

MONITOR

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

www.ltccc.org • SPRING 2011



LTCCC Issues Annual Report Card on Government Protection

Every year the Long Term Care Community Coalition publishes a report card on the previous year's performance of the various government entities charged with protecting New Yorkers who rely on long term care services. The report card is based on a number of factors, including assessments throughout the year of actions taken (or the failure to take action) by the government entities on consumer issues that fall within their purview, results from our meetings and direct communications with government officials, research on specific issues that we have identified as important to consumer care in the course of the year and input from LTCCC's members.

LONG TERM CARE COMMUNITY COALITION	REPORT CARD
NYS Department of Health (DOH)	B-
NYS Attorney General Cuomo/MFCU	A
NYS Senate	D-
NYS Assembly	C
NYS Office for the Aging	A-
CMS	C
NYS Medicaid Inspector General (OMIG)	A

NYS Department of Health (DOH): B- DOH works in a number of areas crucial to long term care consumers. In this report card we address DOH activities relating to ensuring nursing home quality and safety. [Please note that LTCCC is currently conducting a major study of assisted living/adult home oversight in New York which will be released in the summer.]

Inspection and Enforcement: We were disappointed to see that the number of homes identified by the DOH as putting their residents in immediate jeopardy

continued on page 2

LTCCC's Legislative Priorities for 2011



With the state and federal governments facing another year of severe economic challenges, the plight of long term care consumers is likely to become even more tenuous. The provider industry will fight to protect its interests, especially its income, as the government tries to cut back spending. Meanwhile, the agencies that monitor care and respond to complaints when there is abuse or neglect – already devalued by many political leaders – will likely face hiring freezes and further cutbacks. These agencies are already understaffed and overwhelmed, as detailed in LTCCC's 2010 report, "Government Monitoring & Oversight of Nursing Home Care: The Relationship *continued on page 8*

In This Issue...

New Project: What is the Status of Care in NYS Adult Homes, Enriched Housing & Assisted Living	3
LTCCC Calls for Law to Protect Access to Justice for NH Victims	3
LTCCC Annual Event	4
Enforcement Actions Against Nursing Homes	6, 7
Action Alert Mailing List	12

Annual Report Card *continued from page 1*

went down from 43 in 2009 to 33 in 2010. In addition, the number of state and federal fines dropped slightly from 103 to 99 (though the amount fined increased from \$1,413,183 to 1,456,245). We were also disappointed to see that the number of homes receiving other actions such as state monitoring, directed plans of correction, etc... was down again this year from 58 to 51. We do not believe that this means care is improving but rather that inspectors still have problems identifying deficiencies. Therefore, we were pleased to see that DOH applied, and was accepted, to become one of the states to use the new Quality Indicator Survey (QIS). This new process uses 162 quality indicators and focuses on resident, family and staff interviews, past deficiencies and complaints. Resident samples will be increased and every surveyor will use a Data Collection Tool (DCT) tablet PC to enter information. This new system began in August 2010. We hope to see better identification and documentation of violations next year as this new system goes into full effect.

We are happy that the substantiation rate of complaints has improved. According to the DOH's website, during the last three years (November 2007 to October 2010), 27,821 complaints were made to DOH. Of these, 10,284 were investigated on site. Sixteen hundred and eight (1608) of these resulted in facility deficiencies. While still low, this is a substantiation rate of 15.6 percent, up from 13 percent last year.

We were also pleased that the DOH was supportive of an LTCCC initiative to amend the Patient Abuse Law to change "expungement" of all unsubstantiated

cases to "legally sealed" (see article in the last edition of *The Monitor* on LTCCC's legislative priorities for a description of this proposed change). This would permit DOH to analyze why they did not substantiate an abuse complaint and whether they should change how they determine whether a witness is credible.

Nursing Home Quality Improvement: DOH took the lead to develop a patient safety/quality improvement project, launched in 2010, to lower the number of pressure ulcers across the entire continuum of care: The Gold STAMP (Success Through Assessment, Management and Prevention) Program to Reduce Pressure Ulcers in New York State. The uniqueness of this project lies in its attempt to promote collaboration and communication within and throughout the continuum of care related to pressure ulcer assessment, management and prevention.

Although the data do not yet indicate lower prevalence of pressure ulcers, the project has brought together a coalition of provider organizations, developed resources and tools which include an organizational self-assessment of the processes of care for pressure ulcers, a guidance document and tools for the assessment, management and prevention of pressure ulcers, and education and information on the use of these resources and strategies to create cross-setting partnerships and to improve communication between settings about pressure ulcers.

