

MONITOR

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

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New LTCCC Project to Assess Nursing Home Reimbursement

The Long Term Care Community Coalition is excited to announce the beginning of an ambitious new project to examine NY State's nursing home Medicaid reimbursement system. The state is in the process of proposing changes to the current system, which was implemented in 1986. LTCCC has long been concerned that while the current system, which pays a higher rate as residents' care needs increase, improves access for residents with high care needs, it also has created some powerful disincentives to improve residents' conditions (rates decrease if residents improve) or even to admit other groups of people (those with lower care needs). In order to make recommendations to the state as it reforms the system that will best promote quality care for all nursing home residents while still promoting the efficient use of resources, LTCCC has embarked on the Nursing Home Reimbursement Project. This project is being made possible through funding from the New York Community Trust.

“Our goal is to insure that reimbursement encourages good care and gives the state a ‘bang for its buck’”

LTCCC has formed an advisory committee to help guide our research and develop recommendations. The Coalition is excited by the level of expertise and diversity that this project has attracted in our advisory

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State Attorney General's Medicaid Fraud Unit Taking Action to Protect Consumers

Hidden Camera Evidence Used by Attorney General in Trial to Prove Neglect by a Nursing Home Company

For the first time in New York State, hidden-camera recordings have been used to legally prove nursing home neglect. Highgate LTC Management, LLC was sentenced on May 15, 2008 following a criminal conviction for neglect at its Northwoods Rehabilitation and Extended Care facility, located in Cortland, New York. The company, which must pay \$15,000 in fines, is now prohibited from operating a nursing home, long-term care facility or other health care facility.

“Rather than focusing only on individual direct care staff, the OAG held the company operating a nursing home criminally liable.”

This case illustrates the continuing strength of the NYS Attorney General's "nursing home initiative." The initiative got underway in 2004 when, at a meeting with LTCCC, then attorney general Spitzer and his senior staff, LTCCC told the attorney general: "We want you to be the sheriff of nursing homes the way you are the sheriff of Wall Street." Soon thereafter, Spitzer established the Patient Protection Section, under the direction of Cassandra Bethel, within his Medicaid Fraud Control Unit (MFCU) to respond to allegations of abuse and neglect in the state's nursing homes. Following that, then Deputy Attorney General for Medicaid Fraud and Control William Comiskey introduced the concept of hidden cameras as part of this initiative.

Throughout the work of this initiative, LTCCC, meeting with OAG staff, has made the argument that

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NY Has New Senate Majority Leader

Senator Dean Skelos was elected as the new NYS Senate Majority Leader after Senator Joseph Bruno announced his decision to retire on 23rd June 2008. He represents New York's 9th Senatorial District (southwest Nassau County) and is currently serving his tenth term in the New York State Senate. He was elected to the NYS Senate in 1984 and then went on to be named as the Deputy Majority Leader to Senator Bruno in 1995. Because so much power in NY State is concentrated in the Senate Majority Leader, Assembly Speaker and governor, this development is very important for long term care consumers. Historically, consumer protections that LTCCC has advocated for – such as nursing home staffing standards – have hit a brick wall in the Senate.

As a Deputy Majority Leader, Senator Skelos played a central role in the development of the Senate's legislative and governmental policy. His work as the Deputy Majority Leader spans across tax deductible college tuition, Megan's Law, high-tech job creation, mass transportation in Long Island and many other areas. Of particular interest to long term care consumers is his sponsorship of a law to fight Medicaid fraud (June 2006).

Federal studies and industry experts believe that 10%, or more, of the state's Medicaid spending is lost to fraud. Considering that the NY State's Medicaid Program costs \$45 billion per year, approximately \$4.5 billion is stolen from the taxpayers annually. "This drives up property taxes, state taxes and federal taxes

and deprives the neediest New Yorkers of the quality healthcare they deserve" said Senator Skelos. His anti-Medicaid fraud law creates an independent office of Medicaid Inspector general to detect and investigate suspected fraud and to recover improper payments. This law also provides incentives to county governments to fight fraud.

