

MONITOR

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



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LTCCC Leads Response to Support Assisted Living Law

In response to the lawsuits filed by several assisted living providers and their associations seeking to overturn the NY State regulations promulgated in March 2008 (to effectuate the assisted living law passed in 2004), LTCCC has filed an amicus curiae brief supporting the state’s regulations and the NY Department of Health’s interpretation of the assisted living law.

An amicus curiae brief, also known as a “friend of the court” brief, can be filed by a party who, while not directly involved in a lawsuit, has a strong interest in the lawsuit’s outcome. In this case, LTCCC



is strongly supporting the assisted living regulations, which we believe provide crucial protections for assisted living residents and their families. A number of state and national groups have joined us as signatories to the brief: Alzheimer’s Association New York City, NCCNHR: The National Consumer Voice for Quality Long-Term Care, New York State Nurses Association, New York State Long Term Care

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Annual Report Card on Government Action

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NY STATE GOVERNMENT	
Governor	A-
DOH	B+
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GOVERNOR: A-

The Governor’s 2009-2010 budget, proposed at a time of severe fiscal crisis, offered proposals that minimized harm to consumers and responded to many consumer concerns. While, as of this writing, the budget has not been finalized, we were glad to see that among the Governor’s proposals was to put money into initiatives that encourage higher quality care and that shift people from nursing homes to less institutional settings. [See future issues of *The Monitor* for more information as program funding is finalized and implemented.] In addition, Governor Paterson has been building on the openness and responsiveness that we had started to see in the Spitzer administration. Agencies appear to be much more responsive to consumer needs and concerns, recognizing that the long term care system’s central purpose is to serve the citizens of New York. In addition, it appears that the essential capacity of surveillance and enforcement has not been sacrificed to save money in the short term, since (as of this writing)

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LTCCC to Release Recommendations for Nursing Home Reimbursement

As announced in the last newsletter, LTCCC has been hard at work on the second stage of our ongoing reimbursement project, funded by the New York Community Trust. Stage II has consisted of in-depth interviews with government employees from seven states who are involved in their state Medicaid reimbursement systems in order to better understand the unique characteristics of their systems and the incentives (or disincentives) for quality care these systems create. We are pleased to inform our readers that the response to our interviews has been overwhelmingly positive and we have been able to collect information which will be invaluable to us in making our final recommendations to New York State on the future direction of reimbursement, a topic which has become all the more relevant as the state faces the current fiscal crisis and the demands of an aging population. Using the data we collected in stage I of the project, LTCCC selected seven states which we felt were innovative in creating incentives for quality care in a case-mix system. The states selected were Georgia, Kansas, Maryland, Minnesota, Mississippi, Texas, and Utah.

For each state we contacted persons who are directly involved with administering their state's reimbursement system and conducted 30-60 minute phone interviews. We were especially interested in discovering why certain state initiatives to improve quality of care were enacted and whether they have been effective in meeting their goals. The state personnel we spoke with were enthusiastic about our

work and excited to be involved in a project which is not only the first of its kind, but also could potentially provide them with valuable information they could use to improve the quality of care for nursing home residents in their own states. After conducting the first round of interviews we were invited by many of our interviewees to contact them for follow up interviews from which we were able to gather more valuable information and clarify some important issues.

Having collected these data and completed all of our interviews, the LTCCC is currently in the process of working on the third and final stage of the reimbursement project, where we will use the information gathered in stages I and II to make workable recommendations to the state on how our system can be improved to provide efficient care in a way that most improves the quality of life for the thousands of residents currently in nursing homes and the millions more that will enter the system in the coming years. We have already seen some results from our work. During this past year we have been sharing the draft results of the project with the Governor's office and with the Department of Health, urging them to consider shifting some of the nursing home reimbursement funds so that quality care is encouraged. We were pleased to see a major investment in this concept in the Governor's executive budget. [See our article on the Governor's budget in this edition of *The Monitor* for more details and what you can do to support the project's goals.] □

LTCCC

The Monitor is published quarterly.
Spring 2009 • Volume 48

LONG TERM CARE COMMUNITY COALITION

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This newsletter is made possible through funding by the following foundations:
FJC-Foundation of Philanthropic Funds • Herman Goldman Foundation • Robert Sterling Clark Foundation
Layout and design by www.pattiedesign.com

— Long Term Care and the Chinese American Community —

Last spring, LTCCC received a grant from the Chinese American Medical Society's CAIPA Community Service Committee to inform Chinese New Yorkers about long term care. Like many other New Yorkers, many individuals in the Chinese community do not clearly understand what long term care is. Many do not know where to go if they need long term care and how to pay for such care. The issue is complicated by the many different funding streams, the multiple agencies administering services and by the many different eligibility criteria.