Nursing Home Reimbursement: Last year we hoped to see major changes for the better as the state undertook revision of its nursing home reimbursement

continued on page 10



LONG TERM CARE COMMUNITY COALITION

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

The Monitor is published quarterly.
SPRING 2011 • Volume 56

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

Staff

Richard J. Mollot, Esq., *Executive Director*
Cynthia Rudder, PhD, *Director of Special Projects*
Sara Rosenberg, *Office Manager*
Lucia Caltagirone, *Public Policy Intern*

Board of Directors

Geoff Lieberman, *President*
Deborah Truhowsky, Esq., *Vice President*
Martin Petroff, Esq.
Carol Rodat
Lisa Wickens

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

What is the Status of Care in New York State's Adult Homes, Enriched Housing and Assisted Living?

With funding from the Robert Sterling Clark Foundation, LTCCC has begun working on a project to assess the quality of care in assisted living communities as well as the ability of the state to hold assisted living providers accountable. We will do this by collecting information from Department of Health (DOH) inspections, Ombudsmen complaints and information from consumers. In addition, we will examine the strengths and weaknesses of current law, regulation and enforcement.

Assisted living communities, for our purposes, include adult homes, enriched housing and assisted living residences. Adult homes and enriched housing facilities have had to abide by state mandated licensure requirements for many years; however, there had been no such licensure requirements for assisted living residences until 2008 when regulations implementing a 2004 assisted living law were put in place. In the years preceding the licensure requirement, unli-

censed assisted living residences had proliferated throughout New York State. At the same time, the aging population of the state was increasingly turning to these various facilities as alternatives to nursing homes, often ignorant of the legal and regulatory distinction between these categories of facilities.

While adult homes and enriched housing were more strictly regulated than assisted living residences, they were not without their share of quality and care issues. In 2002, *The New York Times* ran a Pulitzer Prize-winning series of articles documenting the failures of adult homes in the state. Despite the scandal that resulted from this exposé, problems continue to plague adult homes today.

The 2004 assisted living law was enacted with the hope of restructuring the assisted living system in New York and with the goal of giving seniors and disabled New Yorkers a safe alternative to nursing homes.

continued on page 5

LTCCC Calls for Law to Protect Access to Justice for NH Victims

Misinterpretation of Nursing Home Abuse & Neglect Statute

It is well known that serious problems persist in nursing homes in NY and nationwide. State and federal oversight mechanisms are often insufficient to ensure that every resident receives the care he or she needs to attain and maintain their highest practicable physical, social and emotional well-being, as both state and national laws require. Thus, as readers of *The Monitor* know, much of LTCCC's work is focused on improving the state and federal governments' ability to hold nursing homes accountable. But when the government fails to uphold minimum standards, it is crucial that consumers – residents and their families – have a meaningful right to hold providers accountable themselves.

Unfortunately, though consumers have always had

“...higher awards of damages send a message to providers that they will be held accountable...”

the right to sue providers for neglect and abuse, this generally did not result in meaningful accountability for nursing home resident harm or even death because our legal system did not, as a matter of course, place a high monetary value in the lives of nursing home residents. Since damages for causing injury or death to an individual are often given a monetary value based on the impact of the loss of current and future income and the period of future pain and suffering, nursing home residents' lives were afforded little value. In order to overcome this bias, NY State leaders promulgated §2801(d) of the public health law. By providing for a minimum monetary award in patient abuse and neglect cases, §2801(d) overcomes the bias that exists in traditional personal injury claims. The result is a greater incentive for residents

continued on page 9

LTCCC Honors Two Individuals

Who Have Worked To Empower New York State Consumers

On October 6th, 2010, LTCCC honored Michael Burgess, former Director of The State Office For The Aging and Honorable Richard N. Gottfried, Chair, New York State Assembly Committee On Health, for their exemplary efforts to empower consumers.

As executive director of New York StateWide Senior Action Council, a consumer advocacy organization, and as director of the State Office for the Aging, Mr. Burgess has long focused on the empowerment of seniors. Among his many achievements in this area, he held conferences on how to empower communities to ensure successful aging with regional follow-ups; developed a website devoted to resources for community empowerment; and funded projects encouraging consumer empowerment. As a state legislator and chair of the Assembly's Health Committee, Mr. Gottfried has championed many bills to empower consumers: the Physician Profiling Law, which gives patients access to information about a doctor's record; the Health Care Proxy Law, which allows people to designate an agent to



Richard Mollot, LTCCC's Executive Director, presenting the "apple" to Michael Burgess

make health care decisions for them if they lose decision-making capacity; and the Family Decision Making Act, which permits families and loved ones the right to make decisions for incapacitated patients without a Health Care Proxy. He has been a leading proponent of

patient autonomy, especially in end-of-life care and reproductive freedom. In addition, whenever there is a bill creating an advisory task force for a government agency, Mr. Gottfried makes sure that there is a requirement for consumer participation. We were pleased to honor such worthy individuals.

