

MONITOR

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

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Assemblyman Gottfried Introduces Bill to Protect People in ALPs

As discussed in a related article in this edition, a major disappointment for consumers in the final state budget bill was that the 6000 beds added to the assisted living program (ALPs) did not require providers caring for residents in these beds to follow the assisted living law passed in 2004 with all of its protections. The state is creating two models of assisted living; one for the poor and middle class (ALP beds are mainly paid for by Medicaid) and one for the rich and upper class (assisted living residences are private pay). We are happy to report that Assemblyman Richard Gottfried, chairman of the Health Committee, has introduced a bill, Assembly Bill 7654, which, according to the memorandum submitted with the bill, will apply the consumer protections of an “enhanced assisted living residence” (EALR) as described in the assisted living law to the ALP beds. It will also permit an EALR to house ALP beds.

If this bill passes, it will apply the important protections we fought for in the 2004 law to the new ALP beds as well as to all ALP beds after 5 years. In addition, regulations adopted for EALRs require them to have a registered professional nurse on duty and onsite at the residence, for eight hours per day, five days a week, and a licensed practical nurse on duty and onsite at the residence for eight hours per day for the remainder of such week; a registered professional nurse on call and available for consultation 24 hours a day, seven days a week, if not available onsite; and

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New Report Recommends Change in Nursing Home Payments

New York’s nursing home residents have more bedsores than the national average yet receive less care to prevent them. Likewise, more of our residents are incontinent, yet they receive less treatment for it. Meanwhile,



according to the governor’s office, “New York spends \$7 billion annually on nursing homes, about the same as California and Pennsylvania combined.” One has to ask: what are we paying for?

The Long Term Care Community Coalition’s new report, “Modifying the Case-Mix Medicaid Nursing Home System to Encourage Quality, Access, and Efficiency” seeks to address these issues. The report is the outcome of a year-long study by LTCCC, supported by The New York Community Trust, that is the first major effort to examine, from a consumer perspective, whether the different ways that nursing homes receive funding actually result in good care for vulnerable residents and are a smart use of taxpayer dollars. The report recommends major changes in the New York State nursing home Medicaid reimbursement system to both save money and focus on quality. Over \$7 billion in Medicaid funds goes into the nursing home industry annually, yet little of this money is tailored to encourage quality care. Based on LTCCC’s study of the 34 other states using a similar system to pay for nursing home care (a “case mix system” in which providers are paid based upon the conditions and needs of their residents), the report gives

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New Report...

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detailed information on how these states are encouraging access for hard to place residents, quality of care and life for residents and efficiency in the use of state funding. Using the data collected, as well as telephone interviews with state officials across seven states chosen for case studies, the report presents over 30 practicable recommendations for improving the system.

Perhaps our most important recommendation is that the state must find ways of shifting the focus of the reimbursement system away from historical costs towards a system in which payment is linked with quality. New York should not and can not continue to have some of the country's lowest quality indicator scores while remaining one of the largest spenders on nursing home care. There are a number of ways, detailed in the report, in which other states have already begun linking reimbursement to quality care. It is our hope that this report will serve as a catalyst to taking similar steps in New York State.

Other major recommendations include: (1) Link reimbursement to facility performance on inspections. If facilities are deficient in certain areas, in addition to possible fines, they should be required to spend in the deficient areas. (2) Begin to move the reimbursement system from one focused only on facility costs to one more focused on quality by developing nursing home quality pools with funds going to facilities that excel in a number of diverse areas such as quality outcomes, staffing levels, resident satisfaction, staff retention and performance on inspections. (3) Set specific goals, required programs

and positive resident outcomes for any additional funds given to facilities to encourage admittance and proper care of hard-to-place residents or residents with special needs. (4) Encourage facilities to spend more on direct care, of which the majority of costs relate to direct care staff, by permitting providers to spend more than the average in this area. This will save money in the long run. Right now, Medicaid pays more the more care a resident needs. If residents receive quality care and improve or at least maintain function, Medicaid will spend less. (5) Put caps on reimbursement in indirect areas such as administrative costs. Use the savings for spending in direct care. (6) Reward facilities that develop energy efficient systems or make "green improvements" to their facilities. This will also save Medicaid funds in the future.

