

MONITOR

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

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LTCCC Publishes White Paper: Making Affordable Assisted Living a Reality

Assisted living provides an attractive option for people who need or desire care services yet want to live in a more community-like setting than a nursing home. It can have the added benefit of delaying or even preventing admittance to a nursing home, thereby saving the considerable costs of nursing home care. However, private pay rates for assisted living are often



prohibitive. To date, in New York State, assisted living has only been a real option for those with substantial assets, income or other resources to pay such rates. LTCCC's Assisted Living Committee has developed a white paper proposing recommendations for ways New York State can make assisted living affordable to all New Yorkers, irrespective of income. The full paper is available on our website: www.ltccc.org.

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Annual Report Card On Government Action

Federal Government

President and Congress: F. Long term care consumers were virtually ignored by the nation's political leadership in Congress and the White House.

Assisted living, which plays an increasingly important role as a place for older adults who need or want care in a residential setting,

continued to be completely overlooked. While Congress celebrated the 20th anniversary of the passage of the Nursing Home Reform Law (see article on page 15 for more information), nothing was done to address the need for safe staffing standards and more rigorous regulatory enforcement.

Centers for Medicare and Medicaid Services (CMS): D. Last year CMS reduced a fine by 99% against a poor performing upstate New York nursing home when it complained of financial hardship. We are pleased this year to report that, due to our advocacy, CMS national office now requires that if any CMS regional office wants to significantly reduce a proposed CMP, it must get approval from the national office in Baltimore. In addition, recent impositions of CMPs by the regional office have indicated that CMS is using other methods to respond to a facility's request for a consideration of financial hardship, some of which we suggested. In some cases, CMS has agreed to accept the payment in installments, rather

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LONG TERM CARE COMMUNITY COALITION		REPORT CARD
FEDERAL GOVERNMENT		
President and Congress		F
Centers for Medicare and Medicaid Services (CMS)		D
NY STATE GOVERNMENT		
Governor Spitzer & NYS Department of Health		B
The Legislature		C
Attorney General Andrew Cuomo		A
State Office for the Aging		A

State Comptroller Issues Audit on DOH Nursing Home Complaint System

Comptroller Thomas DiNapoli's audit of New York's nursing home complaint system indicates that the State Department of Health (DOH) was late in investigating one out of every five complaints filed against nursing homes. From April 2005 to September 2006, auditors found that 1,186 of about 6,700 investigations by DOH began late. Although the auditors found that DOH responded promptly to

complaints where residents were in immediate danger, it failed to act quickly on other complaints.

"When a complaint is made about a nursing

home, DOH has to act and act quickly," DiNapoli said. "The department is doing its part to investigate very serious complaints in a timely manner. But it needs to get to other complaints faster. Failing to respond on time could put elderly and dependent New Yorkers at risk."

The complaints that DOH investigated late were ones which, although a resident was not in immediate

jeopardy, were serious. They involved resident neglect and quality of care issues, such as: accidental injury, inattentiveness to residents with incontinence issues, verbal and mental abuse of residents and com-

“DOH was late in investigating one out of every five complaints filed against nursing homes.”

plaints concerning drug and medication issues.

The audit found that the slow response to these complaints was due to staff deployment or shortages at DOH. In addition to the late start of investigations, the audit also found that although DOH's rate of case closure had improved over the past five years, many complaints were not closed within the state required 180 days, causing New York State to miss opportunities to be reimbursed for investigating expenses in a timely manner by the federal government.

Also, case files in the Central New York, New York City and Long Island offices were missing necessary documentation, and incorrect data was entered into the department's complaint/investigation logging system.

DOH agreed with most of the findings of the audit and its recommendations. It has begun evaluating current staffing levels relative to all of the complaints. It has agreed that future budget requests will be based on this need methodology. □



LTCCC

LONG TERM CARE COMMUNITY COALITION

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242 West 30th Street • Suite 306 • New York, NY 10001
Phone (212) 385-0355 • Fax (212) 239-2801
website: www.ltccc.org

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Staff

Richard J. Mollot, Esq., *Executive Director*
Cynthia Rudder, PhD, *Director of Special Projects*
Sara Rosenberg, *Office Manager*
Camilla Benedicto, *Public Policy Intern*
Claire Jean-Simon, *Public Policy Intern*
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LTCCC Holds Roundtable Discussions on the Future of Nursing Homes in NY

LTCCC, with support from the New York Community Trust, is sponsoring a series of two roundtables to bring together a small group of individuals to discuss the future of nursing homes in this state. The individuals invited included prominent people representing different stakeholders, including providers, consumers and workers, as well as leaders from the governor's office, State Office for the Aging, Department of Health and several philanthropies.



According to the U.S. Department of Health and Human Services, about nine million men and women over the age of 65 need long-term care each year. Most studies indicate that consumers needing long-term care would rather have that care in their home than have to go to a nursing home. In addition, state policy has the goal of “rebalancing” the system by investing more Medicaid funds into home and community-based care and less in nursing homes. With Medicaid funding being diverted away from nursing homes, LTCCC has been concerned about what will happen to those individuals who will need, or want, to go to a nursing home for their long term care. Will nursing homes be there in the future? What will the quality of care be like?