Prior to the presentation of the

awards, the honorees met with the audience over cocktails and hors d'oeuvres. The formal part of the evening was begun by Richard Mollot, LTCCC's executive director.

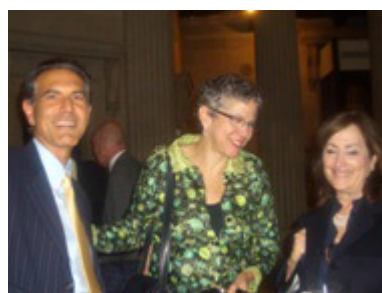
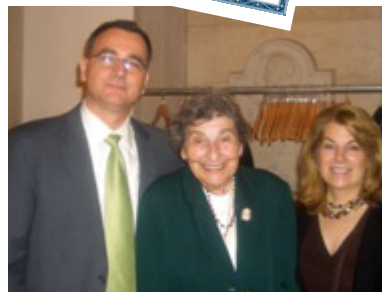
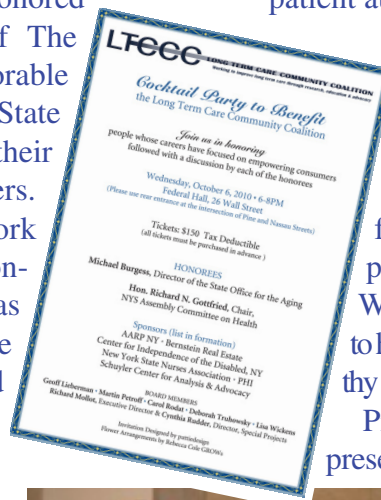
After the presentation of awards, each honoree responded to questions on long term care. Among the questions asked:

- With the gubernatorial elections upon us it is clear that the next Administration will need to focus on the budget gaps and some of the strategies communicated by nominees are downsizing government and State staff and we are concerned that may mean less focus and oversight of the frail elderly and disabled, what are your thoughts on this? What can we do to help?

- Often, as you know, consumers and their advocates have trouble influencing policy, given their lack of resources. What can consumers and their advocates do, with their limited resources, to make sure their voices are heard?

- National studies have indicated that the ombudsman program should

continued on next page



Cynthia Rudder, Director of Special Projects, presenting the "apple" to Richard Gottfried

be independent, not part of any government agency. What is your position on this?

- The Lieutenant Governor has suggested that the authority to create the reimbursement rates for nursing home and hospitals be moved from the Legislature to the Executive. What is your position on this? ☐

LTCCC would like to thank its sponsors, without whom this event would not have taken place. Grand Host: Verizon. Benefactors: PHI, Bernstein Real Estate, Ostroff, Hiffa & Associates, SCAA, AARP, Omnicare, New York State Academy of Trial Lawyers, Atlanticare, CID-NY, and the New York State Nurses Association. Pattiedesign designed the save the date cards and the invitations; flowers were provided by Rebecca Cole Grows; and honoree gifts were furnished by the firm of DF Truhowsky & Associates.

Important Action Alerts!

NY State is facing a serious budget crisis. It is crucial that the public speaks out NOW and lets our state leaders know that consumers, especially frail elderly and disabled who depend on care services, must be protected. Please take a moment to make your voice heard on these two critical issues:

- **Urge Gov. Cuomo to Stand Up For Nursing Home Residents: Support Nursing Home Quality Pools in the State Budget!** Please go to the LTC Citizen Action Center at www.ltccc.org and send a fast & free message now! If you cannot access the internet, please see the back page of this newsletter for phone, fax and U.S. Mail info for our state leaders (and please mail us a copy of your message if you can!).

- **Submit YOUR Ideas for Redesigning Medicaid.** Gov. Cuomo is giving the public the opportunity to weigh-in on how the state should redesign Medicaid. The Governor's Medicaid redesign team is almost entirely comprised of providers - this is a unique opportunity for people and organizations to provide input to decision-makers on OUR priorities.

Unfortunately, some of the most important consumer protections and regulatory safeguards afforded by the law were eviscerated in two lawsuits brought by the assisted living industry in 2009. One such resident protection that was invalidated was the requirement that assisted living facilities have a professional nurse on staff to monitor care for residents with dementia and for those aging in place and becoming more frail.

This new study will assess the current state of the laws, regulations and the enforcement of the laws governing assisted living facilities, given the weakened protections afforded to consumers. By identifying the strengths and weaknesses of the regulatory scheme, and suggesting modifications, if appropriate, we hope to improve quality of care, accountability and develop advocacy strategies to shift the assisted living system toward a new model honoring resident dignity and autonomy.