When he was the Chairman of the Senate Aging Committee, Senator Skelos was a leader in the development of NY State's Elderly Pharmaceutical Insurance Coverage (EPIC). Since its implementation in 1987, it has saved thousands of NY seniors more than \$1 billion in prescription drugs. It's EPIC Plus program increases its income eligibility while reducing the out-of-pocket expenses by 20%.

LTCCC will be reaching out to the new Senate majority leader and his staff to make sure that they are aware of the major issues facing elderly and disabled long term care consumers in New York State.

“We hope that Majority Leader Skelos will be interested in making the needs of NY State's frail elderly and disabled a priority.”



Contact Senator Skelos and let him know that you are concerned about long term care consumers in New York and believe that their needs should be a priority. See the action alert contact list in this (and every) issue of The Monitor or visit our Long Term Care Citizen Action Center at www.ltccc.org to send a free and easy message. □

LTCCC

LONG TERM CARE COMMUNITY COALITION

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

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Meetings of NYS Leaders, Providers & Stakeholders

Yield Action Steps to Meet Nursing Home Challenges

The future for nursing homes and those who will need them is looking bleak. Problems in nursing homes are widespread. Too many of our loved ones suffer because of neglect and abuse. Thus, it is no surprise that going to a nursing home is seen as the option of last resort. As a result, there is a strong and growing movement in New York and nationwide to enable people who need long term care to receive that care outside of nursing homes.

LTCCC strongly supports the right to get care in one's home or in a more community-like setting. But what about those who need or want care in a place that offers 24 hour skilled nursing? With money and public attention turning away from nursing homes – while the numbers of frail elderly continue to rise dramatically – how will we ensure that people have access to good and safe nursing home care?

To address these critical questions, LTCCC convened two invitation-only roundtable meetings of state policy makers, leading consumer and provider representatives, and representatives of several of the state's foremost foundations to begin the dialogue necessary to guide New York's planning and policy development in the future. These meetings were held in December 2007 and March 2008. Participants included Joseph Baker, Assistant Deputy Secretary of Health and Human Services, Office of the Governor; Mark Kissinger, Deputy Commissioner, Office of Long Term Care, NY State Department of Health; Michael Burgess, Director of the State Office on Aging and Richard Gottfried, Chairman of the NYS Assembly Health Committee, among others. Prior to the meetings, LTCCC conducted significant background research, to give participants the relevant information they needed on demographic, economic and financing issues. We also conducted a pre-meeting survey of participants to get a snapshot of what issues and challenges they believe are most crucial for the future.

The results of these two meetings have been published in a report, *The Future of Nursing Homes in New York State: Results of Two Roundtable Discussions*, which we believe will be valuable to

policymakers, providers, consumers and workers as we address the challenges facing nursing homes and those who need them. The report is available at www.nursinghome411.org. Following are some of the report's highlights.

Our research indicates that NY nursing homes and the people who might need them are in trouble:

- The need for nursing home care may grow as New Yorkers get older, poorer, sicker and more disabled.
- Nursing homes will be called upon to do more as our population becomes more racially and ethnically diverse.

At the 1st meeting, participants identified three main themes:

- In order to make nursing homes an attractive option for those who need long term care, culture change or person-directed care will need to become the norm – only it can deliver what consumers want.
- Workplace issues, such as high staff turnover, poor working conditions and shortages pose significant

challenges to the nursing home industry.

- Multiple financing issues, including reimbursement for care and dealing with an aging infrastructure, must be addressed.

At the 2nd meeting, participants brainstormed to develop realistic action steps to meet the challenges identified earlier. Over 100 action steps were suggested. A few examples:

- To encourage culture change & person-directed care: foundations could fund projects that train nursing home staff in how to use resident focus groups to identify issues of concern and areas of resident and family satisfaction and the state could use its website to educate the public about nursing home culture change and their rights as long-term care consumers so that they come to expect and demand positive changes in their community's facilities.