Conducting effective outreach to the Chinese American community offers additional challenges. In order to make sure that any informational materials we develop are culturally sensitive, LTCCC brought together an advisory committee made up of representatives of organizations working with Chinese Americans. The committee discussed the importance of acknowledging the fact that many elderly Chinese parents or relatives live with their children or family as they become more infirm and dependent. When these younger family members find that they cannot keep their elderly relatives at home or that they need to get outside help they may feel guilty or even feel shame. The committee also discussed the fact that deciding on which form of Chinese to use for printed materials is not a simple

matter. There is a "simplified" and a "traditional" Chinese. Simplified Chinese is used in the People's Republic of China and the traditional form, used in printed text for over 1000 years, is used in the Republic of China (Taiwan). Deciding which to use is a political issue as well as an issue of cultural competence (to meet the needs of the intended audience). In addition, since many older Chinese Americans cannot read at all, the information may have to be directed to their children.

As of this writing, LTCCC has developed a first draft of an educational brochure which provides a simple explanation of what long term care is and the importance of planning for long term care. To give the community a general idea of the services available in New York City, the ways they can pay for these services and the various eligibility criteria needed to access these services, the brochure includes a chart with a tabular presentation of this information that is easy to read and understand. We believe that this brochure will serve as a starting point to help people in the Chinese American community access the long term system in ways that are most beneficial to them as individuals.

The final version of this brochure will be released in the spring and will be available for free download from our homepage, www.ltccc.org. □

— Governor Paterson's 2009-2010 Budget —

Governor Paterson introduced his budget on December 15, 2008. His proposals in Medicaid and health care include limiting state funds for Medicaid spending to \$16.0 billion, an increase of 3.8 percent from 2008-09. According to the Governor, the recommendations focus on reforming hospital, nursing home and home care reimbursement systems to direct spending to primary and community based settings.

The nursing home proposals are intended to save \$420.2 million in 2009-2010 through across-the-board rate reductions, eliminating the 2008 and 2009 trend factors, reducing recruitment and retention grants for public facilities, and delaying nursing home rebasing. The budget invests a portion of the savings to phase-in 6,000 new assisted living program (ALP) beds over five years; support financially disadvantaged homes;

and recognize the costs of hard to serve patients.

According to Department of Health staff, significant proposed changes are:

- A new regional pricing system will replace individual facility costs. This may lead to a shift in funding from not-for-profits to for-profits.
- Rebasing would be delayed from 2002 to 2005.
- Money is set aside to help those homes needing help to transition from the old system to the new system.
- Funding for financially disadvantaged homes will be added.
- Public facilities will be removed from the list of disadvantage homes eligible for additional funding.
- The reimbursement rates for nursing home residents with lower acuity needs will be reduced 25 percent over

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staff involved in such activities have been exempt from any cuts. On the other hand, we are very concerned about the proposal to radically expand the ALP program which would perpetuate a two-tiered system of assisted living.

Recommendations for 2009: As the state continues to face the financial crisis we hope that the Governor's fiscal planning protects consumers while sustaining crucial oversight and enforcement mechanisms and ensuring provider accountability. Though everyone will be faced with financial challenges, because long term care providers are entrusted with the safety and dignity of people who are particularly vulnerable, it is critical that standards are maintained. Rather than focusing predominantly on cutbacks, we urge the Governor to focus more on restoring fairness to the tax system (by reinstating some of the large tax breaks given to the most affluent citizens in recent years) and closing wasteful corporate loopholes.