As of this writing, LTCCC has gathered data on surveys conducted by the Department of Health from 2002 to the present and developed and begun to collect data from consumers and Ombudsmen through two online surveys. These surveys ask participants to report on the issues they believe to be important in assisted living, problems they have experienced or observed in facilities, their perception of the role of DOH oversight, and their perception of the effectiveness of the rules governing assisted living care. The next step in the study is to conduct focus groups with representatives of advocacy organizations and Ombudsmen to further identify the issues plaguing assisted living, the effectiveness of assisted living regulations and DOH oversight.

This project is slated to run into the summer of 2011. At the conclusion of the study it is our hope that the dissemination of our findings and recommendations will enhance resident protections and quality of life.



If you are an Ombudsman, a resident of an adult home, enriched housing or assisted living residence or an advocate of a resident and want to participate in our on-line survey, please contact sara@ltccc.org. ☐



Quarterly Enforcement Actions Against Nursing Homes

Selected Enforcement Actions By The NYS Attorney General

Medicaid Fraud Control Unit¹ Took Action Against 5 Nursing Home Personnel 9/16/10 - 12/15/10

Nursing Home	Location	Defendant	Narrative	Sentence
Absolut Center for Nursing & Rehabilitation	Endicott	Gulley, Yolanda, CNA	The defendant, knowing that the 83-year old resident was a two-person assist, attempted to reposition the resident without assistance, who fell out of the bed and suffered injuries to her head. Defendant denied knowing how the resident was injured.	12/13/2010: One-year conditional discharge.
Jewish Home of Central New York	Syracuse	Radford, Kelly, LPN	The defendant stole narcotics meant for residents and falsified records stating that the residents had received the medications.	10/8/2010: One-year conditional discharge.
Meadowbrook Care Center	Freeport	Williams, Carolyn, CNA	While the defendant attempted a Hoyer transfer without assistance and falsified the CNA accountability record to conceal that fact. The Hoyer fell upon the resident who received stitches to treat facial lacerations.	9/28/2010: One-year conditional discharge with special conditions of surrendering her CNA certificate and refrain from caring for any incompetent person whether due to age, physical disability, or mental disease or defect.
Medford Multicare Center	Medford	Ellis, Patricia, LPN	The defendant lifted resident who had fallen from the floor without seeking an RN to assess him for injuries and put him back to bed. Did not report incident or initiate requisite paperwork.	10/25/2010: Time Served (defendant served 7 days in jail), surrendered her license, and three years probation with the condition that during the period of probation, she must refrain from being employed taking care of any incompetent person whether the incompetence is due to age, physical disability, mental disease, or defect.
St. Camillus Residential Health Care Center	Syracuse	Pritchard, Stephanie, CNA	The defendant stole jewelry from resident, which her boyfriend, Thomas White, pawned.	10/12/2010: Five-years probation and restitution of \$3,150.

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

Federal Civil Money Penalties¹ Against 5 Nursing Homes: 9/1/10 – 11/31/10²

Name Of Home	Location	Survey Date	Amount
Countryside Care Center	Delhi	6/17/2010	\$17,437.50 ⁴
Cuba Memorial Hospital, Inc. SNF	Cuba	10/7/2010	\$17,615.00 ³
John J. Foley Skilled Nursing Facility	Yaphank	7/1/2010	\$3,250.00 ³
Marcus Garvey Nursing Home	Brooklyn	6/14/2010	\$40,428.70 ^{3,5}
Pleasant Valley	Argyle	8/11/2010	\$31,590.00 ³

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

²As reported by CMS. For more detailed information contact the FOIA Officer at CMS 212-616-2220. This list will be posted on LTCCCs website every three months.

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

⁴Amount reduced 25% due to financial hardship. Original fine was 25% higher.

⁵Includes interest at 10.875% for paying in installments.