- To address workforce issues: the state could give "Best Practice" awards to nursing homes that utilize models of decentralized decision-making and providers could provide workers with extra supports,

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Enforcement Actions Against Nursing Homes

CIVIL MONEY PENALTIES¹ AGAINST 8 NURSING HOMES: 3/1/08 – 5/31/08²

NAME OF HOME	LOCATION	SURVEY DATE	AMOUNT
Absolut Center for Nursing & Rehabilitation	Endicott	12/5/07	\$76,050 ³
Cuba Memorial Hospital SNF	Cuba	11/15/07	\$9,000 ³
Mt. Loretto Nursing Home	Amsterdam	10/19/07	\$67,650 ³
NYS Veterans Home at Montrose	Montrose	11/20/07	\$36,000 ³
Northwoods Rehabilitation & Extended Care Facility-Hilltop	Niskayuna	2/7/07	\$4,950 ⁴
Schulman & Schachne Institute for Nursing & Rehab	Brooklyn	2/5/08	\$39,325
Stonehedge Health Rehabilitation Center-Rome	Rome	8/31/07	\$56,665 ⁴
Wingate at Beacon	Beacon	2/5/08	\$55,350 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 212-616-2345. This list will be posted on LTCCC's website every three months.

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

⁴Fine imposed in accordance with settlement agreement between CMS and the facility.

STATE FINES AGAINST 8 NURSING HOMES: 3/16/08 – 6/14/08¹

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT ²
Blossom Health Care Center	Rochester	3/23/07	\$2,000
Blossom South Nursing & Rehab	Rochester	6/8/07	\$2,000
Cabrini Center for Nursing & Rehabilitation	Manhattan	8/20/07	\$6,000
Cold Springs Hills Center for Nursing & Rehab	Woodbury	8/8/07	\$1,000
Evergreen Valley Nursing Home	Plattsburgh	6/6/07	\$8,000
Heritage Commons Residential Health Care	Ticonderoga	11/21/07	\$2,000
Van Duyn Home & Hospital	Syracuse	2/9/06 combined with 3/30/07	\$6,000
Wyoming County Community Hospital SNF	Warsaw	2/1/07	\$2,000

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.

Free Toolkit: Speak Out to Support Safe Nursing Home Staffing Standards

Visit www.nursinghome411.org for LTCCC's free toolkit to help you advocate for safe staffing standards in nursing homes. These materials can help you and others in your community make your voices heard!

- An informative "brief" on the crisis in nursing home care, which can be distributed to elected officials, the press, etc...
- A brief report on the cost effectiveness of safe staffing levels, to present to elected officials to counter the argument that it is too expensive.
- A sample letter to an elected official.
- A chart listing members of Congress who have shown support for nursing home residents.
- A sample letter to the editor .
- A petition form to gather signatures on safe staffing
- A "tell my story" form for people to describe their personal experiences.

Tell your representatives in Congress and state legislators that it is time for a law requiring that nursing homes have safe staffing! How many more people must suffer before we say 'enough is enough'!!



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 (SQ) 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.

The State Took Other Action Against 19 Nursing Homes 3/16/08 - 6/14/08¹					
NAME OF HOME	LOCATION	IJ,SQ or G	SURVEY DATE	CMP²	ACTIONS³
Avalon Gardens Rehab and HCC	Smithtown	GG	5/23/08		DOPNA
Betsy Ross Rehab Center	Rome	GG	3/20/08		DPOC, Inservice, DOPNA
Cabrini Center for Nursing & Rehab	Manhattan	GG	5/6/08		DPOC, Inservice, DOPNA
Erie County Medical Center-SNF	Buffalo	GG	4/4/08		DOPNA
The Hamptons Center for Rehab and Nursing	Southampton	IJ	4/21/08	X	DPOC, Inservice, DOPNA
Hempstead Park Nursing Home	Hempstead	SQC	4/10/08	X	DPOC, Inservice, DOPNA
Kateri Residence	Manhattan	GG	3/28/08		DPOC, Inservice, DOPNA
Mercy of Northern New York	Watertown		4/24/08		DOPNA
Morris Park Nursing Home	Bronx	IJ	6/10/08	X	State Monitor, DPOC, Inservice, DOPNA
Mt. Loretto Nursing Home	Amsterdam	GG	4/4/08		DPOC, Inservice, DOPNA
Newfane Rehabilitation & Healthcare Center	Newfane	GG	4/11/08		DOPNA
St. Ann's Nursing Home Co. Inc. - The Heritage	Rochester	IJ	5/9/08	X	DOPNA
St. Joseph's Home	Ogdensburg	IJ	5/6/08	X	State Monitor, DPOC, Inservice, DOPNA
Terence Cardinal Cooke Healthcare Center	Manhattan	IJ	3/19/08	X	DPOC, Inservice, DOPNA
Teresian House Nursing Home	Albany	GG	4/30/08		DOPNA
Terrace Health Care Center	Bronx	IJ	5/27/08	X	DPOC, Inservice, DOPNA
Vivian Teal Howard	Syracuse	SQC	3/3/08	X	State Monitor, DPOC, Inservice, DOPNA
Wartburg Lutheran Home for the Aging	Brooklyn	IJ	5/6/08	X	DPOC, Inservice, DOPNA
Wartburg Nursing Home	Brooklyn	IJ	5/6/08	X	DPOC, Inservice, 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 - nhinfo@health.state.ny.us.