Nursing homes provide professional and highly specialized nursing care to elderly and disabled individuals. While nursing home care may not be appropriate for those frail elderly or disabled individuals who are able to, and want to, remain at home or in their community, the nursing home is a valuable and necessary long-term care option for those with physical, emotional and mental health conditions that prevent them from living independently or in

community-based residences. In addition, for some who may be isolated at home, the socialization that a good nursing home gives is crucial.

The first of two roundtable discussions, entitled “The Future of Nursing Homes in New York State,” took place on Dec. 13, 2007. The first meeting proved to be successful in illuminating the trends and issues that will have potential impacts on nursing homes as a long-term care option. The goal was to stimulate dialogue about these trends and the challenges to good nursing home care in New York. A professional moderator helped ensure that the immense tasks asked of meeting participants could be completed in the meeting's short timeframe.

The participants were invited to think critically and discuss two specific topics: the populations that they think will need nursing home care in the future and the reasons behind challenges, such as ensuring quality assurance, access and ade-



quate financing to meet the needs of future nursing home residents. Workgroup presentations helped to identify common ground among participants, as well as shed light on concerns and challenges that many attendees may not have previously considered.

This first fast-paced meeting helped lay the groundwork for the second roundtable discussion, which will be held on March 20, 2008. At this second meeting, the same participants will help to develop action steps that can be taken by government, providers, consumers and philanthropists to overcome the identified challenges and will develop a strategy for implementing them. LTCCC will be publishing a report on the outcome of this meeting in a future edition of this newsletter. □

Report Card...

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than reduce the fine. These installments generally include interest. In addition, when facilities that missed the opportunity to waive their right to a hearing and thus have their fines reduced 35% requested a consideration due to financial hardship, CMS granted them only a 25% reduction rather than the full 35%. Kudos to CMS!

On the other hand, there were several areas in which we were very disappointed by CMS's inability to effectively protect nursing home residents:

1. CMS's "Special Focus Facility Program." The stated reason that the Special Focus Facility (SFF) program was initiated is because a number of facilities consistently provided poor quality care, yet periodically fixed a sufficient number of the presenting problems to enable them to pass one survey, only to fail the next survey. In addition, they often failed the next survey for many of the same problems as before. Such facilities with an "in and out" or "yo-yo" compliance history rarely addressed the underlying systemic problems that perpetuated repeated cycles of serious deficiencies. Nursing homes on the SFF list represent those with the worst survey findings in the country, based on the three most recent years of survey history. However, each state was only permitted to identify from one to six homes that meet these criteria for more focused and more forceful surveillance and enforcement. While the goal of this program is a good one, in practice the program has many problems. First, the number of facilities in this program is too few. There are over 16,000 nursing homes in the country, yet only 128 SFF homes. Second, it might lead people to believe that these are the only poorly performing nursing homes in their state. New York State, with over 670 nursing homes, had only one home listed in the released list. Third, states have been given limited help from CMS in finding ways to either help facilities improve before they have to be terminated from participation in the Medicaid and Medicare programs (and, usually are closed) or to help states find ways to have other more qualified owners take over a home and thus avoid closure. Closing and moving residents is the last thing any of us want. Advocates across the country, including LTCCC, have made their voices heard, but CMS is not listening.

2. CMS failed to effectively enforce the federal Nursing Home Reform Law. This failure included

ignoring calls by LTCCC and others to streamline the survey and enforcement system to overcome systemic weaknesses that result in too many nursing home care problems either being unidentified or poorly identified. This is also documented in an important report by the Government Accountability Report released in March 2007, *Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents*. As noted by the Center for Medicare Advocacy, "The GAO found that both the number of serious deficiencies cited and the number of sanctions actually implemented declined between fiscal years 2002 and 2005; that CMS imposes civil money penalties at the lower end of the permissible range, limiting their deterrent effect; that CMS does not use the full range of available sanctions; and that CMS infrequently imposes discretionary sanctions."

3. CMS continued to have a major role in the "Advancing Excellence" campaign. This campaign, launched in collaboration with the nursing home industry, establishes voluntary goals and benchmarks which, in effect, undermine enforcement of the federal Nursing Home Reform Law's requirements for the care and treatment of nursing home residents. It is especially disappointing to see CMS, which frequently claims that it has limited resources, expend valuable resources on this effort.

State Government

Governor Spitzer and NY State Department of Health: **B.** Bravo to the Governor and the Department of Health for standing up to assisted living providers and continuing to propose mandating RN coverage for residents in those assisted living facilities with an enhanced assisted living or special needs certificate. While many consumer comments to assisted living regulations proposed last March supported the need for RN coverage, many provider comments were against it. We are pleased to see that the Governor and DOH understand that RN coverage is crucial for assessing and monitoring the needs of these residents.

Under Governor Spitzer, we have seen major changes in the level of responsiveness to consumer concerns by both the Governor's office and the Department of Health. While we were happy to see a substantial increase in civil monetary penalties, state fines and other mandatory actions taken against nursing homes that were found to give poor care, we

continued on next page

Assisted Living Regulations Finally Released: Another 30 Day Public Comment

The new proposed assisted living regulations were finally published on December 26, 2007. Since they were changed significantly from those originally published last March, a new 30 day comment period was necessary. That comment period ended on January 25, 2008. The Department of Health is now reviewing these comments and we hope the final regulations will soon be promulgated. Remember, the law requiring licensure passed in 2004 and we are still awaiting the final regulations.