The full report can be found at www.nursinghome411.org. □

The nursing home provider industry is putting tremendous pressure on the governor, NY Senate and Assembly to maintain the status quo. It is crucial that your senator, assembly representative and the governor hear from NY citizens that we cannot continue to pay nursing homes without any regard for the outcomes they achieve. Urge your state leaders to read the report and implement its recommendations. You can send a message to them by going to LTCCC's Citizen Action Center (go to www.ltccc.org and click on the Citizen Action Center on the right hand side). □

LTCCC

LONG TERM CARE COMMUNITY COALITION

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

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LTCCC Develops Recommendations for Long Term Care Restructuring

New York State, along with many other states, is focusing on restructuring its long term care system. New York State's long term care system is complicated, lacking in consumer direction and important services are not necessarily available to all long term care beneficiaries. To overcome these and other challenges, LTCCC has developed a policy paper, with funding from the

Robert Sterling Clark Foundation, which provides recommenda-

tions to the State on how to restructure New York State's long term care programs to better meet the needs of consumers.

We believe New York State's long term care system should be restructured with the consumer and his or her needs in mind, so that the system benefits the consumer and improves physical and emotional functioning as well as quality of life. Thus, the policy paper will examine whether or not any of the current major long term care programs have been

evaluated in terms of meeting consumer needs. Our findings indicate that, most of the time, program outcomes are not measured. For example, home and community based services are supposed to increase quality of life as well as increase functional independence. However little is known as to whether or not the consumer's needs are met and if the programs are successful in producing positive outcomes in terms of their quality of life.

“Programs should be designed with the consumer and his or her needs in mind...”

We also use the principles from LTCCC's white paper on the future of long term care (written with funding from the Robert Sterling Clark Foundation and available on the publications page of our website, www.ltccc.org) as a touchstone for assessing programs.

The final paper is available on LTCCC's website, www.ltccc.org and will be used this year and in the future to ensure that long term care restructuring is responsive to consumer needs and desires. □

NYS Budget Passed

Although nursing homes will still face a number of cuts – the budget includes \$224.6 million in 2009-10 nursing home savings – the industry was successful in waylaying a number of the Governor's proposals in his Executive Budget, reported in the last edition of *The Monitor*, such as the institution of a regional rate for nursing homes. Of particular concern to consumers is the delaying of the introduction of the quality pools. This concept, proposed by LTCCC and discussed at length in

its report on the nursing home reimbursement system (see

related article in this edition), would use some of the seven billion dollars annually given to nursing homes to be distributed on the basis of quality outcome criteria rather than merely reimbursing facilities for their costs. This is an important first step to move the reimbursement system from one focused primarily on facility costs to one based more on quality care. While we are disappointed that these pools will not go into effect this year, we were relieved that the

“LTCCC will have to fight hard this year to make nursing home quality pools a reality.”

budget does mandate the implementation of quality pools on April 1, 2010 and calls for the establishment of a workgroup to make recommendations on, among other things: (1) how to establish the regional rates; (2) ways to reimburse costs of direct care staff; (3) identification of cost differences among facilities based upon sponsorship, size, affiliation, location, public versus non-public, facility layout, culture change initiatives and labor costs; (4) establishment of a quality pool; (5) reimbursement for residents with special needs; (6) impact of planned rightsizing of nursing homes and (7) the relationship between facility spending on various costs and quality of care and resident outcomes. For the first time, a committee of this kind has a requirement that advocates for residents must have a place at the table. The bill also requires the workgroup to work in consultation with the assembly and the senate.