² Recommendation to CMS

³Denial 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.

Fraud Unit Taking Action...

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the OAG should look at the responsibility of the owners and operators of the homes as well as individual direct care staff culpability. We are pleased to see that the current Attorney General, Andrew Cuomo, and Deputy Attorney General, Heidi Wendel, have continued to lead the charge against abuse and neglect in nursing homes and built on past successes, making sure that owners and operators are held accountable as well as individual staff.

The hidden cameras in the Highgate case showed that multiple employees at the facility neglected an elderly resident and then falsified paperwork to cover it up. The resident – whose family consented to the camera being installed in the resident’s room – was not turned and positioned every two hours as required to prevent pressure ulcers – but the nursing home’s resident chart falsely stated that he was. In one 18-hour period, the resident was never repositioned. There were over 40 occasions when the resident was not washed after an incontinent episode, and his oral care was sporadic. This comatose 59-year old resident was left to lie in his own waste for hours at a time, while suffering from skin lesions and not receiving proper maintenance for his feeding tube. During the trial, the former director of nursing admitted that the facility was consistently understaffed and often had fewer employees on duty than what they themselves had identified as the minimum number required to provide the necessary care to the residents.

Rather than focusing only on individual direct care staff, the OAG sought to hold the company operating the home criminally liable because, according to Attorney General Cuomo, the company, “allowed its employees to provide lax care that placed a patient’s health in peril. This was not a case of neglect by just one aide.”

UPDATE: The Albany *Times Union* reported at the end of June that Northwoods and three other Highgate homes are expected to be sold in US Bankruptcy Court. According to the *Times Union*, Hyman Jacobs, “The owner of seven nursing homes operating under the name Windsor Healthcare LLC of Norwood, N.J.,” is the prospective buyer. In order for the sale to take place it must be approved by the Bankruptcy Court judge and the Department of Health. Mr. Jacobs would also have to win the court auction.

LTCCC was also interested to read in the *Times-Union* that “Attempts to sell the properties a year ago

failed despite the interest of 20 potential buyers from as far away as California. That was because the state demanded about \$8 million in unpaid taxes and interest.” Given that providers and their lobbyists are constantly decrying that they are making too little money or are losing money, we have to wonder why there is so much interest in buying nursing homes here, particularly ones that would surely require a large investment to get up to standards.

Family-Type Home Shut Down After Conviction of Owners

The OAG held owners of a “family type” adult home criminally liable for bilking two residents out of their money through unconscionable agreements. Family type homes provide long-term residential care, room, board, housekeeping, personal care/or supervision to four or fewer adults. They are under the auspices of the Department of Social Services and the Office of Child and Family Services. Owners of Welcome Home, located in Beaver Dams in Schuyler County, were convicted in June of stealing from their residents. In addition to jail time and probation, the owners were forced to sell their property to make full restitution to the estates of the two victims. □

Meetings of NYS Leaders...

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such as pro bono legal services, child day care, and transportation services.