All in all, the new regulations retain many of the protections we fought for and we are very pleased with them. Thanks to all who wrote letters and sent emails. You made a difference. In its assessment of the original public comments, the DOH said that “a majority of the comments were submitted by residents of facilities which will need to become licensed as assisted living residences.... In particular, these comments support the proposed rules regarding nurse
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Report Card...

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would like to see other substantive change. The nursing home complaint system still needs much improvement and surveyors need more training on how to identify non-compliance and rely more on residents and families as well as nursing home staff. In addition, important initiatives like “pay for performance” and use of the state’s CMP funds continue with minimal consideration of consumer priorities. The call for leadership in requiring safe nursing home staffing levels continue to go unanswered.

The Legislature: C. There was little legislative action to protect long term care recipients in New York. The legislature passed a law expanding the number of Assisted Living Program (ALP) beds for adult homes and enriched housing even though consumers advocated for phasing out the program since we will soon have assisted living regulations governing the licensure of this level of care. In addition, laws requiring ratios of staff for nursing homes or, at least, stopping admission to those homes with a dangerously low level of staffing, were not passed.

Attorney General Andrew Cuomo: A. This year the Medicaid Fraud Control Unit (MFCU) continues to protect our most vulnerable elderly and disabled. The unit conducted a far-reaching investigation of the home health care industry. The investigation, which led to the filing of criminal charges, found that hundreds of individuals in the New York City area purchased bogus certificates certifying that they had been trained to provide home health services when they had not, as well as numerous examples of unqualified aides billing Medicaid for home care services without ever appearing at the patient’s

home. As a result of this, the Attorney General has called upon the Legislature to institute a statewide registry of certified home health aides.

The office’s use of cameras hidden in nursing home resident rooms, with the consent of the residents/families, has continued to be very successful. The hidden camera surveillance operations, which uncovered many instances where treatment mandated by the care plan was not provided, led to the conviction of the owner and operator of Northwoods Nursing Home in Cortland and 14 other defendants across the state. Kudos to MCFU for being able to convict, following a jury trial, the owner and operator of Northwoods on three felony counts. It is very difficult to criminally convict an owner or operator. We are pleased to see MFCU focus on negligent and abusive owners and operators, as well as on individuals who commit violent and sexual criminal acts.

State Office for the Aging: A. Since Michael Burgess was appointed Director of SOFA things have been popping. He has made it a priority to bring many different constituencies to the “table,” as well as being more responsive to constituency groups and making information more available to the public. New divisions were formed and new staff hired to make this a reality. In order to begin to meet the goal of inclusion, SOFA has held a series of “Director’s Round Tables,” and is planning more. SOFA has also focused this year on making communications more uniform, easier to access and of better quality in order to help make information more available to the public. In addition, SOFA has worked to make sure that any advisory councils under its command be more diverse, representing various populations and regions. □

Assisted Living Regulations...

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staffing for enhanced assisted living and special needs assisted living, the development of individualized service plans and disclosures that the facilities are required to make to residents.”

Below is a summary and critique of the new regulations. Please go to www.assisted-living411.org for more information and links to the proposed regulations in their entirety.

Staffing in Enhanced and Special Needs Certified Residences

The original language called for a licensed nurse on duty and on-site 16 hours a day, seven days a week; an RN for eight of the 16 hours five days a week; and an RN on call 24 hours a day, seven days a week. The new language calls for an RN on duty and on-site for eight hours a day, seven days a week and on call for

Thanks to all who wrote letters and sent emails. You made a difference.

24 hours, seven days a week. While we are not happy that we lost an LPN for eight hours a day, we believe that the compromise of the new language is acceptable. We are happy that DOH recognized the need for an RN for seven days a week to assess and monitor residents who may become unstable.

“Floating” Enhanced Slots/Beds

The new proposed regulations state that enhanced beds may “float,” but if an applicant proposes to use floating beds, it must describe how it will ensure that all applicable program and structural requirements of regulation will be met. While we approve of this language, we are concerned that it might discourage applicants from using floating enhanced beds. Given the value to residents of beds that float (residents in an residence with an enhanced certificate who need enhanced care do not have to move from the room they have been living in to another part of the residence if the beds/slots “float”), we urged DOH to add language to encourage the use of floating beds (unless the residents’ needs, and not those of the facility, make a move necessary).

When “Independent Housing” Would Require Licensure

DOH added specific indicators of when an independent housing would need licensure. We approve of this addition, but we asked DOH to add: “If an entity or individual advertises, makes any oral or written presentations that they provide these services (listed in the regulations), it will have to be licensed.”

Responding to Resident/Family Complaints

The new proposed regulations require residences to respond to a resident council’s questions or complaints within 21 days. While we are pleased to see this, we asked DOH to add a time frame to the section on questions and complaints from family organizations as well.

Right to Choose Health Care Provider

The proposed regulations state that the resident has the right to choose his/her health care providers, however, it also adds the following: “notwithstanding any other agreement to the contrary.” We suggested that this phrase be removed to prevent any confusion about the resident’s rights.