DOH: B+

After many years in which the Department turned its back on consumers and their representatives, the Department has become increasingly open to listening to consumers and incorporating consumer concerns in policies and regulations. We were especially pleased to see that the Department promulgated good and fair assisted living regulations and, in the face of adult home provider lawsuits, is vigorously defending those regulations. Likewise, the approach taken by the Department towards the fiscal crisis has, to a large extent, been protective of consumer needs. We were also pleased that some of our ideas related to using some of the funds that go to nursing homes to encourage quality found their way into the Governor's budget as a quality initiative proposed by the Department of Health. However, we are concerned that some community organizations and individual consumers continue to report that DOH's consumer complaint line is not adequately responsive when a consumer reports a problem or needs help in a crisis and that the substantiation rate is still too low. We are also concerned that even as consumers continue to complain of poor care and do not see an improvement in quality, the number of actions taken against poorly performing nursing homes (such as

denial of payment for new admission, directed plan of correction or independent monitor) and fines against such homes (including both state fines and federal civil money penalties (CMPs)) dropped from 2007 to 2008. For instance, the number of CMPs levied dropped from 51 in 2007 to 43 in 2008 and the dollar amount dropped from approx \$1,484,000 to approx \$912,000.

Recommendations for 2009: DOH is in the early stages of what is expected to be a major overhaul of the nursing home reimbursement system and at the same time is embarking on a major restructuring of the long term care system. While we will be making many specific recommendations on these issues, in general we urge DOH to proceed carefully, given the numerous and often conflicting needs and desires of different consumers and different providers. It is crucial that changes to nursing home reimbursement increase systemic efficiency, which from a consumer perspective means that money should be used to encourage and pay for good care. At the same time, individuals in poorly performing facilities must be protected; their lives are (literally) at stake. Both in the nursing home and out, long term care restructuring must make its first priority the guarantee that everyone who needs long term care receives adequate care in a way that protects their dignity and enables them to live as independently as possible.

ATTORNEY GENERAL: A

In 2008 the Attorney General's Medicaid Fraud Control Unit (MFCU) continued its aggressive enforcement of Medicaid fraud in nursing homes and other long term care settings. We were glad to see that, when fraud was found, the enforcement actions were both thoughtful and meaningful. Not only did the MFCU seek financial remuneration and penalties, it was also responsive to consumer concerns that steps should be taken to ensure that good practices and safeguards were put into place to prevent problems from reoccurring. In addition, the MFCU developed, with consumer input, a good brochure to make sure people understand their rights as consumers of long term care and how the MFCU can help them.

Recommendations for 2009: One: while we appreciate that the Attorney General has held senior management and owners accountable in some of the nursing home cases (in addition to direct care workers) we urge them to intensify its focus on whether

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there is management or owner culpability in any case that targets direct care workers. As we know, administrators and owners can create an environment in the nursing home that makes it hard for workers to provide proper care or that fosters abuse and neglect. Two: now that assisted living is legally recognized in NY State, it will be important for the Attorney General to step up enforcement activities in this sector. These activities can range from ensuring that assisted living advertisements, brochures and contracts don't contain unlawful claims, false promises or illegal contractual provisions to prosecuting fraud in facilities that take government funds (as the Medicaid Fraud Control Unit is currently doing in nursing homes). Three: we urge the Attorney General to explore more ways that it can be innovative in holding providers accountable for poor care and illegal practices. This could include: exploring the use of RICO statutes and other legal protections not traditionally used in healthcare sector.

STATE SENATE: F

No progress was made on improving conditions for long term care consumers, or bolstering provider accountability, under the Senate leadership of either Bruno or Skelos in 2008. As a whole, the Senate remained hostile to consumer protections.

Recommendations for 2009: Under its new leadership, we hope and expect that the Senate leaders will work with the Assembly and move forward on important protections for long term care consumers, such as nursing home staffing standards and bolstering of the public health law section 2801-d which provides for private lawsuits in cases of nursing home neglect and abuse but which has often been improperly interpreted by judges in court cases.

STATE ASSEMBLY: C -

With a few exceptions, the Assembly has been moribund this past year when it has come to protecting New York State's long term care consumers and their families. While there were several Assembly representatives who initiated good proposals for consumers, Health Committee Chair Richard Gottfried continued to spearhead the major efforts to protect consumers and their families by introducing important legislation to set minimum staffing standards in

nursing homes, developing and introducing legislation to "shore up" loopholes in the public health law which have prevented too many victimized nursing home residents (and their families) from getting adequate legal recourse and introducing a bill which passed into law that mandates food committees in adult homes.

Recommendations for 2009: Although the state's fiscal crisis will make it difficult to promulgate initiatives that cost money, we hope that the Assembly leaders will take advantage of the more consumer friendly political landscape to push legislative initiatives that protect and benefit our long term care consumers. For example, the legislature could pass laws that encourage better use of nursing home "pay for performance" money or that move the state forward in a way that encourages real "affordable assisted living" that people want, not merely perpetuate the old adult home system through further expansion of the ALP (Assisted Living Program).

