those in nursing homes while setting forth a mandate that is less onerous for providers (who have fought minimum staffing requirements) and thus more politically viable. This bill, A08220, had over forty sponsors in the Assembly by the end of the session. It requires approximately four hours of direct care staff time per resident per day. According to a federal study, this is the level below which nursing home residents have a markedly higher likelihood of increased frailty or injury resulting from poor care or neglect. Mandating this minimum safe staffing requirement is our top priority for nursing homes this year.

In addition to Assemblymember Gottfried’s safe staffing bill in New York, we are also supporting a congressional bill to mandate minimum staffing nationwide. The Nursing Home Staffing Act, last introduced by Representative Henry Waxman in 2005, would mandate standards comparable to the NY State bill. LTCCC will be initiating a campaign this year to advance grassroots and organizational support for this important measure. We hope you will all join us.

### **Affordable Assisted Living**

Last year, several NY Assembly members requested that LTCCC develop recommendation for legislation for affordable assisted living: assisted living that would be available to people who are lower or middle income, and who are shut out of assisted living now because it is so expensive. This year, we will be building on these efforts, and are in the process of identifying and assessing different ways to institute affordable assisted living in New York.

From a legislative and policy perspective, we believe that it is crucial that the state first identify the model of assisted living that it wants to make affordable before it puts more public money into the system. This model should include the type of living environment that we all identify with assisted living: a home-like environment which encourages resident

autonomy and independence. Last year, LTCCC fought unsuccessfully against a provider-based initiative that expanded New York’s Assisted Living Program, which provides additional money to adult homes for assisted living “slots.” Unfortunately, a number of adult homes provide very bad living conditions and are institutional (rather than home-like) environments. In addition, in order to use these slots, adult homes do not have to be licensed as assisted living residences under the law. This coming year, we will work to ensure that the state puts public funding only into residences that are licensed as assisted living and are responsive to consumer needs and desires. [See the article on assisted living in this newsletter for more information on this issue and our planned activities.]

### **Bolster Legal Protections for Nursing Home Residents & Families**

As readers of *The Monitor* know, LTCCC is a strong proponent of using the law to protect nursing home residents and their rights. Section 2801(d) of the state public health law sets forth a powerful private right of action for residents and their family members to sue a nursing home when the nursing home’s failure to provide adequate care has harmed the resident. Unfortunately, at the urging of providers, a few judges have interpreted this law extremely narrowly, limiting injured residents and their loved ones’ ability to hold providers accountable.

Working with Assemblymember Gottfried and Deborah Truhowsky, a prominent attorney representing nursing home residents (and a member of LTCCC’s Board of Directors and partner at Schwartzapfel Truhowsky Marcus Sachs P.C.), we helped devise legislation that was introduced in the Assembly to “close the loopholes” in §2801(d). Two of the three bills developed passed the Assembly. This year we hope to gain the support of NY State Senate Aging Committee Chair Martin Golden to introduce companion legislation in that chamber and insure that the law can be used as it was meant to: to hold nursing homes accountable when they harm residents.

### **Nursing Home Diversion**

The Nursing Home Diversion Act, which LTCCC helped to develop, is a bill introduced by Assemblymember Gottfried that would simply require nursing homes with dangerously low staffing levels to go “on diversion” – not take in additional

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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  
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Assemblymember Richard N. Gottfried, Chair,  
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**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 Joseph Bruno  
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Senator Kemp Hannon  
Chair, Committee on Health  
[hannon@senate.state.ny.us](mailto:hannon@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).

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residents – until they come out of the danger level by either an increase in staffing or reduction in number of residents. Diversion would go into effect at the staffing level identified in a federal study as putting residents “substantially at risk.” LTCCC, and others who support this bill, believe that it is a necessary measure to protect nursing home residents whose homes are most likely to be dangerous.

As of the end of the last session this bill had gained thirty sponsors in the Assembly. LTCCC will work to increase support for this important safety measure in both the New York Senate and Assembly this coming year.



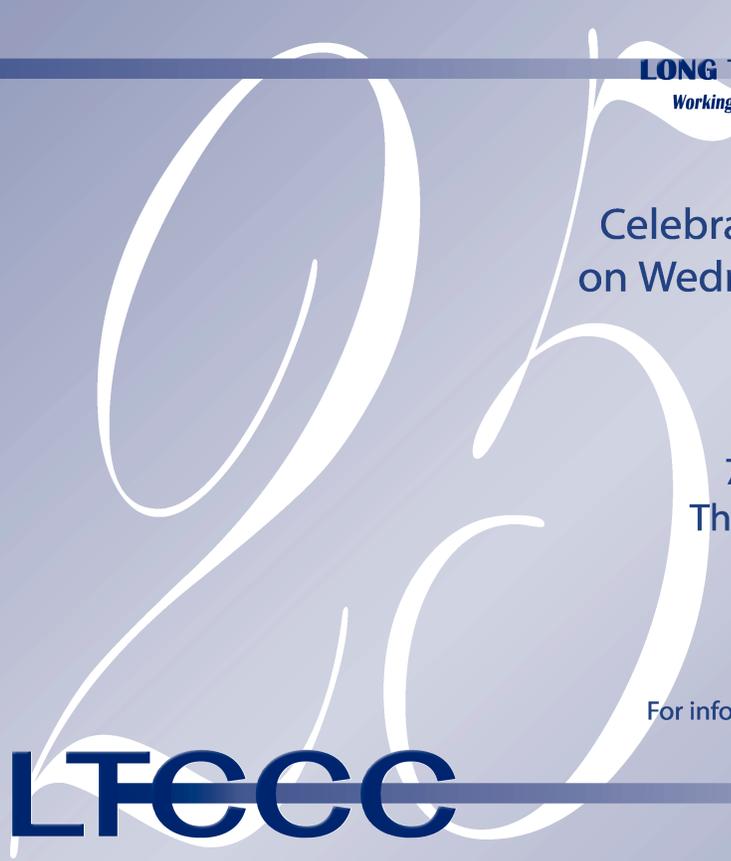
Join LTCCC’s action alert list and receive the latest news and alerts to speak out to your state and federal leaders on these issues when they are before the legislature. Email [info@ltccc.org](mailto:info@ltccc.org) with the message “please add me to the action alert list.” You can also visit the Long Term Care Citizen Action Center on our Website, [www.ltccc.org](http://www.ltccc.org), to view the latest action alerts. □

## LTCCC Director Appointed to State Advisory Council

Richard Mollot, LTCCC’s Executive Director, has been appointed to the New York State Department of Health’s Long Term Care Restructuring Initiative Advisory Council. The Council is charged with assisting the Department of Health in rebalancing the scope and delivery of long



term care services in New York State. Richard will work to ensure that consumers – particularly the frail elderly and disabled – are protected and have appropriate options to meet their needs as changes are instituted. □



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