Medical Evaluation Form

We asked that DOH require a uniform medical evaluation form developed by DOH, rather than merely a department approved substitute.

Medication Management

We told DOH that there must be clarification of when a medication has to be administered (thus needing the RN) and when it is can be “managed” (in which case an aide can assist the resident). We told DOH that if a resident is not self-directing, the medication must be administered by an RN.

In our next newsletter we hope to print information about the final, promulgated regulations. □

Do we have your correct contact information?

Please take a moment to check your information on the back cover and email (info@ltccc.org) or call us (212-385-0355) with any changes.



Enforcement Actions Against Nursing Homes

CIVIL MONEY PENALTIES¹ AGAINST 14 NURSING HOMES: 9/1/07 – 11/30/07²

NAME OF HOME	LOCATION	SURVEY DATE	AMOUNT
Betsy Ross Rehabilitation Center	Rome	5/1/07	\$2,925
Blossom South Nursing & Rehab Center (formerly known as Arbor Hill Care Center)	Rochester	10/25/05	\$149,500 ⁵
Buena Vida Continuing Care & Rehab Center	Brooklyn	7/11/07	\$26,715
Daughters of Jacob Nursing Home	Bronx	3/6/07	\$137,970 ⁴
Ellis Residential & Rehabilitation Center	Schenectady	5/7/07	\$5,850
Evergreen Valley Nursing Home	Plattsburgh	6/6/07	\$4,550
Fairchild Manor Nursing Home	Lewiston	6/13/06	\$13,200 ⁵
Harbour Health Multicare Center for Living	Buffalo	5/31/07	\$4,875
Hawthorn Health Multicare Center for Living	Buffalo	4/4/07	\$4,550
Jewish Home and Hospital for the Aged	New York	7/25/07	\$2,600
Mt. Loretto Nursing Home	Amsterdam	8/10/07	\$1,400 ³
Van Duyn Home and Hospital	Syracuse	3/30/07	\$3,375 ⁴
Waterview Nursing Care Center	Queens	10/3/07	\$3,575
Woodcrest Rehab & Residential Health Care Center	Queens	6/6/07	\$2,925

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

² As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2345. This list is posted on LTCCC’s website every three months.

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

⁴ Reduced due to financial hardship

⁵ Fine imposed in accordance with settlement agreement between CMS and the facility.



Take our survey...

on NY Connects, the single point of entry for long term care in New York. The survey is available at www.ltccc.org (click on the yellow box that says “take our survey”) or call 212-385-0355 for a hard copy.



Enforcement Actions Against Nursing Homes

STATE FINES AGAINST 21 NURSING HOMES: 9/16/07 – 12/15/07¹

NAME OF HOME	LOCATION	DATE OF SURVEY	AMOUNT ²
Bellhaven Nursing Center, Inc.	Brookhaven	3/31/06	\$1,000
Betsy Ross Rehabilitation Center Inc.	Rome	5/1/07	\$13,000
Bialystoker Center for Nursing & Rehab	Manhattan	8/15/02	\$1,000
Bishop Charles Waldo Maclean Episcopal Nursing Home	Queens	4/6/07	\$7,000
Bridge View Nursing Home	Whitestone	6/23/06	\$1,000
Bridge View Nursing Home	Whitestone	12/7/06	\$1,000
Bridge View Nursing Home	Whitestone	2/7/07	\$1,000
Bronx Center for Rehabilitation & Healthcare	Bronx	4/27/07	\$2,000
Bronx-Lebanon Special Care Center	Bronx	5/10/07	\$2,000
East Rockaway Care Facility	Lynbrook	4/10/07	\$1,000
Ellis Residential & Rehabilitation Center	Schenectady	5/7/07	\$4,000
Flushing Manor Nursing & Rehabilitation	Queens	8/9/01	\$2,000
Katherine Luther Home	Clinton	5/21/07	\$2,000
Livingston Hills Nursing & Rehabilitation Center LLC	Livingston	6/7/07	\$5,000
Marcus Garvey Nursing Home Company Inc	Brooklyn	5/18/06	\$4,000
Mayfair Care Center	Hempstead	2/17/05	\$1,000
Mayfair Care Center	Hempstead	5/5/06	\$2,000
Meadowbrook Healthcare	Plattsburgh	10/31/02	\$5,000
Oceanside Care Center, Inc.	Oceanside	5/3/07	\$1,000
Parkview Care and Rehabilitation Center Inc.	Massapequa	2/28/01	\$2,000
The Pines Healthcare & Rehabilitation	Olean	3/9/07	\$2,000
Rockville Skilled Nursing and Rehabilitation Center, LLC	Rockville Center	8/28/06	\$6,500
Rockville Skilled Nursing and Rehabilitation Center, LLC	Rockville Center	3/29/07	\$1,000
St. Luke Health Services	Oswego	3/15/07	\$2,000
Whittier Rehabilitation and Skilled Nursing Center	Ghent	6/30/06	\$2,000

¹ As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL Officer at 518-474-8734 or e-mail – nhinfo@health.state.ny.us.

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



LTCCC's Annual Appeal

Unlike many organizations, LTCCC makes only one appeal for donations per year. If you have not already, please consider making a tax deductible donation to support our work to protect nursing home residents and others who rely on long term care. You can make a tax deductible donation with a credit card by going to our Website, www.ltccc.org or you can send a check to LTCCC, 242 W. 30th Street, Suite 306, New York, NY 10001.