Quarterly Enforcement Actions Against Nursing Homes

NY State Fined 30 Nursing Homes: 9/17/10 – 12/17/10¹

Name Of Home	Location	Date Of Survey	Amount ²
Atlantis Rehabilitation and Residential Health Care Facility	Brooklyn	10/22/2009	\$4,000.00
Bishop Charles Waldo Maclean Episcopal Nursing Home	Queens	12/17/2009	\$10,000.00
Blossom North Nursing and Rehabilitation Center	Rochester	10/28/2009	\$10,000.00
Central Park Rehabilitation and Nursing Center	Syracuse	5/26/2009	\$2,000.00
Lakeview Rehabilitation and Care Center (Crest Hall HRF)	Middle Island	6/5/2009	\$10,000.00
Elant at Brandywine, Inc	Briarcliff Manor	9/2/2009	\$4,000.00
Erie County Medical Center-SNF	Buffalo	4/4/2008	\$4,000.00
Erie County Medical Center-SNF	Buffalo	1/12/2009	\$10,000.00
The Hamptons Center for Rehabilitation and Nursing	Southampton	9/16/2009	\$4,000.00
Heritage Commons Residential Health Care	Ticonderoga	8/31/2009	\$10,000.00
Highland Healthcare Center	Wellsville	10/15/2009	\$2,000.00
Horizon Care Center	Queens	12/26/2008	\$14,000.00
Iroquois Nursing Home Inc	Jamesville	1/22/2009	\$12,000.00
Mohawk Valley Nursing Home Inc	Ilion	11/10/2009	\$2,000.00
NYS Veterans Home in NYC	Queens	6/29/2009	\$6,000.00
Parker Jewish Institute for Health Care & Rehab	Queens	10/16/2009	\$4,000.00
Petite Fleur Nursing Home	Sayville	3/13/2009	\$10,000.00
Regal Heights Rehabilitation and Health Care Center	Queens	4/2/2009	\$14,000.00
Rosewood Heights Health Center	Syracuse	12/8/2009	\$10,000.00
Samaritan Keep Nursing Home Inc	Watertown	10/29/2009	\$4,000.00
The Springs Nursing and Rehabilitation Centre	Troy	2/26/2009	\$10,000.00
Stonehedge Health and Rehab Center	Chittenango	10/22/2009	\$4,000.00
Sunharbor Manor	Roslyn Heights	11/23/2009	\$10,000.00
Sunrise Manor Center for Nursing and Rehabilitation	Bay Shore	5/8/2009	\$2,000.00
Sutton Park Center for Nursing and Rehabilitation	New Rochelle	10/7/2009	\$4,000.00
TLC Health Network Lake Shore Hosp Nursing Facility	Irving	7/17/2009	\$4,000.00
Union Plaza Care Center	Queens	9/25/2009	\$2,000.00
Wellsville Manor Care Center	Wellsville	8/6/2009	\$8,000.00
Westmount Health Facility	Queensbury	5/13/2009	\$8,000.00
Whittier Rehabilitation & Skilled Nursing Center	Ghent	5/19/2009 and 8/10/2009	\$14,000.00
Woodcrest Rehabilitation & Residential Health Care Center., LLC	Queens	7/17/2009	\$4,000.00

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

²Under state law nursing homes can be fined up to \$2,000 per deficiency. These fines may be increased to \$5,000 if the same violation is repeated within twelve months and the violations were a serious threat to health and safety. These fines may also be increased up to \$10,000 if the violation directly results in serious physical harm.

NY State Took Other Action Against 10 Nursing Homes 9/16/10 - 12/16/10¹

Name of Home	Location	Resident Impact ²	Survey Date	Actions ³
Absolut Ctr for Nursing & Rehab at Endicott	Endicott	IJ/SQC	11/5/2010	CMP, Monitor, DPOC, Inservice, DOPNA
Adirondack Tri County Nursing & Rehab Ctr Inc.	North Creek	IJ/SQC	10/6/2010	CMP, Monitor, DPOC, Inservice, DOPNA
Cuba Memorial Hospital Inc. SNF	Cuba	IJ/SQC	10/7/2010	CMP, Monitor, DPOC, DOPNA
Hempstead Park Nursing Home	Hempstead	IJ/SQC	9/28/2010	CMP, Monitor, DPOC, Inservice, DOPNA
Marcus Garvey Nursing Home Co Inc.	Brooklyn	IJ/SQC	11/30/2010	CMP, Monitor, DPOC, Inservice, DOPNA
Mercy of Northern N Y	Watertown	IJ	9/17/2010	CMP, Monitor, DPOC, Inservice, DOPNA
Nathan Littauer Hospital Nursing Home	Gloversville	GG	10/8/2010	DPOC, Inservice, DOPNA
Northwoods Rehab & Extended Care Facility	Cortland	GG	10/22/2010	DPOC, Inservice, DOPNA
The Pines @ Glens Falls Ctr for Nsg and Rehab	Glens Falls	GG	11/4/2010	DPOC, Inservice, DOPNA
St Francis Home of Williamsville	Williamsville	GG	10/28/2010	Monitor, Inservice, DOPNA

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

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

³Civil Money Penalty (CMP): State recommends to CMS; State Monitoring: state sends in a monitor to oversee 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; Denial of Payments for New Admissions (DoPNA): Facility will not be paid for any new Medicaid or Medicare residents until correction.

LTCCC's Legislative Priorities *continued from page 1*

Between Federal and State Agencies” (available at <http://www.nursinghome411.org/?articleid=10003>). Thus, in 2011, the priorities for LTCCC will involve working to counter the enormous influence of the provider industry and its lobbyists and improving both the government's and individuals' ability to hold providers accountable for providing decent care.