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Enforcement Actions Against Nursing Homes

Civil Money Penalties¹ Against 16 Nursing Homes – 12/1/08 - 2/28/09²

Name Of Home	Location	Survey Date	Amount
Adirondack Medical Center Uihlein	Lake Placid	8/8/08	\$75,497.50
The Baptist Home at Brookmeade	Rhinebeck	9/26/08	\$13,780.00
Beechtree Care Center	Ithaca	9/12/08	\$6,100.00 ³
Blossom Health Care Center	Rochester	9/4/08	\$6,825.00 ⁴
Delaware Nursing & Rehabilitation Center	Buffalo	10/27/08	\$487.50
Folts Home	Herkimer	9/17/08	\$10,000.00 ³
Garden Gate Health Care Facility	Cheektowaga	7/17/08	\$4,800.00 ⁵
Glendale Home	Scotia	9/10/08	\$20,800.00
Gold Crest Care Center	Bronx	8/26/08	\$18,712.50 ⁴
Mount Loretto Nursing Home	Amsterdam	9/12/08	\$26,250.00 ³
Northwoods Rehabilitation and Extended Care Facility-Cortland	Cortland	3/29/07	\$14,250.00 ³
Northwoods Rehabilitation and Extended Care Facility-Hilltop	Niskayuna	5/15/07	\$3,000.00 ³
Oceanview Nursing and Rehabilitation Center	Far Rockaway	11/26/08	\$4,875.00
Park Ridge Nursing Home	Rochester	11/25/08	\$6,045.00
Wayne County Nursing Home	Lyons	8/7/08	\$5,200.00
Willoughby Rehabilitation and Health Care Center	Brooklyn	7/11/08	\$44,687.50

Facilities Whose Reimbursement Rate Was Reduced To Pay CMP⁶

Name Of Home	Location	Amount
Golden Gate Rehabilitation and Health Care Center	Staten Island	\$47,320 plus interest at a rate of 11.125%
Whittier Rehabilitation and Skilled Nursing Center	Ghent	\$2,500.00

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 LTCCCs 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.

⁴Reduced due to financial hardship.

⁵Settlement agreement

⁶Facility did not pay on time so CMS reduced their Medicare payments to recover CMP.

Selected Enforcement Actions of NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 5 Nursing Home Personnel – 12/16/08-3/15/09

Nursing Home	Location	Defendant	Sentence	Narrative
Bethany Gardens Skilled Living Center	Rome	Thaler, Amanda, CNA	1/16/2009: 90 days incarceration	Defendant stole an 89 year-old resident's gold and diamond engagement ring that her husband gave her in 1940. Defendant and her boyfriend, separately charged, pawned the ring for \$15. The engagement ring was recovered and returned to the resident.
Crouse Community Center, Inc.	Morrisville	Rathbun, Rainey, LPN	3/11/2009: One-year conditional discharge	Defendant grabbed the face of a 61 year-old resident, who had become combative and spit at the defendant. The defendant grabbed the resident with such force that the resident sustained skin tears and his wheelchair fell over backwards.
Northwoods Rehabilitation and Extended Care Facility - Hilltop	Niskayuna	Kozakiewicz, Kimberly, LPN	1/13/2009: Five years probation for the two felony convictions and time served (one day in jail) for the misdemeanor drug possession conviction	On multiple occasions, defendant stole medications (controlled substances) from the facility for her own use. She falsified and forged nursing home records to conceal her thefts and also submitted a license renewal document to the NYS Department of Education falsely stating that no facility had fired her.
Rosa Coplon Jewish Home and Infirmary	Getzville	Penman, Patricia, CNA	3/5/2009: One-year conditional discharge	The resident became combative while the defendant was assisting the resident. The defendant slapped the resident in the face.
Westgate Nursing Home	Rochester	Phillips, Carla, CNA	3/4/2009: Five years probation, seven weekends of jail-supervised work release (community service), and restitution of \$1,700	Defendant stole five personal checks from a nursing home resident, issued the checks to her landlord, boyfriend, and herself, and forged the resident's signature. In total, the defendant stole \$1,700 from the resident.