EVERY DOLLAR MAKES A DIFFERENCE!



Enforcement Actions Against Nursing Homes

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

The State Took Other Action Against 19 Nursing Homes 9/16/07 - 12/15/07¹

NAME OF HOME	LOCATION	IJ,SQC or G	SURVEY DATE	CMP ²	ACTIONS ³
Absolut Ctr for Nursing & Rehab	Endicott	IJ/SQC	12/5/07	X	DOPNA
Central Island Healthcare	Plainview	GG	11/20/07		DPOC, DOPNA
Cuba Memorial Hospital Inc, SNF	Cuba	IJ/SQC	11/15/07	X	State Monitor, DPOC, DOPNA
Eden Park HCC Inc.	Catskill	GG	10/18/07		DPOC, Inservice, DOPNA
Evergreen Valley Nursing Home	Plattsburgh	GG	10/25/07		DPOC, Inservice, DOPNA
Fulton County Residential HCF	Gloversville	GG	10/5/07		DPOC, Inservice, DOPNA
Grace Manor Health Care Facility	Buffalo	GG	10/15/07	X	DOPNA
Guilderland Center Nursing Home	Guilderland Center	IJ/SQC	10/5/07	X	State Monitor, DPOC, Inservice, DOPNA
Little Neck Nursing Home	Little Neck	GG	10/15/07	X	DOPNA
Mt. Loretto Nursing Home Inc.	Amsterdam	IJ/SQC	10/19/07	X	State Monitor, DPOC, Inservice, DOPNA
Northwoods Rehab Cortland	Cortland	GG	11/29/07		DPOC, Inservice,
NYS Vets Home at Montrose	Montrose	SQC	11/20/07	X	DPOC, Inservice, DOPNA
NYS Vets Home at St Albans	Queens	IJ/SQC	9/25/07	X	State Monitor, DPOC, Inservice, DOPNA
The Pines Healthcare & Rehab	Machias	IJ/SQC	12/7/07	X	State Monitor, DPOC, DOPNA
Riverview Manor HCC	Owego	GG	11/16/07	X	DPOC, Inservice, DOPNA
Teresian House Nursing Home Co	Albany	IJ/SQC	9/26/07	X	State Monitor, DPOC, Inservice, DOPNA
The Crossings Nursing and Rehab Center	Minoa	IJ/SQC	10/25/07	X	State Monitor, DPOC, Inservice, DOPNA
Van Allen Nursing Home	Little Falls	IJ/SQC	10/31/07	X	State Monitor, DOPNA
Waterview Nursing Home	Queens	IJ/SQC	10/3/07	X	DPOC, Inservice, DOPNA

¹ As reported by the Department of Health (DOH). For more detailed information call the DOH FOIL officer at 518-474-8734 or e-mail – nhinfo@health.state.ny.us.

² Recommendation to CMS.

³ 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.

White Paper...

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The paper identifies two major priorities:

- Consumers, regardless of income, must have appropriate choices for affordable housing and services; and

- Developers must be encouraged and enabled to build and operate affordable assisted living facilities.

It also has two guiding principles:

- Government must take the lead to ensure that consumers have appropriate options for affordable housing and services and to ensure that developers have the ability to build and operate affordable assisted living facilities by balancing the use of mandates with incentives and subsidies; and

- The populations of assisted living facilities must encompass all economic levels. Mixed income housing is more economically feasible.

Affordable assisted living consists of affordable services and affordable housing for those with low and moderate incomes. Following are recommendations for each.

Recommendations for Providing Affordable Assisted Living Services.

We urge the state to:

1. **Utilize the State Plan Personal Care Services Benefit option to guarantee services for all Medicaid eligible individuals; have Medicaid pay for all personal care services in the assisted living residence; require providers to use the SSI funds usually used for personal assistance to be used only for other direct resident services; closely track the utilization of this benefit in assisted living – keeping track of how many people are receiving benefits and how providers are using the Medicaid funds; and publish on the Department of Health’s website an annual report on this tracking.**

Although the Personal Care Services Benefit option has the possibility of increasing the numbers of people who will access this benefit, it also has the potential of saving the state Medicaid money that would have been spent on nursing home care. Additionally, we suggest that Medicaid cover all of the personal care needs of individuals in assisted living. Providers should no longer be expected to cover personal care assistance for the SSI payment. SSI would cover everything except personal care. Providers have long complained that SSI does not permit them to adequately provide for their residents.

The extra SSI funds should help. However, it is crucial that providers be required to use the funds that would have been used to provide personal assistance only for other direct care services.

2. **Mandate sliding scale fees for any facility that accesses Medicaid or SSI or is built or converted using any government financial assistance.** This would need to be coupled with incentives/subsidies (see recommendations for housing below). Sliding scale fees would make the assisted living facility accessible to consumers with varying levels of income.

Recommendations for Providing Affordable Assisted Living Housing.

We urge the state to:

1. **Include financing options for assisted living in the single point of entry system for consumers.** As the state develops the first phase of its single point of entry (POE), it must include educational information and technical help to consumers to help them access financial resources and affordable options for assisted living services and housing.