Following are some of the major legislative issues we expect to be advocating on:

NYS Budget Requiring at Least a Portion of Nursing Home Payment to be Tied to Quality: LTCCC, with strong support from consumers across the state, was successful in getting a law passed two years ago that started to move nursing home payment from a system that basically pays nursing homes for taking residents in – with little accountability for whether or not they are providing decent care – to one in which nursing homes are paid for providing care that, at least, meets minimum standards. The law, which was supposed to go into effect in 2010, called for \$50 million of the billions spent on reimbursement to be tied to quality in the first year and \$125 million in the second year.

Unfortunately, despite an outpouring of messages sent to Gov. Paterson and the state legislators last year, this small start (less than 1% of total nursing home reimbursement!) toward tying public money to quality care was quashed by the NY Senate leadership during budget negotiations, who failed to support it despite the overwhelming public interest this change would serve.

LTCCC is now working to engage state leaders so that there is some requirement in the coming year's budget bill for nursing homes that receive public money to care for our frail elderly and disabled to provide quality services.

Clarify and Codify Protections for Assisted Living Residents: Assisted living continues to be an important alternative for people who cannot or do not want to live on their own, but who wish to avoid the institutional environment of most nursing homes. Unfortunately, a faction of the provider industry and their lobbyists won their lawsuits against the state in 2009, and succeeded in removing key protections that LTCCC, Statewide Senior Action Council, AARP and others had fought for. Now that the regulations have been revised with weaker standards to reflect the providers' "win," LTCCC will be working on a new

law to counter the changes that we think put consumers most at risk. For example, the providers succeeded in their fight to remove any requirement for a professional nurse on staff in an assisted living in New York State, even in a facility that is promising to provide care for people with significant dementia or who are "aging in place" – staying in the facility when their frailty is becoming so great that they are approaching a nursing home level of need.

Reinstatement of the professional nursing requirement for these facilities is our top priority in this area. In addition, we will be fighting for passage of legislation introduced by Assemblymember Richard Gottfried last year which would apply the consumer protections in "enhanced" assisted living residences to residences housing the Medicaid Assisted Living Program (ALP) and also allow enhanced residences to include ALP slots.

Amend Nursing Home Abuse Reporting Law: This amendment to the public health law, described in detail in the last (Winter 2010) issue of *The Monitor*, would fix a problem in the current law wherein complaints of abuse or neglect that are not substantiated by NY Department of Health (DOH) are expunged – all record of the complaint is destroyed. The problem stems from the fact that cases that are not substantiated can still be useful and important in the future. For instance, LTCCC learned of several recent cases in which DOH did not substantiate a complaint and the records were expunged yet the NYS Attorney General's Medicaid Fraud Control Unit was able to successfully hold the perpetrator accountable. This amendment would require that complaints unsubstantiated by DOH are sealed rather than expunged, so that law enforcement agencies can access those records in future investigations in which they might have relevant information. The public would not have access to these sealed cases.

Protect Access to Justice for Victims of Nursing Home Abuse: As discussed in detail in another article in this issue of *The Monitor* ("LTCCC Calls for Law to Protect Access to Justice for NH Victims"), LTCCC is advocating for a law to amend § 2801d of the Public Health Law to ensure that when residents and their families sue a nursing home for harm any damages that they are awarded (such as for their pain and suffering due to abuse) are protected, to the greatest

continued on next page

LTCCC's Legislative Priorities *continued from previous page*

extent possible, from a Medicaid lien. [Please see the article for a full discussion of this important issue.]

Nursing Home Staffing Standards: For many years LTCCC has been advocating for passage of a bill to require that nursing homes have minimum safe staffing levels. Members of the public are often shocked to learn that nursing homes, though entrusted with our most vulnerable citizens, are not required to maintain even minimum staffing levels. Nevertheless, a law requiring safe staffing levels has never been able to overcome the provider industry's influence in Albany.

This year, LTCCC will be joining with the NY State Nurses Association and others in support of the Safe Staffing for Quality Care Act, which would require both acute care facilities and nursing homes to implement direct-care nurse to patient ratios. In addition, LTCCC will continue to fight for an alternative bill, the Nursing Home Diversion Act, which requires that

facilities that fall below the level of staffing that a federal study found is likely to result in harm to the resident go "on diversion," meaning that they are not permitted to take in additional residents until their staffing goes above this danger threshold.



Because state leaders will be focused on the state's fiscal crisis and the powerful industry lobbyists will be working to protect their interests, your voice is needed now more than ever. We will need consumers, Long Term Care Ombudsmen, concerned caregivers and the public to make their voices heard on these issue – so that our state representatives and the new governor know that the public is concerned. The best way to do this is to join our Citizen Action Alert List by emailing info@ltccc.org. You will be alerted when your voice is needed to send a quick, free message. □

LTCCC Calls for Law *continued from page 3*

and families to hold providers accountable for neglect and abuse.