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



Enforcement Actions Against Nursing Homes

State Fines Against 10 Nursing Homes – 12/16/08 - 3/13/09¹

Name Of Home	Location	Date Of Survey	Amount ²
Daughters of Sarah Nursing Center	Albany	2/25/08	\$2,000
Evergreen Commons	East Greenbush	5/21/07	\$8,000
Evergreen Valley Nursing Home	Plattsburgh	10/25/07	\$2,000
Highfield Gardens Care Center of Great Neck	Great Neck	8/8/07	\$6,000
John J. Foley Skilled Nursing Facility	Yaphank	12/5/07	\$4,000
Kateri Residence	Manhattan	3/28/08	\$4,000
Summit Park Nursing Care Center	Pomana	9/5/08	\$12,000
Syracuse Home Association	Baldwinsville	3/27/08	\$2,000
Terence Cardinal Cooke HCC	Manhattan	3/19/08	\$6,000
Village Center for Care	Manhattan	4/16/08	\$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.

The State Took Other Action Against 9 Nursing Homes – 12/16/08 - 3/13/09¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Erie County Medical Center SNF/Erie County Home	Buffalo/Alden	GG	1/12/09	DPOC, DOPNA
Hempstead Park Nursing Home	Hempstead	GG	1/9/09	DPOC, Inservice, DOPNA
Horizon Care Center	Arverne	IJ/SQC	12/26/08	CMP, Monitor, DPOC, Inservice, DOPNA
Livingston Hills Nursing & Rehab Center	Livingston	IJ/SQC	2/10/09	CMP, Monitor, DPOC, Inservice, DOPNA
Mt. Loretto Nursing Home	Amsterdam	IJ/SQC	1/20/09	CMP, Monitor, DPOC, Inservice, DOPNA
Northwoods Rehab and Extended Care Facility-Troy	Troy	IJ/SQC	1/16/09	CMP, Monitor, DPOC, Inservice, DOPNA
Ocean Promenade Nursing Center	Rockaway Park	IJ/SQC	2/24/09	CMP, Monitor, DPOC, Inservice, DOPNA
Rivington House, The Nicholas A. Rango HCF	Manhattan	IJ/SQC	3/9/09	CMP, Monitor, DPOC, Inservice, DOPNA
Whittier Rehab & Skilled Nursing Center	Ghent	IJ/SQC	12/30/08	CMP, Monitor, 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.

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

³Civil Money Penalty (CMP): State recommends to CMS; 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.

Assemblyman Gottfried ...

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additional nursing coverage, as determined necessary by the resident’s medical evaluation, attending physician and/or the service plan.

What You Can Do

Providers who currently have ALP beds will fight

this. We need to let our state leaders know how important it is. Send a message to all of your state leaders and let them know that Assisted Living Program (ALP) consumer need the same protections as those consumers who pay privately in an Enhanced Assisted Living Residence. See the back page for contact information or go to: www.ltccc.org and click on the Citizen Action Center on the right. □

LTCCC Directors Speak at NYS Surveyor Training



Richard Mollot, Executive Director and Cynthia Rudder, Director of Special Projects, participated at March trainings for New York State nursing home surveyors. Over 110 inspectors were present in each of two sessions. The presentation: “Residents Have the Answers: How Listening to Residents is Key to a Successful Survey Outcome,” began by raising awareness of the losses faced by residents who enter a nursing home and how life in a nursing home can compound these losses. Urging the surveyors to focus on the spirit of the regulations, the directors let the inspectors know how important they are to the residents because they have the power to make things better. Surveyors were asked to think about a number

of different scenarios and discuss what kinds of information they needed in order to decide if a deficiency should be written and at what level of seriousness the deficiency would be rated at. One scenario:

A facility was cited when a resident was found to be hard of hearing and even though a hearing aid was ordered, the resident had not received her hearing aid when the survey was conducted (10 months later). Surveyors were asked to rate this deficiency in terms of its severity. Was it a potential for harm or was it harm? (Note: this deficiency was rated originally as only having a potential to harm the resident).