2. **Advocate for increased funding for Section 8 Housing Choice Vouchers (HCVs).** HCVs enable poor, disabled or elderly tenants to receive rent vouchers from a local housing agency and redeem them with participating private landlords. The number of HCVs available depends on funding. These vouchers are funded by federal monies and are given to regional offices across the state. However, the state could advocate with the federal government for increased funding and work with the regional offices to make HCVs available to consumers who need to use them to pay for assisted living.

3. **Establish a single point of entry system for developers of affordable assisted living at a single, central location.** Right now, resources for developers are scattered, resulting in unnecessary challenges and missed opportunities to facilitate the development of affordable assisted living. New York should establish a clearinghouse or “one stop shop” resource that would coordinate all information, loans and subsidies; bring together private and public donors as well as not-for-profit and for-profit developers; and provide a listing of all funding resources for assisted living.

4. **Advocate for blended federal, state and city funding streams.** State and federal funding for housing programs should be combined when appropriate in order to consolidate the number of programs and give the state more control over budgeting.

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Giving the state the authority to merge funds for different programs will allow the state to use the funds in ways that are appropriate for its consumers and will be more helpful to developers.

5. Encourage municipalities to become partners with affordable assisted living developers. Many municipalities have access to land that they might be able to give to developers of affordable assisted living facilities for free or at a low cost.

6. Find ways to increase subsidies/tax incentives for developers. Increased subsidies/tax incentives should be offered to developers who are willing to allocate more than the current required units for residents with low-incomes and developers who are willing to maintain the affordability of units beyond the required amount of time (now 20 percent and 10 years, respectively, for the Low Income Housing Tax Credit). Developers who take such measures need better tax incentives and/or subsidies to make the project financially feasible. When agencies or programs are only able to give limited incentives according to established guidelines, additional incentives, such as subsidies from other programs or funds, should be offered to developers who allocate more units for low income residents or maintain affordability beyond the required amount of time.

7. Create a “true” State housing trust fund that has a dedicated revenue stream and encourage the use of trust funds for affordable assisted living. The current State Housing Trust Fund Program is insufficient. It lacks a dedicated stream of funding which means that appropriations are argued every year and ongoing funding levels are never assured. The trust fund needs a dedicated revenue stream to ensure the sustainability of the program.

8. Allocate a portion of the governor’s new Housing Opportunity Fund for assisted living. This year Governor Spitzer has proposed a new Housing Opportunity Fund, targeting \$400 million to support affordable and supportive housing across the state. A portion of these funds should be used for affordable assisted living. While a dedicated revenue stream is still the final goal, funds from the Housing Opportunity Fund would provide a good start towards affordable housing in assisted living.

9. Shorten the amount of time it takes to process requests. The New York State Housing Finance Agency has streamlined their application by remov-

ing unnecessary paperwork. Other agencies also need innovative solutions to streamline application and approval processes and ensure that projects are completed on time.

10. Allot more points in their QAPs (Housing Credit Qualified Application Plan) for developers wanting to build affordable assisted living facilities. Allotting more points in the QAP, the plan used for deciding incentives/subsidies, effectively gives developers of affordable assisted living priority in the application process for incentive programs.

11. Establish and enforce regulations for quality of care and life. We strongly encourage the government to publish and enforce the assisted living regulations and continue to consider stricter regulations, particularly related to staffing and training. Above all, we must ensure that nursing home and adult home scandals are not perpetuated under New York’s new assisted living law and regulatory system. Only those homes committed fulfilling the promise of assisted living - promoting resident rights, autonomy and a home-like environment - should be able to access Medicaid financing.

12. Mandate that any licensed facility that accesses Medicaid or SSI or is built or converted using any government financial assistance cannot discriminate against consumers using HCVs as unnecessary paperwork is eliminated. Many landlords say they will not accept HCVs because of the burden of paperwork. The government must intervene to ensure that tenants with low-incomes will be able to access affordable housing by mandating that landlords who receive Medicaid, SSI or any government financial assistance or incentives, be required to accept HCVs.

13. Mandate sliding scale fees for housing for any licensed facility that accesses Medicaid or SSI or is built or converted using any government financial assistance or incentives. Implementing a sliding scale fee minimally limits profits while promoting the creation of mixed-income assisted living facilities.



Please let your state representatives and other state policy makers know that you would like to see these recommendations implemented. Our website, www.assisted-living411.org, lists talking points for you to use in any letters you write or in any meetings you have. □

LTCCC Receives Grant To Educate Chinese American Community



The Chinese American Medical Society's CAIPA Community Service Committee has awarded LTCCC a grant to help elderly Chinese New Yorkers understand and benefit from the new single point of entry (POE) system for long term care. The POE, called NY Connects, is in the process of being rolled out across New York State. Its purpose is to provide

information and assistance to individuals on long term care options. [For more information on NY Connects and POEs in general, visit our website, www.ltccc.org and click on Access to Long Term Care under the "Key Issues" tab.]