- To address the problems of adequate financing: providers should consider investing in energy alternatives and new technology in the nursing home to decrease capital expenditures and inefficiency and the state could support research on current and future efficiency models and develop a statewide capital investment strategy.

The full report presents over 100 action steps that the various leaders and stakeholders can take to solve these problems. LTCCC will be following up with all of the participants to find out how they have tried to implement some of these steps. As a consumer organization, LTCCC has already implemented a number of them. We have encouraged the state to propose grant funds to nursing homes and non-nursing home groups to encourage culture change and applied for state funding to train state surveyors on how to inspect culture change facilities. We will continue to urge realization of these ideas. □

Important Info on Upcoming Digital TV Conversion

On February 17, 2009, all analog television signals will end, switching the country to digital-only signals. Older televisions will need a “converter box” to locate the digital signal and convert it to analog. A cable box will serve this purpose, however people who use an antenna will need to purchase a converter. The government will issue 2 coupons per household, worth up to \$40 each, for the purchase of 2 converter boxes. The converters start at about \$60 and are available from major electronic retailers.

Some special issues affect people living in nursing homes, assisted living facilities and adult homes:

1. The definition of household currently excludes nursing homes, assisted living and adult homes, which are considered businesses. Thus, neither the owners nor the residents are eligible for the coupons.
2. Many residents of these homes and facilities do not have cable and cannot afford the monthly cost of cable.
3. Certain televisions (old enough to have knobs) may need an additional item – a splitter cable – to



connect the TV to the converter.

4. Many stations throughout the U.S. are “low power” stations. After February 17th, converters with a signal boost will be required in order to receive the local station programming. Some states are heavily affected by this issue; a list of stations by city name is available at: <http://www.ntia.doc.gov/dtvcoupon/LPTVmap.html>.

5. If a resident has a friend or family member who is eligible, they can get a coupon and give it to the resident. However, residents should be careful about in turn giving their coupon to someone else to redeem: if a large number of coupons are presented to a retailer at one time, the purchase will trigger fraud control measures and restrict the purchases. This is a real possibility if a facility staff person collects coupons to purchase for residents.

For more information, visit the federal website on digital tv conversion: <https://www.dtv2009.gov/> or the U.S. Department of Commerce office can be reached to answer questions or take coupon requests 24 hours a day, 7 days a week at 1-888-DTV-2009. □

New LTCCC Project...

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committee. The committee’s members are Dr. David Grabowski, Department of Health Care Policy, Harvard Medical School, who has done extensive research in the area of nursing home reimbursement; Alene Hokenstad, Project Director, Division of Policy Analysis at the United Hospital Fund; Geoff Lieberman, the Director of the Coalition of Institutionalized Aged and Disabled (CIAD), an organization representing nursing home residents; Lisa Wickens, the Vice President of Health Policy Initiatives at Sigma Care and former Department of Health staff member; Ann Wyatt, a consultant to nursing homes implementing culture change; and Tony Yang-Lewis, the Administrator at Cobble Hill Health Center. By bringing together a committee with a range of outlooks and expertise we will be better able to focus our research and develop feasible recommendations that encourage quality care.

The Nursing Home Reimbursement Project is expected to proceed in three main stages. The first involves gathering in-depth, accurate, and up-to-date information on the current reimbursement systems being used in all states with a case-mix model. We

have limited our scope to states using case-mix, a system that pays providers a rate based on the assessed needs of their residents, because the majority of states, including New York, are using a version of this model. We will also examine any additional sources of payment to nursing homes such as pay for performance, grants, etc... to examine their impact on quality care. In order to collect this data the LTCCC will be examining state statutes and regulations, contacting state officials and other consumer groups, and sending out surveys to state ombudsmen and community advocacy groups. The second stage will involve using these data to select a number of states for more thorough case studies. We hope to choose states which have enacted unique and innovative additions to their reimbursement systems and programs in order to better understand the impact of these additions.

We will be using our research to formulate recommendations for the state as it moves forward in reforming the reimbursement system. As the reforms are instituted, our goal is to insure that reimbursement encourages good care and gives the state a “bang for its buck” so that the best use possible is made of our public resources. □

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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:

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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.

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



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