STATE OFFICE FOR THE AGING: A

Under director Michael Burgess, the State Office for the Aging (SOFA) continued to be at the forefront of the state's efforts to educate and inform seniors about long term care and the choices available to them and to be a strong supporter of consumer protections and choice. LTCCC has long been concerned about the ability of New York's and other states' Long Term Care Ombudsman Programs to stand up for consumer rights. Thus we were very pleased this year that the state ombudsman program, housed in SOFA, was able to join in the amicus brief supporting the assisted living regulations that are being challenged by several providers and industry organizations.



Send a message to all of your state leaders: your state senator, your assemblyperson, the legislative leaders and governor and let them know that long term care consumers and their families must be protected.

See the back page of this newsletter for names and contact information or visit our LTC Citizen Action Center at www.ltccc.org for specific action alert issues and contact information. Nothing in Albany will change unless the state leaders hear from you and other citizens! □



Enforcement Actions Against Nursing Homes

Civil Money Penalties¹ Against 20 Nursing Homes – 9/1/08 - 11/30/08²

Name Of Home	Location	Survey Date	Amount
Carthage Area Hospital SNF	Carthage	7/24/08	\$22,262.50 ^{3,4}
Champlain Valley Physicians Hospital SNF	Plattsburgh	8/20/08	\$6,500.00 ³
Daughters of Jacob Geriatric Center	Bronx	6/13/08	\$2,275.00 ³
Fieldston Lodge Care Center	Bronx	8/26/08	\$22,652.50 ³
Golden Gate Rehabilitation & Health Care Center	Staten Island	6/27/08	\$47,320.00 ³
Grace Manor Health Care Facility	Buffalo	1/18/06	\$8,400.00
Hempstead Park Nursing Home	Hempstead	4/11/08	\$1,300.00 ³
Heritage Commons Residential Health Care	Ticonderoga	6/27/08	\$52,390.00 ³
Julie Blair Nursing & Rehabilitation Center	Albany	6/30/08	\$27,137.50 ³
Loretto Utica Center	Utica	6/30/08	\$6,500.00 ³
Morris Park Nursing & Rehabilitation Center	Bronx	6/10/08	\$38,610.00 ³
Norwegian Christian Home & Health Center	Brooklyn	8/6/08	\$3,575.00 ³
St. Ann's Community (The Heritage)	Rochester	5/9/08	\$2,925.00 ³
St. Camillus Residential Health	Syracuse	7/31/08	\$3,900.00 ³
St. Joseph's Home	Ogdensburg	5/7/08	\$2,600.00 ³
Summit Park Nursing Care Center	Pomona	9/5/08	\$11,245.00 ³
Terrace Health Care Center	Bronx	5/27/08	\$40,917.50 ³
Vivian Teal Howard RHCF	Syracuse	3/3/08	\$7,000.00
Wartburg Lutheran Home	Brooklyn	5/8/08	\$5,200.00 ³
Wartburg Nursing Home	Brooklyn	5/8/08	\$5,200.00 ³

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

²As reported by CMS.

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

⁴Reduced due to financial hardship.

NEW FEATURE: Selected Enforcement Actions of NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 5 Nursing Home Personnel – 9/15/08 - 12/15/08

Nursing Home	Location	Defendant	Sentence	Narrative
United Helpers Nursing Home	Ogdensburg	Borasky, Christine, CNA	10/27/2008: Five years probation with the first 90 days in home confinement	Defendant squeezed the hand of a resident so hard that defendant broke the 82 year-old resident's hand.
Seneca Health Care Center	West Seneca	Jackson, Sheletta, CNA	10/28/2008: One year conditional discharge with 50 hours of community service	Defendant failed to follow resident's care plan requiring a two-person assist. When the defendant alone transferred 99 year-old resident from wheelchair to toilet, resident fell and broke her leg. Defendant did not report the incident and did not obtain treatment for the resident.
Martin Luther Nursing Home	Clinton	Sanchez, Sarah, LPN	9/30/2008: Three years probation	For her own use, defendant diverted and stole morphine sulphate prescribed for two nursing home residents.
Daughters of Sarah Nursing Center	Albany	Wilson, Virginia, CNA	9/15/2008: One year conditional discharge	Defendant falsified safety check records by indicating she performed one-half hour safety checks of residents to which she was assigned. Surveillance footage showed Wilson never went near residents' rooms during her shift; one resident had fallen out of bed, sustained a head injury and did not receive timely treatment.
Gowanda Nursing Home	Gowanda	Austin, Cory, CNA	2/11/09: Three years probation, a condition of which is to undergo anger management counseling.	Austin took resident, who had become agitated and defiant when another staff member tried to give resident medications, to his room. Austin attacked and repeatedly pushed resident to the floor, yelled racial epithets, and pinned the resident to the bed with his knee in the patient's back.