Over this next year, LTCCC will educate the Chinese community about the: availability of the POE in New York City; the requirements a POE sponsor must comply with; and their rights under the POE. In addition, members of the Chinese community will be helped to participate in the workings of the Long Term Care Council which is a requirement of each POE. With the help of an advisory committee consisting of representatives of the Chinese senior community in New York City, LTCCC will develop, distribute and publicize an educational brochure to ensure that people in the Chinese American community achieve the maximum knowledge of, and benefit from, the POE. □

Lawsuit Demands An End to Misplacement of Those With Mental Illness In Nursing Homes

Individuals with mental illness residing in nursing homes and advocacy organizations have sued New York State, including the Department of Health and the Office of Mental Health because they have unlawfully placed individuals with mental illness in nursing homes in New York, New Jersey and Massachusetts instead of providing them community-based housing. This lawsuit, Edwin T., et. al. v. Hogan, et. al, is in federal court in the Eastern District of New York located in Brooklyn. Currently, the parties are in the middle of discovery (the point in a court case when both sides are finding and disclosing evidence related to their cases) and engaging in motion practice.

These individuals do not have physical problems that require that they live in nursing homes. In fact,



the nursing homes have no appropriate services for them: no therapeutic counseling, no cognitive or behavioral therapy, no advanced skills development. The lawsuit seeks to put an end to this practice and demands that the State build community housing so that these residents can live in community residences that meet their needs.

If you know of any individual with mental illness who was discharged to a nursing home from either a state psychiatric center or from a hospital with a psychiatric ward and who does not have a serious physical issue, please ask if

they are interested in joining our effort and have them contact: Sandra Del Valle, Staff Attorney, New York Lawyers For The Public Interest, (212) 244-4664 Ext. 473. □

Adult Homes and Enriched Housing

Apply for New ALP Beds

Recent legislation expanded the number of Assisted Living Program (ALP) beds available to adult homes and enriched housing. LTCCC was against this expansion, believing that the ALP program should be phased out as the new assisted living regulations are put in place.

The ALP program permits residents of adult homes or enriched housing who are eligible for nursing home care to remain in place if it is deemed safe. Their care is financed by SSI and Medicaid. Since the new assisted living legislation creates a new assisted

“ Our concern now is to make sure that any approved applicant is one that is committed to the true mission of assisted living.”

living level for such residents, we did not want the ALP program to continue outside of this licensure. However, although we joined with AARP to defeat it, the legislation became law, and 1500 new beds were added to the system.

DOH sent out a request for applications for the new beds in September, 2007 and is now evaluating the applications. The criteria for approval includes extra points for commitment to SSI and low income individuals and there is a preference for new building or wings rather than changing existing adult home beds to ALP beds. Unfortunately, as a result of recommendations contained in the Commission on Health Care Facilities in the 21st Century (a.k.a. the Berger Commission) Report, about 230 beds are also available for nursing homes in Niagara, Tompkins and Suffolk counties to convert nursing home beds to ALP beds. The idea of converting nursing home beds to assisted living is the antithesis of the model of assisted living that LTCCC has been advocating for for years.

Our concern now, which we communicated to DOH, is to make sure that any approved applicant be one that is committed to the true mission of assisted living. ALP beds should only be approved for those residences able to demonstrate that they: (1) provide a wide range of resident choice; (2) respect residents' self-direction; (3) encourage residents' independence; (4) promote and honor resident decision-making

power; and (5) deliver care in a culturally competent manner. In addition, we urged DOH to give extra weight to those residences that: (1) have a mix of appropriate numbers of single and double rooms; (2) provide access to the single rooms and individual bathrooms without discriminating based on source of payment; and (3) provide each room with facilities to prepare meals.

We also suggested that, given the June 2007 report on ALP beds in some adult homes by the Commission on Quality of Care and Advocacy for Persons with Disabilities, which concluded that the homes studied spent significantly less than they received in reimbursement, had inflated Medicaid payment levels with unsupported assessments and had substantive disparities between plans of care and provided services, the Department conducts a similar assessment of any applicant who is requesting to add to its ALP beds. For those applicants that are requesting ALP beds for the first time, we urged DOH to require these applicants to demonstrate how they would not have outcomes similar to those above.

DOH has indicated that although it does not have the authority to require some of these things, it is

“ It remains to be seen what types of residences will finally be approved.”

interested in encouraging residents' rights and autonomy. We were happy to find that in the Q and A section related to the application, DOH made the following statements: “The Department encourages applicants to describe in the program narrative how they intend to maximize resident independence, resident self-direction, provide residents with a wide range of choice with regard to activities, food selection, community involvement, and otherwise supports the quality of life for potential ALP residents” and, “The Department has a distinct interest in ADA compliance, resident rights and accurate level of care determinations.”

It remains to be seen what types of residences will finally be approved. □

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

This toolkit has materials to help you make your voice heard, including:



1. An informative “brief” on the crisis in nursing home care, which can be distributed to elected officials, the press, etc...
2. 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.
3. A sample letter to an elected official.
4. A chart listing members of Congress who have shown support for nursing home residents.
5. A sample letter to the editor.
6. A petition form to gather signatures on safe staffing.
7. A “tell my story” form for people to describe their personal experiences.
8. Additional information & links to data resources.

This toolkit can help you and others in your community speak out in support of safe minimum staffing standards for nursing homes. Study after study has indicated that sufficient staffing is key to quality of life and quality of care. Yet while we give nursing homes billions of dollars a year, and trust them with our most vulnerable loved ones, we do not require that they maintain adequate staffing to provide decent care.