This is important, from LTCCC's perspective, not only because it facilitates the public's ability to seek justice when a resident has been harmed or died as result of poor care but also because higher awards of damages send a message to providers that they will be held accountable when they fail to meet minimum standards and cause harm to vulnerable residents.

As readers of *The Monitor* know ("New Laws Protect Access to Justice for NH Victims," Fall 2009), problems with some judges' interpretation – or misinterpretation – of §2801(d) have arisen. This has resulted in a diminished ability of residents and families to seek justice. Last year, legislation, developed with input from LTCCC and sponsored by NYS Assembly Health Committee Chair Richard Gottfried, was signed into law that cured serious problems relating to: judicial interpretation of the scope of remedies available to the consumer under the law, the meaning of the term "injury" and a nursing home resident's right to make a legal claim against a nursing home for neglect or abuse that has caused harm without fear of retaliation by the nursing home.

Amendment Needed Now to Protect Right to Justice

Unfortunately, one important bill to cure misinterpretation of §2801(d) failed to pass into law. Under existing law, if a nursing home resident is awarded monetary damages to compensate for injury by a nursing home, that award is not subject to a Medicaid lien to pay for benefits or counted towards his or her Medicaid eligibility. This is important because if it was subject to a Medicaid lien or it did count towards Medicaid eligibility, there would be less of an incentive for Medicaid recipients to sue. However, the law does not specifically address the situation that may arise if a resident dies before the conclusion of the case. This bill clarified that this aspect of the law also applies if a resident dies before the conclusion of the case.

LTCCC is currently working with Assemblymember Gottfried on a new bill that would fix this problem and overcome the challenges faced last year that prevented its passage. We were told that these challenges related to the belief that the state must put a lien on any funds awarded as damages to a recipient of Medicaid services. However, an official directive from the NY State Department of Health states that,

continued on page 11

Annual Report Card *continued from page 2*

system. Unfortunately, the year has been disappointing in this regard (see grade for NYS Senate, below). Despite the disappointing outcomes in the Legislature, however, we were pleased that DOH staff continued to be very supportive of the quality pools concept for nursing homes and very responsive to LTCCC's suggestions about the nursing home reimbursement modifications, agreeing to work to require nursing homes to document expenditure of any add-ons to the rates for dementia and bariatric residents. [Note: As of press time, the quality pools are still in limbo (dependent on the new Governor and the Legislature) and the needed steps to implement the changes required for documentation of the add-on expenditures have not been taken.]

NYS Attorney General Cuomo/MFCU: A

The Medicaid Fraud Control Unit (MFCU) of the NY Attorney General's office continued to work diligently and aggressively to investigate nursing home abuse and neglect. During this last year, LTCCC requested, under Freedom of Information Law, all patient abuse cases, not substantiated by DOH, where MFCU convicted an individual in a court of law of patient abuse, neglect or mistreatment. We examined six such cases. We were impressed by the ability of MFCU to hold the caregivers accountable and to be able to get convictions. One case involved a nursing home aide who pushed a resident from a chair to the floor, grabbed him by his shirt, pushed him up and down on the floor, while yelling at him and calling the resident, a "nigger." He then picked him up off the floor, threw him on the bed, put his right knee on the resident's back, pulling his shoulder back while continuing to shout at him. The other cases were just as egregious. This year MFCU also held a number of CNAs, LPNs and an admission coordinator accountable for abuse, convicting them in a court of law. One of these involved a case where DOH did not substantiate the original complaint, which alleged sexual abuse. The individual received ten years probation and was ordered to register as a level 2 sex offender.

NYS Senate: D- This year the Senate has received an even lower grade than last year. They listened to the lobbying of the nursing home industry and killed the quality pool initiative for the year. In other areas, we saw little movement to pass legislation to protect

long term care consumers. Two highlights were the passing of the Family Decision Making Law and the End of Life Counseling Bill.

NYS Assembly: C With a few additional exceptions, the Assembly was also moribund (again) this year when it came to protecting New York State's long term care consumers and their families. The Assembly passed the Family Decision Making Law and the End of Life Counseling Bill. However, we are pleased that the chair of the health committee, Richard Gottfried, continues to introduce progressive legislation to improve quality of care and life for those who rely on long term care services.