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



Enforcement Actions Against Nursing Homes

State Fines Against 11 Nursing Homes –9/16/08 - 12/15/08¹

Name Of Home	Location	Date Of Survey	Amount ²
Crest Hall Care Center	Middle Island	1/25/08	\$2,000
Delaware Nursing & Rehabilitation Center	Buffalo	2/28/08	\$2,000
The Dutch Manor Nursing & Rehab Centre	Schenectady	12/14/07	\$5,000
Meadowbrook Healthcare	Plattsburgh	1/31/08	\$1,000
Mercy of Northern New York	Watertown	1/16/08	\$10,000
Mt. Loretto Nursing Home Inc.	Amsterdam	10/19/07	\$6,000
Oceanview Nursing & Rehab Center Inc.	Queens	3/20/08	\$2,000
St. Joseph Nursing Home Co of Utica	Utica	2/4/08	\$12,000
Schulman and Schachne Institute for Nursing & Rehabilitation	Brooklyn	2/5/08	\$4,000
Syracuse Home Association	Baldwinsville	12/27/06	\$3,000
Wyoming County Community Hospital SNF	Warsaw	2/27/08	\$2,000

¹As reported by the Department of Health (DOH).

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

The State Took Other Action Against 19 Nursing Homes – 9/16/08 - 12/15/08¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
The Baptist Home at Brookmeade	Rhinebeck	IJ/SQC	9/26/08	CMP, State Monitor, DPOC, Inservice, DOPNA
Beechwood Homes	Getzville	GG	10/14/08	DPOC, DOPNA
Delaware Nursing and Rehabilitation Center	Buffalo	GG ⁴	10/27/08	CMP
Elderwood Health Care Center at Tioga	Waverly	IJ/SQC Cont'd Def	12/12/08	CMP, DOPNA
Ellis Residential and Rehabilitation Center	Schenectady	IJ/SQC	10/24/08	CMP, DPOC, Inservice, DOPNA
Grandell Rehab and Nursing Center	Long Beach	GG	10/20/08	DPOC, DOPNA
Julie Blair Nursing and Rehabilitation Center	Albany	GG	12/12/2008	DPOC, Inservice, DOPNA
Long Island State Veterans Home	Stonybrook	IJ/SQC	10/22/08	CMP, State Monitor, DPOC, Inservice, DOPNA
Mercy of Northern New York	Watertown	GG	10/24/08	DPOC, Inservice, DOPNA
Mercy of Northern New York	Watertown	IJ/SQC	10/28/08	CMP, DPOC, Inservice, DOPNA
Nathan Miller Center for Nursing Care	White Plains	IJ	11/24/08	CMP, State Monitor, DPOC, Inservice, DOPNA
Oceanview Nursing and Rehabilitation Center	Queens	IJ/SQC	11/24/08	CMP, DPOC, Inservice, DOPNA
Park Ridge Nursing Home	Rochester	IJ/SQC	11/25/08	CMP, State Monitor, DPOC, DOPNA
Resort Nursing Home	Queens	GG	12/15/08	DPOC, DOPNA
Rosewood Heights Health Center	Syracuse	GG	8/20/08	DPOC, Inservice, DOPNA
St. Ann's Home for the Aged	Rochester	GG	9/19/08	DPOC, DOPNA
Schulman & Schachne Institute for Nursing & Rehabilitation	Brooklyn	GG	12/5/08	DOPNA
Shore View Nursing Home	Brooklyn	GG	9/17/08	DPOC, Inservice, DOPNA
Sunrise Nursing Home	Oswego	IJ/SQC	12/11/08	CMP, DOPNA
Waterview Nursing Care Center	Queens	IJ/SQC, Cont'd Def	12/9/08	CMP, State Monitor, DPOC, Inservice, DOPNA

¹As reported by the Department of Health (DOH).