It is time that our elected officials, who sign off on payments to nursing homes, sign on to hold them responsible for having safe staffing levels. But they won't do that unless they hear from us – a lot of us – that this is an important issue.

**The toolkit is available at
nursinghome411.org.**

20 Years After OBRA '87: The Federal Nursing Home Reform Law

December 7th 2007 marked the 20th anniversary of the Nursing Home Reform Law (also known as the Omnibus Reconciliation Act (OBRA) of 1987), federal legislation that focused on improving the quality of nursing homes in the United States. The Nursing Home Reform Law was enacted during the Reagan administration as a response to a report released by the Institute of Medicine (IOM), which documented the abuse, mistreatment, and sub-standard care that many nursing home residents were experiencing across the country.

The basic objective of the Nursing Home Reform Law was to ensure that nursing home residents receive the quality care to help them achieve or maintain their "highest practicable" physical, mental, and psychosocial well-being. In order to meet this objective, the Nursing Home Reform Law set out a series of minimum federal mandates which required the provision of certain services that must be given to each resident, mandated certification and training for nurse aides, created a residents' bill of rights, and established a surveillance and enforcement system to monitor compliance with the new guidelines.

Although the Nursing Home Reform Law was passed in 1987, to the consternation of consumers, full implementation of this law did not occur until 1995, when the federal government finally completed the publication of its final enforcement rules. The reason publication of the federal regulations was delayed for 8 years was because of a backlash from the nursing home industry. The industry fought to weaken the implementation of the law. They were successful in both weakening and delaying the release of the regulations. Even after the enforcement provisions went into effect, the industry has continued to fight effective enforcement of the law, both federally and on a state level. As a result, neglect, poor quality of care, and abuse continue to occur in too many of the nursing homes in our country. The lack of real enforcement of federal regulations is extremely disappointing to advocates and family members alike,

many of whom still witness abuse and neglect on a daily basis.

Despite the mounting frustration and discontent in response to the lack of effective enforcement, there have been several positive outcomes and benefits directly related to the enactment of the Nursing Home Reform Law. Although lately the number of physical and chemical restraint use appears to be rising, restraint use declined significantly after the Nursing Home Reform Law was finally implemented. In addition, there was a significant decrease in the proportion of residents with pressure ulcers and urinary catheters.

However, 20 years later, there are still many quality problems in nursing homes. For instance, although studies clearly indicate a correlation between number of staff and quality of care, the majority of nursing homes do not have enough well trained staff to care for their residents. The lack of minimum staffing standards in the Reform Law is one of its major shortcomings, which LTCCC and other advocates are still trying to address. In addition, enforcement is still a major problem, with the industry continually fighting effective enforcement, and limited resources for both the federal government and the states diminishing the ability to conduct effective surveillance and enforcement.

“The basic objective of the Nursing Home Reform Law was to ensure that nursing home residents receive the quality care...”



Visit www.nursinghome411.org for our “Free Toolkit: Speak Out to Advocate for Safe Nursing Home Staffing Standards.”

You can use the toolkit to send a message to elected officials, write a letter to the editor, collect names on a petition to support safe staffing levels and more! Please help us help nursing home residents by letting people in your community know, including friends and family, people at your church, temple or mosque, etc. □

Action Alert Mailing List

NEW YORK STATE OFFICIALS:

Governor Spitzer
State Capitol, Albany, NY 12224
Phone: 518-474-8390
E-Mail: Go to:
<http://www.state.ny.us/governor>

Richard Daines, MD
Commissioner, NYS Department
of Health (DOH)
Corning Tower
Empire State Plaza
Albany, NY 12237

Mark Kissinger
Deputy Commissioner,
Office of LTC Programs
NYS DOH
Corning Tower
Empire State Plaza
Albany, NY 12237

Michael Burgess
Director, New York State
Office for the Aging
Agency Building #2
Empire State Plaza
Albany, NY 12223

Atty. General Andrew Cuomo
The Capitol
Albany, NY 12224-0341
(518) 474-7330

New York State Assembly:

To write to your representative in the Assembly, address your letters to him or her at NYS Assembly, Albany, NY 12248. The general switchboard for the Assembly is 518-455-4000.

In addition to your personal representative, it is important that the following leaders hear from you:

Assemblymember Sheldon
Silver, Speaker
speaker@assembly.state.ny.us

Assemblymember Richard N.
Gottfried, Chair,
Committee on Health
gottfrr@assembly.state.ny.us

Assemblymember Jeffrey
Dinowitz, Chair,
Committee on Aging
dinowij@assembly.state.ny.us

New York State Senate:

To write to your Senator, address your letters to him or her at NYS Senate, Albany, NY 12247. The general switchboard for the Senate is 518-455-2800.

In addition to your personal senator, it is important that the following leaders hear from you:

Senator Joseph Bruno
Majority Leader
bruno@senate.state.ny.us

Senator Martin Golden
Chair, Committee on Aging
golden@senate.state.ny.us

Senator Kemp Hannon
Chair, Committee on Health
hannon@senate.state.ny.us

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

FEDERAL OFFICIALS:

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



242 West 30th Street, Suite 306
New York, NY 10001

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