Surveyors made a number of recommendations for getting the information they needed: speak to the resident and family; look into the resident’s level of activities before and after the assessment; look into staff training; look into why the hearing aid was not in place and if the facility tried any other ways of making sure the resident was not isolated. Most of the surveyors believed that this situation should be rated as harm.

Both Richard and Cynthia enjoyed working with the surveyors and the surveyors indicated that they appreciated the presentations and felt that they had learned a lot. □

New NY Senate Leadership

Since the Democrats won a slim majority in the NY State Senate in November 2008, they have taken over the leadership of the Senate and in the early months of 2009 leadership positions were assigned. The new majority leader is Malcolm Smith. Senator Tom Duane is now chair of the Senate Health Committee. He has appointed Denise Soffel, a long time consumer advocate, to be the Executive Director of the Senate Health Committee and Roger Bearden as Health Committee Counsel. Bearden comes from Disability Advocates, where he litigated and advocated on behalf of individuals with mental illness and other disabilities. Senator Ruben Diaz is chair of the Aging Committee.

LTCCC is pleased to see two important advocates – Soffel and Bearden – in influential positions dealing with healthcare issues. For many years, the Senate

leadership turned its back on efforts to improve care and quality of life for consumers, particularly when they involved holding providers accountable for meeting minimum standards.



Send a message to your state senator, assembly representative and the governor and let them know that long term care oversight and consumer protections are important to you. Providers and their representatives are able to be a powerful lobby in Albany. YOUR voice is needed to speak out for those who depend on long term care! Got to www.ltccc.org and click on the Citizen Action Center on the right hand side for the latest action alerts and contact information for all state and federal officials. □

NYS Budget...

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LTCCC will have to fight hard this year to make nursing home quality pools a reality (see www.nursinghome411.org for a copy of the report). Having a requirement for April 1, 2010 in the budget does not guarantee that these ideas will go into effect. As readers know, much can happen in a year. In addition, the nursing home industry will work hard to make sure their ideas are heard, in the workgroup, with the Governor and with the legislature. We must make sure that our voices are heard as well.

Another major disappointment for consumers was in the addition of 6000 slots for the assisted living program (ALP). LTCCC had argued that any provider receiving approval for additional ALP beds be required to follow the assisted living law which has a number of important protections. Unfortunately, the final bill just expands the current ALP program, which is housed in the traditional licensed adult home, many of which are very institutional settings. Since the final budget bill was passed, Assemblyman Gottfried has introduced a bill to remedy this. See related article on front page. Here too, the industry won out – in this case the adult home providers. By not requiring that the Assisted Living Program be required to follow the assisted living law, the state has created two models of assisted living; one for the poor and middle class (ALP beds, paid for by Medicaid as well as private pay) and one for the

rich (assisted living residences are entirely private pay). Individuals eligible for ALP beds are people who need nursing home care but are able to be cared for in an adult home or enriched housing. They are vulnerable and need the same protections given to individuals who reside in assisted living residences with an enhanced certificate.

A number of other long term care provisions included in the budget are: (1) the requirement that a facility that wants to take out more than three percent of its equity must get Department of Health approval; (2) the requirement that any financially distressed nursing home receiving additional funds must present a plan for restructuring and must demonstrate progress (this mandate for accountability was proposed to all the legislative leaders by LTCCC for any funds given to nursing homes that need financial help); (3) the establishment of a three year demonstration program designating two long term care assessment centers, one in New York City and one in another region to assess needs for, and the authorization of, long-term care services and programs. In addition, the commissioner is required to convene an annual meeting of stakeholders to discuss the implementation of the demonstration program.

Once again, the state has lost an opportunity to reform the long term care system in ways which will benefit the consumer. We hope that you will join us as we work this year to make some of these reforms a reality. □



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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.

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speaker@assembly.state.ny.us

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Assemblymember Jeffrey
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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:

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masmith@senate.state.ny.us

Senator Ruben Diaz
Chair, Committee on Aging
diaz@senate.state.ny.us

Senator Thomas Duane
Chair, Committee on Health
duane@senate.state.ny.us

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