²Immediate jeopardy (IJ) and substandard quality of care (SQC): The most serious levels of deficiency causing harm; GG: Deficiencies that have caused isolated resident harm on two consecutive surveys; Continued Deficiency (Cont'd Def): Deficiencies that have continued at post survey inspection and/or new deficiencies found.

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; Termination means the facility can no longer receive reimbursement for Medicaid and Medicare residents.

⁴Non compliance: Deficiencies were found in survey to have been corrected prior to the survey team entering the facility.

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Ombudsman Program, Assisted Living Consumer Alliance, Friends and Relatives of the Institutionalized Aged, Suffolk County Long Term Care Ombudsman Program and Coalition of Institutionalized Aged and Disabled.

In addition to these organizations, we would like to take this opportunity to recognize LTCCC board member Deborah Truhowsky and her colleagues at the law firm Schwartzapfel Partners who filed the brief on our behalf. Their help was greatly appreciated.

As previous editions of *The Monitor* have reported, LTCCC advocated for many years for an assisted living law in New York and, when that law was finally passed in 2004, we worked for almost four more years to ensure that the regulations included the protections that we, AARP, Statewide Senior Action and others worked so hard to include in the law. [See our assisted living website, www.assisted-living411.org, for more details on the law and the important consumer issues that LTCCC has been working on.] Though the final regulations included compromises on a number of issues we believe are important to consumers, such as a lower requirement for registered nurse hours in facilities providing formal Alzheimer's care or "aging in place" than what we had advocated for, overall we were pleased that the final regulations responded to consumer concerns as well as the providers' powerful lobbying efforts (which persistently sought to diminish facility requirements and limit resident rights and consumer protections).

Given the many years of negotiations and compromise, we were very disappointed that two of the major provider associations, joined by several individual facilities, instituted these lawsuits. Following is a summary of some of the major provider arguments and our responses to each:

• **PROVIDER ARGUMENT:** The regulations promulgated by DOH are "arbitrary and capricious" and exceed the statutory authority of DOH. It was the intent of the legislature that the basic assisted living residences in the law be "identical" to the licensed adult homes (that have long existed in NY State), "with only minor enhancements." According to one provider brief, "the differences are essentially cosmetic rather than substantive." **OUR RESPONSE:** The assisted living laws were many years in the mak-

ing precisely because it was widely understood and accepted that the existing system of licensed adult homes was not working and required substantial changes to respond to the changing needs of consumers and the growth in numbers of people turning to assisted living to provide care in a residential setting as well as changes in the industry. The need for substantial change from the adult home model is clearly laid out in the law, which provides distinct requirements for basic assisted living and for enhanced and special needs assisted living.

• **PROVIDER ARGUMENT:** The requirement for Enhanced Assisted Living Residences (EALRs) or Special Needs Assisted Living Residences (SNALRs) to have an RN on duty for one 8-hour shift per day, five days per week is an arbitrary, irrational requirement that is going to be too costly for providers. **OUR RESPONSE:** This is not an arbitrary requirement but one that responds, conservatively we believe, to the particular situations of those people who will be in EALRs (people becoming more frail and "aging in place") and in SNALRs (people with special needs relating to Alzheimer's and other dementia). The providers argue, repeatedly, that the RN requirement is tantamount to requiring them to provide skilled nursing services. In fact, it is a result of the recognition that for the vulnerable populations being served in EALR and SNALR facilities, it is necessary to have a full time staff member who is capable of assessing residents. Simply put, if a facility is going to be providing care for individuals who have moved beyond the need for basic assistance and care and who are clearly becoming more frail and/or more demented, we believe that it is absolutely essential that there be a full time staff member who has the ability to recognize and evaluate these residents to ensure their safety.

• **PROVIDER ARGUMENT:** The regulations improperly interfere with a facility's ability to require a guarantor of payment in the residency agreement. They argue that: "The Department states that operators may not require a guarantor unless the operator has 'reasonably determined', on a case by case basis, that the prospective resident would lack either the current capacity to manage financial affairs and/or the financial means to assure payment due under the residency agreement. **OUR RESPONSE:** This requirement addresses an important protection for both the

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New York State's Budget Crisis

New York State faces a major budget crunch. Governor Patterson has estimated that New York State will have to deal with a \$12.5 billion deficit this year, ballooning to \$47 billion by 2012. He has proposed deep across-the-board cuts in funds to hospitals, nursing homes and home care agencies.