NYS Office for the Aging: A-

Under the leadership of Michael Burgess (who stepped down in late 2010), the office continued its focus on empowering seniors. SOFA worked with community partners to hold two conferences to further discussions on livable communities, and their website now includes a new section on community empowerment. SOFA was also one of 12 states' agencies recently awarded a Lifespan Respite Program grant from the U.S. Administration on Aging. The federal grant will be used to develop and enhance coordinated, accessible, community-based respite care programs for caregivers (family, friends and neighbors) regardless of age. In addition, SOFA won a number of federal grants to provide long term care options counseling, to help individuals at risk of being admitted to a nursing home to remain at home, to develop a consumer directed option for home-based services, and to participate in the Veteran's Directed Home and Community-based Service Program. In addition, a new law passed in 2010, introduced as an Office for Aging departmental bill, requires a public utility company or municipality that intends to discontinue services to a multiple dwelling to notify the State Ombudsman if the multiple dwelling is a residential health care facility, adult care facility or assisted living residence. This measure will ensure that the State Ombudsman, with the assistance of designated local ombudsmen, has the opportunity to help avoid the discontinuance of services where possible and to address the questions and concerns that arise when residents receive a notice of discontinuance.

continued on next page

Annual Report Card *continued from previous page*

On the negative side, it is troubling that New York City still does not have a New York Connects program, helping people in the City identify and access the services they need whether in their homes, communities or a residential setting. Almost every other region has had a functioning NY Connects program for its residents for quite some time. Given that this is the fifth program year for NY Connects, the implementation of a program for NY City citizens is long overdue.

CMS: C We were very impressed with the strong draft rules CMS proposed to implement the health care reform law in relation to civil monetary penalties. We look forward to the final publication of the rules. However, as noted last year, we are still concerned that the problems with nursing home quality and NYDOH weaknesses persist in the state despite CMS's responsibility for ensuring that the state conducts effective and comprehensive oversight. Thus, we were disappointed that the regional office gave no reaction to LTCCC's report, *Government Monitoring & Oversight of Nursing Home Care: The Relationship Between Federal and State Agencies* in which we raised a number of important issues and made recommendations to overcome some of the challenges to effective oversight. We had hoped that CMS regional staff would have a response.

NYS Medicaid Inspector General (OMIG): A According to its 2009 annual report, after three years of operation, OMIG has substantially improved NY State's efforts at identifying and preventing Medicaid fraud, waste and abuse. New York has led -and contin-

ues to lead - the nation in identifying and recovering improper Medicaid payments. In relation to long term care, in addition to "excluding" (which prevents an individual or entity from being involved in any activities for which the Medicaid program reimburses) all of the nursing home staff convicted in cases undertaken by the Attorney General, OMIG also conducted 10 investigations this past year into allegations of both quality problems and financial improprieties at nursing homes. We have been pleased at the results of a few of these cases. One case will be referred to the OAG; and another found significant patient care deficiencies that resulted in an OMIG report and a requirement to develop a plan of correction. In this case, OMIG found immediate jeopardy: poor care for residents with major pressure ulcers; residents denied pain medication; and residents not receiving appropriate follow up care by their physicians. This led to a developed plan of care; three follow up visits to determine correction; and a requirement for in-service training. Two other investigations resulted in warning letters telling the providers that any future infractions would be met with stronger enforcement actions. We hope in the future OMIG will consider using other sanctions such as recovering Medicaid funds for poor care and requiring independent oversight paid for by the provider.

Another OMIG project that is crucial to our nursing home residents, a review of the usage of atypical antipsychotics in New York State nursing homes, is underway. Although there have been no results to date, we are happy that OMIG is focusing on this burgeoning issue and look forward to the results of this project next year. □

LTCCC Calls for Law *continued from page 9*

when seeking a lien for personal injury suffered by a Medicaid recipient, "the amount of the lien... must not exceed the maximum amount paid by Medicaid for services related to the injury." In addition, the US Supreme Court ruled that a Medicaid lien can only be on the portion of a judgment that represents payment for medical care (i.e., does not include any amount, proportionally, to compensate for pain and suffering or other non-medical recovery).

LTCCC believes that this bill will be crucial because it removes a potential disincentive to taking legal

action when a resident's care has been so bad that the resident has actually died, rather than recovered from (or is able to live with) his or her injuries. It prevents a result that is both grossly unjust and contrary to the clear intent of the law.

Please join LTCCC's Action Alert List and be informed when you can speak out through our LTC Citizen Action Center on this issue when the bill is introduced. Our Citizen Action members have provided an influential voice in the past and will be critical in getting the NY State leadership to support this bill. □

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

NON-PROFIT ORG.
U.S. POSTAGE
PAID
NEW YORK, NY
Permit No. 893

Visit our homepage, www.ltccc.org, for the latest news, action alerts or to make a donation!

NEW YORK STATE OFFICIALS:

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

Nirav Shah, 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

Greg Olsen, Acting Director
NYS Office for the Aging
Agency Building #2
Empire State Plaza
Albany, NY 12223

Atty. General Eric T.
Schneiderman
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
gottfr@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 Dean Skelos
Temporary President and
Majority Leader
skelos@senate.state.ny.us

Senator David Valesky
Chair, Committee on Aging
valesky@senate.state.ny.us

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

Action Alert Mailing List

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.