Many consumers urge the state not to balance the budget on the backs of beneficiaries of the health care system. A Better Choice for NY, a coalition of over 100 organizations, suggests, and we agree, that the state should look to collecting more revenue by other means:

1. Restoring progressivity and fairness to the state's personal income tax by raising taxes on the highest income New Yorkers.
2. Collecting taxes that are due.
3. Closing corporate tax loopholes.
4. Lowering prescription drug prices by using the state's tremendous purchasing power to see reduced prices from drug manufacturers for prescription drugs for Medicaid, state employees, and other state programs.
5. Reducing the use of costly consultants receiving sweetheart contracts – hired to do work that state workers can and should be doing.

If cutting has to be done, we urge the state to do so thoughtfully and carefully. The state must focus on cutting out inefficiencies or where we are not getting a “bang for our buck.” It is crucial that access and quality are not jeopardized.



Send a message to the following state leaders: Governor David A. Paterson, Attorney General Andrew M. Cuomo, Your State Senator, Your Assemblyperson, NY Senate Majority Leader Malcolm A. Smith, NY State

Senate Health Committee Chair Thomas Duane, NY Assembly Health Committee Chair Richard Gottfried and Assembly Speaker Sheldon Silver. Tell them that you are very concerned about how plans to cut spending will affect vulnerable long term care consumers in NY State. Let them know that we cannot balance the budget on the backs of our frail elderly and disabled loved ones! Urge them to make sure that those who depend on long term care are protected. Rather than slash programs, the state should develop a balanced approach that focuses on restoring fairness in the tax code and closes corporate loopholes and “economic development” giveaways. In addition, if cuts to programs are necessary, they must be done carefully to make sure that people have access to the care and services they need and that there is sufficient oversight and quality assurance of care programs.

See the back page for contact information to send your message or go to: www.ltccc.org and click on the Citizen Action Center on the right: Urgent Alert: Speak out to Governor Paterson on State Budget Cuts to send an email message for free. Please do this now. □

Assisted Living Law...

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consumer and his or her family. For the consumer, it is indicative of being treated as an adult who is to be assumed to be capable of making decisions and responsible for him/herself unless otherwise indicated. For the family, it means that they can move their loved one into an assisted living facility without worrying that at some point in the future they may be caught unaware and be faced with responsibility for paying for it. Two things are crucial to note: 1. The facility can decide, on a case by case basis, that an individual needs to have a guarantor in order to be admitted to the residence and 2. If the resident runs out of money in the future the facility is free to evict

him or her. The sole purpose of this important provision is that facilities cannot impose a blanket rule that potential residents have guarantors. An additional, valuable benefit of this provision is that it will prevent a guarantor provision from being buried in a boiler plate residency agreement where people are less likely to take note of it and understand what they are agreeing to.

At the time of publication, the court had not yet set argument dates for either of the lawsuits.

For more detailed information and news on the lawsuits, including a full copy of LTCCC's brief, visit our assisted living website: www.assisted-living411.org. □

LTCCC Law Student Fellowship

Sponsored by the Law Firm of Schwartzapfel Truhowsky Marcus P.C.

LTCCC has awarded its first Outstanding Law Student Fellowship Award to John Holt, a law student at Brooklyn Law. The law firm of Schwartzapfel Truhowsky Marcus P.C. has sponsored this fellowship to assist New York's Long Term Care Community Coalition (LTCCC). Each semester the Long Term Care Community Coalition recruits law students as interns to help with the research and advocacy work that they do involving long term care in New York. The LTCCC recommended John Holt, a law student at Brooklyn Law School, as a candidate for sponsorship. Attorney Deborah Truhowsky of Schwartzapfel Partners reviewed the recommendation and approved sponsoring Mr. Holt for the fellowship. "We feel that the LTCCC provides vital services to the community ensuring that long-term care for the elderly and disabled is humane and compassionate", stated Deborah Truhowsky. "We are

happy to be able to support the Coalition by sponsoring this fellowship for Mr. Holt." Schwartzapfel Truhowsky Marcus P.C. is a law firm with a dedicated nursing home neglect practice. The firm recognizes that the neglect or mistreatment of the elderly and disabled is a fundamental violation of the resident's rights.

In addition to its nursing home neglect practice, Schwartzapfel Partners also specializes in auto injuries and accidents, medical malpractice, defective drugs and products, and estate law. For additional information, contact the firm through its website at <http://www.fightingforyou.com>. Schwartzapfel Partners has offices throughout greater New York. □



Deborah Truhowsky presents the award to John Holt, Nov. 2008

Governor's Budget...

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a four year period to save money and to encourage nursing homes to find less restrictive settings for these residents.

- 6,000 nursing home beds will be phased out over a five year period and 6,000 assisted living program (ALP) beds will be phased in.

- A \$50 million quality pool in the first year will be used to reward nursing homes that perform well in the areas of staffing, quality indicators and inspection surveys in the first year and \$125 million will be used to reward both high performers and those homes improving the most in the second year.

- Proprietary homes wishing to withdraw 3% of their equity must get prior approval.

- Add-ons to rates will be given for special needs residents such as dementia and bariatric residents without any programmatic requirements.

- An incentive for nurse recruitment includes a loan repayment program.

- Funding is included for a falls prevention training program for nursing homes.

- Bed hold rates will be reduced from 100% of the

Medicaid rate to 75% and the occupancy rate required for receipt of the bed hold rate is raised from 95% to 97%.

What is exciting in this budget is that, in a year of major fiscal crisis, the state is proposing to invest in a number of major quality incentives. The Long Term Care Community Coalition has been working with the Department of Health and the Governor's office on implementing such dedicated funding. In fact, LTCCC's Roundtable meetings on the future of long term care (held last winter) and its current project on nursing home reimbursement highlighted the need for such initiatives. LTCCC staff have been sharing early drafts of the report on the reimbursement project with DOH and the Governor's office in order to convince them of the need to invest in quality by looking at a range of criteria. We are pleased to see that they have put some of our ideas into action. Since we have not had the opportunity to evaluate the impact of a number of the proposals, such as the change to a regional pricing system and reducing bed hold rates, we will be assessing them further.

If these new initiatives are included in the final budget that is passed by the legislature and governor, we plan on working with DOH to implement them. □

Joint Project Addresses Nursing Home Worker and Family Concerns

Two years ago, LTCCC embarked on an exciting collaborative project with board member Deborah Majerovitz, Professor of Psychology at York College, City University of New York. The findings of the collaboration were presented at the annual meeting of the Gerontological Society of America in 2006 and will soon be published in the peer-reviewed research journal, *Health Communication*.

LTCCC and Dr. Majerovitz decided to combine the results of two projects: one an LTCCC project (funded by the New York Community Trust) which asked front-line staff in nursing homes to identify the factors that contribute to better working conditions and the other, by Dr. Majerovitz, which asked family members to identify major cares and concerns related to their loved one's care. Six facilities participated in the LTCCC study, with 456 nursing staff members participating in focus groups and surveys. Dr. Majerovitz interviewed 103 family caregivers to nursing home residents for her project. Thus, the new project compared the results from nursing home staff and family members.

The data gathered from participants in both studies revealed a remarkable consensus between family members and front-line staff about the institutional barriers to quality nursing home care. Many of these concerns centered on poor communication within the nursing home.

Combining the information from both groups revealed that both nursing home and family can act as barriers to good communication. Institutional barriers identified included understaffing, high staff turnover, inadequate staff training, facilities' policies based on a medical model without regard to the resident's psy-

chological and social needs, rigid routines, poor intra-staff communication, and work schedules that do not coincide with family visits. Factors that hindered good communication on the part of family members included guilt (sometimes leading them to lash out at staff), confusion over their role once nursing aides were doing the direct care, clashes of culture and values between staff and families of different ethnic backgrounds, expectations of group care, and conflicting responsibilities of work and other family.

Specific communication problems identified by families were: staff making them feel guilty, staff criticizing them for being over-involved, lack of information about the resident's care, changes made in the resident's care without consulting them, staff having too little time to talk, high staff turnover, rotating shifts making it hard to get to know staff, and poor communication among the staff members and administration.

Similar issues were raised by nursing staff, who valued trusting, respectful relationships with supervisors and families, being consulted prior to changes in resident care or in floor routines, support in addressing racist or abusive comments from families and residents, adequate staffing levels, and team work. Nurse aides noted that family members are quick to complain but seldom offer praise, and that their intimate knowledge of the resident is rarely acknowledged.

These findings can be helpful in developing educational programs for nursing home staff, administrators and family members to improve communication within the nursing home. Good communication is essential for quality long term care. □



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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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